

# FAIR TRIALS INTERNATIONAL

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Strengthening  
respect for human rights,  
strengthening INTERPOL

November 2013

Fair Trials International's vision: a world where every person's right to a fair trial is respected, whatever their nationality, wherever they are accused.

## About Fair Trials International

Fair Trials International ('Fair Trials') is a UK-based non-governmental organisation that works for fair trials according to international standards of justice. Our vision is a world where every person's right to a fair trial is respected, whatever their nationality, wherever they are accused.

We pursue our mission by providing assistance, through our expert casework practice, to people arrested outside their own country. We also address the root causes of injustice through broader research and campaigning, and build local legal capacity through targeted training, mentoring and network activities. In all our work, we collaborate with our Legal Expert Advisory Panel, a group of over 120 criminal defence experts from 28 EU Member States.

Fair Trials is active in the field of EU criminal justice policy and, through our INTERPOL work, international police cooperation, extradition and asylum. Thanks to the direct assistance we provide to hundreds of people each year, we are uniquely placed to offer evidence of how international law enforcement systems affect individual rights.

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## GLOSSARY OF KEY TERMS AND ABBREVIATIONS

**Article 2 of the Constitution:** provides that INTERPOL's mandate is to ensure and promote international police cooperation 'in the spirit of the "Universal Declaration of Human Rights"'.

**Article 3 of the Constitution:** provides that 'it is strictly prohibited for the Organization to undertake any intervention or activities of a political, military, religious or racial character'; this is sometimes referred to in this Report as the 'neutrality rule'.

**CCF:** the Commission for the Control of INTERPOL's Files, the body tasked under INTERPOL's Constitution with advising the INTERPOL General Secretariat on a horizontal basis, conducting spot checks of files and handling requests to access or delete information from individuals.

**Diffusion:** a request for international cooperation, including the arrest, detention or restriction of movement of a convicted or accused person, sent by a National Central Bureau directly to other National Central Bureaus and simultaneously recorded in a police database of INTERPOL.

**Draft Red Notice:** this term is a shorthand term used by Fair Trials to denote the temporary record stored on INTERPOL's databases when a National Central Bureau uses i-link to upload a Red Notice request. This record is marked with the indication 'request being processed' pending publication of the Red Notice by the General Secretariat, which will review the information within 24 hours.

**I-link:** an information-technology solution enabling National Central Bureaus to record information directly on INTERPOL's databases. This includes submission of the information for a Red Notice in provisional form.

**INTERPOL:** the International Criminal Police Organisation – INTERPOL.

**INTERPOL alert:** a generic term used by Fair Trials which encompasses **Red Notices** and **Diffusions**. The term is used where it is not possible to specify one type of alert, for instance in the discussion of a case in which it is not known with certainty to which type of alert the person is subject.

**NCB:** National Central Bureau, the division of the national executive authorities which acts as a contact point with INTERPOL and other NCBs, including, in particular, by issuing Draft Red Notices and Diffusions and accessing and downloading information from INTERPOL's files.

**RCI:** Rules on the Control of Information and Access to INTERPOL's Files, which entered into force on 1 January 2005, with amendments entering into force on 1 January 2010, which contain provisions regulating the work of the Commission for the Control of INTERPOL's Files.

**Red Notice:** electronic alerts published by the General Secretariat at the request of a National Central Bureau 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.

**RPD:** INTERPOL's Rules on the Processing of Data, which entered into force on 1 July 2012, which regulate INTERPOL's and the NCBs' processing of information, which includes specific conditions for Red Notices and Diffusions.

## EXECUTIVE SUMMARY

- I. Police, judges and prosecutors across the globe should work together to fight serious crime. Mechanisms designed to achieve this, however, must be protected from abuse to ensure that their credibility is not undermined and to prevent unjustified violations of individuals' rights. This Report is designed to assist INTERPOL, the world's largest police cooperation body, in meeting this challenge.
- II. 'Red Notices', international wanted person alerts published by INTERPOL at national authorities' request, come with considerable human impact: arrest, detention, frozen freedom of movement, employment problems, and reputational and financial harm. These interferences with basic rights can, of course, be justified when INTERPOL acts to combat international crime. However, our casework suggests that countries are, in fact, using INTERPOL's systems against exiled political opponents, usually refugees, and based on corrupt criminal proceedings, pointing to a structural problem. We have identified two key areas for reform.
  - III. First, INTERPOL's protections against abuse are ineffective. It assumes that Red Notices are requested in good faith and appears not to review these requests rigorously enough. Its interpretation of its cardinal rule on the exclusion of political matters is unclear, but appears to be out of step with international asylum and extradition law. General Secretariat review also happens only after national authorities have disseminated Red Notices in temporary form across the globe using INTERPOL's 'i-link' system, creating a permanent risk to individuals even if the General Secretariat refuses the Red Notice. Some published Red Notices also stay in place despite extradition and asylum decisions recognising the political nature of the case. This report therefore recommends that:
    - (a) **Combat persecution:** INTERPOL should refuse or delete Red Notices where it has substantial grounds to believe the person is being prosecuted for political reasons. National asylum and extradition decisions should, in appropriate cases, be considered decisive.
    - (b) **Thorough reviews:** INTERPOL should require national authorities to provide an arrest warrant before they can obtain a Red Notice, and should conduct a thorough review of Red Notice requests and Diffusions against human rights reports and public information.
    - (c) **Draft Red Notices only in urgency:** INTERPOL should ensure that Red Notice requests are not visible to other NCBs while under review except in urgent cases; the NCB should justify its use of the urgency exception and INTERPOL should monitor exception usage closely.
    - (d) **Continual review:** INTERPOL should systematically follow up with countries which have reported arrests based on Red Notices, six or 12 months after it is informed of an arrest, and enquire as to the outcome of the proceedings following the arrest.
- IV. Secondly, those affected by Red Notices currently lack an opportunity to challenge the dissemination of their information through INTERPOL's databases in a fair, transparent process. INTERPOL, which has apparently not, to date, been subjected to the jurisdiction of any court, must provide alternative avenues of redress and effective remedies for those it affects. However, the Commission for the Control of INTERPOL's Files (CCF), its existing supervisory authority, is a

data protection body unsuited to this responsibility and lacks essential procedural guarantees. INTERPOL's judicial immunity is thus currently unjustified. This Report therefore recommends:

**(a) Reform the CCF:** INTERPOL should develop the competence, expertise and procedures of the CCF to ensure it is able to provide adequate redress for those directly affected by INTERPOL's activities. It should explore the idea of creating a separate chamber of the CCF dedicated to handling complaints, leaving the existing CCF to advise horizontally on data protection issues.

**(b) Ensure basic standards of due process:** INTERPOL should ensure that reforms of the procedures of the CCF provide for the following essential safeguards: (i) adversarial proceedings with a disclosure process; (ii) oral hearings in appropriate cases; (iii) binding, reasoned decisions, which should be published; and (iv) a right to challenge adverse decisions.

V. If INTERPOL implements these reforms, police will spend less time arresting refugees and political exiles, at great human cost to those involved, and more time arresting criminals facing legitimate prosecutions. This will enhance confidence in the Red Notice system and, thereby, INTERPOL's credibility with national authorities.

## INTRODUCTION

1. Police and prosecutors need international cooperation mechanisms to combat serious cross-border crime effectively. As the largest international police organisation with electronic networks spanning nearly every country in the world, the International Criminal Police Organisation ('INTERPOL') provides valuable tools for them to do so. This Report is designed to assist INTERPOL by identifying some areas of its work where moderate reforms could help it to detect abuses of its systems and ensure that its work adequately protects individual rights. We believe that by adopting these reforms, INTERPOL would increase the credibility of its work and improve its effectiveness.
2. Our interest in INTERPOL has been driven by our work helping individuals affected by criminal justice measures to defend their basic rights. In 2011-12, we highlighted the case of Benny Wenda. A refugee from Indonesia, Benny was the leader-in-exile of the West Papuan independence movement. He had been prosecuted for political reasons, escaped from prison, and was swiftly granted asylum by the United Kingdom where he continued campaigning and developed an international profile. In February 2011, he discovered a page on INTERPOL's website stating that he was wanted in Indonesia for violent crimes. Benny sought Fair Trials' advice, asking whether he risked arrest, whether he could accept invitations to travel and speak at events at the Australian Parliament and elsewhere, and how he could get his name off the list and move on with his life.
3. In addition to seeking travel assurances for Benny, we highlighted the case in the media. We were concerned that a prosecutor in Indonesia had been able to harness INTERPOL's systems to restrict the campaigning activities of a vocal critic and a political refugee protected by the international community. Although Fair Trials eventually succeeded in obtaining the removal of the Red Notice against Benny, the need for close examination of INTERPOL's work became clear when several other activists and refugees, having heard about our work on Benny's case, came to us for help. Several had been arrested in different countries, spent years unable to visit their families, or suffered permanent discredit through being publicly associated with criminality on INTERPOL's website.
4. In parallel, we noted mounting international concern about political abuse of INTERPOL's systems. Joe Biden, now Vice-President of the United States, warned of the 'manipulation' of INTERPOL as long ago as 2000.<sup>1</sup> The United Nations High Commissioner for refugees had raised the issue in 2008.<sup>2</sup> The Parliamentary Assembly of the Organization for Security and Cooperation in Europe ('OSCE') has had persistent concerns,<sup>3</sup> and in its 2013 Istanbul Declaration called upon

<sup>1</sup> Congressional Record Vol 146 No 91 (14 July 2000).

<sup>2</sup> Remarks by Vincent Cochetel, Deputy Director of the Division of International Protection Services, UNHCR, 2008 (available at <http://www.refworld.org/pdfid/4794c7ff2.pdf>).

<sup>3</sup> See the 2010 Oslo Declaration of the OSCE Parliamentary Assembly (available at <http://www.oscepa.org/meetings/annual-sessions/2010-oslo>), point 16; 2012 Monaco Declaration of the OSCE

INTERPOL to reform its systems for detecting and preventing political abuses.<sup>4</sup> The US Congressional Appropriations Committee recently stated that it ‘remains concerned that foreign governments may fabricate criminal charges against opposition activists and, by abusing the use of INTERPOL red notices, seek their arrest in countries that have provided them asylum’.<sup>5</sup>

5. Members of the European Parliament have also begun pressing the EU High Representative for Foreign Affairs and the European Commission for answers regarding INTERPOL and abuses of its systems targeted at recognised refugees, pointing out that ‘[INTERPOL’s] systems can be misused to obtain the arrest and detention, in one Member State, of those who have been recognised as refugees in another Member State in accordance with common EU standards’.<sup>6</sup>
6. INTERPOL was keen to explain its work to us and proposed that a senior member of its General Secretariat’s legal service attend an off-the-record meeting of our Legal Expert Advisory Panel in Strasbourg in April 2012, which brought together a range of experts on cross-border criminal law. INTERPOL also invited us to attend its Lyon Headquarters, where staff provided a basic insight into its operation and facilitated contact with the Commission for the Control of INTERPOL’s Files (‘CCF’), INTERPOL’s data protection supervisory body. We were able to discuss the CCF’s work on the occasion of one of its meetings (without discussing specific cases) which provided further insight. We would like to thank INTERPOL for this constructive engagement.
7. Following these discussions, we also asked INTERPOL for further information in the form of a series of questions to the General Secretariat and CCF, seeking both confirmation of information given to us off-the-record and further information not available in the public domain. Whilst the CCF did respond, the General Secretariat initially declined to answer our questions.
8. However, in September 2013, we met with operational and legal staff of the General Secretariat and CCF to discuss a draft of this Report. We are pleased that the General Secretariat welcomed our ‘constructive contribution’ to the issue of human rights in INTERPOL’s work,<sup>7</sup> and were grateful to it for pointing out inaccuracies in the draft report and supplying further information. The CCF likewise welcomed our draft report and we are likewise grateful to the CCF for its comments. We have made clear in this Report where information has been supplied to us directly by the General Secretariat or CCF, or where information has been sought but not provided. Our conversations and correspondence with INTERPOL constitute one source of Fair Trials’ expertise.

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Parliamentary Assembly (available at <http://www.oscepa.org/meetings/annual-sessions/1374-monaco-dec-html>), point 93.

<sup>4</sup> 2013 Istanbul Declaration of the OSCE Parliamentary Assembly (available at <http://www.oscepa.org/meetings/annual-sessions/2013-istanbul-annual-session>), points 146 and 147.

<sup>5</sup> Committee Reports, 113<sup>th</sup> Congress (2013-14) House Report, p. 113-171.

<sup>6</sup> See, for example, Question for a Written Answer of Judith Sargentini MEP and Barbara Lochbihler MEP ‘Interpol Red Notices and diffusions concerning EU-recognised refugees’, [E-011458-13](http://www.europarl.europa.eu/answers/question-detail.aspx?question-id=11458).

<sup>7</sup> See INTERPOL press release of 20 September 2013 ‘Individual rights and police information sharing focus of INTERPOL and Fair Trials International meeting’ (available at <http://www.interpol.int/News-and-media/News-media-releases/2013/N20130920>).

9. Primarily, however, our knowledge of INTERPOL’s functioning comes from our work in individual cases, reviewing documents, corresponding with the CCF on behalf of our beneficiaries or advising their lawyers. These cases are represented in this Report by the use of a red and grey text box, as seen opposite. All of those concerned have agreed for their stories to be featured. In some cases, we have used a pseudonym in order to protect their identities, but we have supplied the real names to INTERPOL to enable it to study the cases.

**Fair Trials case**  
*Boxes like this one denote cases in which Fair Trials has provided assistance or liaised directly with the person concerned.*

10. We have also monitored certain other stories relating to INTERPOL in the media. Where reference is made to such cases, we use a ‘screen grab’ from the internet to distinguish them from those in which we have been directly involved, as illustrated opposite. In these cases, we refer only to information which is available in the public domain.



11. Other information in this Report comes from desk-based research, which we have endeavoured to reference with web links where possible, to enable the reader to follow their own lines of enquiry. From these sources combined, we have been able to identify certain areas in which the operation of INTERPOL could be improved. The most significant of these areas, and the main focus of this Report, is the system of publication of ‘Red Notices’ and ‘Diffusions’ – alerts designating individuals as ‘wanted persons’ and seeking their arrest with a view to extradition.

12. This Report is designed to set out, as transparently as possible, Fair Trials’ understanding of INTERPOL’s operation, to avoid any misunderstandings and to ensure it is as helpful as possible for INTERPOL, whilst also ensuring a wide degree of accessibility. It therefore begins with an overview of INTERPOL, its system of Red Notices and Diffusions, the human impact that these alerts can have, and the reasons for which Fair Trials believes these effects place INTERPOL under a duty to prevent abuse (Part I). The Report then describes, based largely on our casework experience, what forms of abuse we have identified, in order to explain the underlying problems which our reform proposals are designed to address (Part II). Next, the Report seeks to identify the structural reasons why such abuses are currently occurring, focusing on INTERPOL’s apparently restrictive interpretation of its rules and the mechanisms for the circulation and publication of Red Notices (Part III). Taking a realistic approach and assuming that, notwithstanding any reforms, errors will always occur in any system, the Report then considers the avenues currently available to individuals to challenge Red Notices which they believe to be abusive, focusing on the procedure before the CCF and the ways in which this could be improved to provide a more satisfactory remedy, in line with the complexity of the issues and the human impact of a Red Notice (Part IV).

13. In all areas, we aim to assist INTERPOL by proposing moderate reforms (drawn together in Part V) which, if implemented, would enhance the reliability of Red Notices, along with INTERPOL’s reputation as an international organisation.

## I – BACKGROUND AND CONTEXT

### 1 – INTERPOL

#### Brief history<sup>8</sup>

14. INTERPOL has its origins in the early twentieth century, when high-ranking police officials from twenty European States came together to create a centralised police cooperation agency. At the 1923 Criminal Police Congress in Vienna, in response to the need for enhanced international police cooperation to tackle international crime, the International Criminal Police Commission ('ICPC') was established, headquartered in Vienna and at that stage under the management of Austrian police. When the institution subsequently came under the control of Nazi Germany, its headquarters were moved to Berlin and most national police forces withdrew their participation.
15. Only after the Second World War did the former members reconvene and establish the forerunner to the present INTERPOL, drawing up a Constitution agreed in 1946. The headquarters were this time in France, and management was closely linked to the French Government until the organisation was reformed again in 1956. This followed the earlier withdrawal of the United States Federal Bureau of Investigation in 1950 after the ICPC had assisted Czechoslovakia, then a communist State, to seek the arrest of two dissidents who had escaped and been granted asylum in West Germany. The adoption of the ICPO-INTERPOL Constitution (the 'Constitution') and General Regulations in 1956 marks the genesis of INTERPOL in its present form, which is the subject of this Report.

#### Structure and governance

16. Headquartered in Lyon, INTERPOL is the world's largest international policing institution. It connects the law enforcement authorities of 190 countries,<sup>9</sup> enabling them to exchange information and cooperate in fighting crime.
17. INTERPOL's organisational structure is established by the Constitution. Although there is some debate as to the legal status of this document – in particular whether it equates to a treaty for the purposes of establishing INTERPOL as an international organisation – it is clear that INTERPOL's internal structure and activities follow the model and procedures it prescribes.
18. The key parts of INTERPOL, as provided by the Constitution, are as follows:
  - a. **The General Assembly** is the 'supreme authority' of the organisation and is composed of 'delegates', who should be experts in police affairs.<sup>10</sup> INTERPOL publicises the involvement of some delegates, such as government ministers, but the full list of participants is a restricted document which is not disclosed to the public. The General Assembly meets at a plenary session once a year and establishes the rules governing INTERPOL's activities. Acting on a two-thirds majority, it adopts formal rules in the form

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<sup>8</sup> For a fuller picture, see Martha, R.S.J. *The Legal Foundations of INTERPOL*, Oxford: 2010. The information in the following two paragraphs is drawn from this source.

<sup>9</sup> At the time of writing.

<sup>10</sup> 1956 Constitution, Articles 6 and 7.

of appendices to the Constitution, and appoints the President of the organisation. Acting on a simple majority, it adopts resolutions on other policy issues.<sup>11</sup>

- b. **The Executive Committee** supervises the execution of decisions of the General Assembly and oversees the work of the General Secretariat. It has the function, *inter alia*, of deciding upon an annual work programme for approval at each General Assembly session and handling certain disputes arising in the context of INTERPOL's work. Members are elected by the General Assembly.<sup>12</sup> The Executive Committee is headed by the President of the organisation, currently Mrs Mireille Ballestrazzi, of France.
- c. **The General Secretariat** is the main executive body, which administers INTERPOL's networks, databases and other activities, and acts as the contact point between INTERPOL and the national police forces.<sup>13</sup> The General Secretariat is under the authority of the Secretary-General, currently Mr Ronald K. Noble of the United States. It has its own legal service, the Office of Legal Affairs, which provides advice on the compliance of INTERPOL's work with international legal standards and the rules adopted by the General Assembly.
- d. **The Commission for the Control of INTERPOL's Files** is a body tasked with overseeing INTERPOL's information-processing. It comprises five members selected for their expertise in data protection, information security and police cooperation. The General Assembly appoints the members from a pool of candidates put forward by the Member States and selected by the Executive Committee, who then choose the Chairman from among themselves.<sup>14</sup> The present Chairman is Mr Billy Hawkes, the Data Protection Commissioner of Ireland.

19. The other key part of the INTERPOL architecture is the network of National Central Bureaus ('NCBs'). The NCBs are the sections of each of the national police authorities which act as the contact point with INTERPOL, supply information for its databases, and use its systems for police cooperation. These are discussed further below. Whilst not a formal part of INTERPOL, the NCBs are the key users of INTERPOL's systems.

## Budget

20. INTERPOL's operating income for 2012 totalled €70m,<sup>15</sup> of which €50,6m came from statutory member contributions.<sup>16</sup> A breakdown of the types of income and expenditure is available in INTERPOL's Annual Report, but there are no public figures indicating the precise amount which each country contributes. In our letter of September 2012, we asked the General Secretariat to provide this information, but it refused. Some information can, however, be extrapolated from the public figures. Contributions vary according to members' ability to pay,<sup>17</sup> and are 'distributed

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<sup>11</sup> Constitution Appendix 1-1, Articles 14, 42, 44.

<sup>12</sup> Constitution Appendix 1-1 Article 22.

<sup>13</sup> Constitution Appendix 1-1 Article 26.

<sup>14</sup> Constitution Appendix 1-1 Articles 36-37.

<sup>15</sup> INTERPOL Annual Report, 2012, page 47.

<sup>16</sup> Resolution of the INTERPOL General Assembly adopted at its 79<sup>th</sup> session, AGN/79/RES/9.

<sup>17</sup> Article 3(3) of the INTERPOL Financial Regulations, as amended by Resolution of the INTERPOL General Assembly adopted at its 70<sup>th</sup> session, AGN/70/RES/1 (amendments in the appendix).

on the basis of a pro rata application of the UN scale of contributions'.<sup>18</sup> In 2011, INTERPOL Washington (the US NCB) recorded that its contribution was 14.9% of the total (€7.4m).<sup>19</sup> Participating countries' resources will also be expended, in a less quantifiable manner, by the deployment of police and court time arresting and detaining those who are the subject of Red Notices and Diffusions (see paragraphs 32, 40 below).

### **Aims and operation**

21. The 1956 Constitution states in Article 2 that INTERPOL's aims are: '(i) to ensure and promote the widest possible mutual assistance between all criminal police authorities ...; (ii) to establish and develop all institutions likely to contribute effectively to the prevention and suppression of ordinary-law crimes'. Its rules enumerate the limited purposes for which its systems can be used, grouped under the heading 'purposes of international police cooperation'.<sup>20</sup>
22. INTERPOL discharges this function, primarily, by enabling information-exchange between national police forces. It maintains a number of databases containing, for example, information on lost and stolen travel documents, firearms, stolen works of art, stolen vehicles and stolen administrative documents. Its databases also include nominal data on known offenders, missing persons and dead bodies, including photographs and fingerprints. INTERPOL's databases for all these purposes are connected to the NCBs by means of the secure global network called 'I-24/7'.
23. Of particular interest for this Report is the system of 'notices': formal alerts and requests for cooperation, published by INTERPOL at the request of an NCB. The notices are colour-coded according to their functions (the number in brackets represents the number issued in 2012<sup>21</sup>):
  - a. **Black** (141) to seek information on unidentified bodies;
  - b. **Purple** (16) to provide information on methods used by criminals;
  - c. **Blue** (1,085) to collect information about a person's identity, location or activities in relation to a crime;
  - d. **Orange** (31) to warn of an event, object or person carrying an imminent threat to public safety;
  - e. **Yellow** (1,691) to locate missing persons, often used in child abduction cases;
  - f. **Green** (1,477) to provide warnings about people who have committed criminal offences and are likely to repeat these crimes in other countries; and
  - g. **Red** (8,136) to seek the location of a wanted person and request their provisional arrest with a view to their extradition or surrender. These notices are the main subject of this Report and their operation is discussed in full in the next section.
  - h. **United Nations Security Council Special Notices** (78) which target groups and individuals who are the targets of UN Security Council Resolutions listing those who are the subject of sanctions as designated by the Sanctions Committee.

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<sup>18</sup> Resolution of the INTERPOL General Assembly adopted at 70<sup>th</sup> session, AGN/70/RES/2.

<sup>19</sup> US National Central Bureau (INTERPOL Washington) / US Department of Justice, Financial Year 2012 Performance Budget: Congressional Submission.

<sup>20</sup> Article 10, INTERPOL's Rules on the Processing of Data, adopted at the 80th ICPO-INTERPOL General Assembly in Hanoi, Vietnam (AG/2011/RES/7), (hereinafter, 'RPD').

<sup>21</sup> INTERPOL Annual Report, 2012, pages 32 and 33.

24. NCBs can also seek the arrest of an individual with a view to extradition by issuing a 'Diffusion', which is a standardised message which asks other NCBs to arrest the individual concerned. These are discussed in more detail below (paragraphs 38-41).

### **Relationship to national police and other entities**

25. INTERPOL is not a police force in itself. It has no powers to arrest anyone, investigate or prosecute crimes. It occasionally deploys 'Incident Response Teams' to assist national police forces during joint cross-border operations or large-scale public events. However, its key function is to provide secure communications and information-sharing channels for its members.
26. The NCB for each member country serves as a contact point for INTERPOL. Typically, the NCB will be a division of the national police force responsible for serious crime and/or cross-border cooperation. In France, for example, it is a division of the *Police judiciaire* (judicial police). In Russia, the NCB is a unit called 'Interpol Moscow'. Both bodies fall within the overall competence of the Ministries of the Interior of each country. The NCBs share information with INTERPOL and, through its channels, other NCBs all over the world. Since 1994, INTERPOL has also worked with international criminal tribunals such as the International Criminal Court,<sup>22</sup> issuing Red Notices seeking the arrest of persons accused of offences falling within the remit of the relevant court.
27. It should be noted that, in practice, it is not only the NCB itself which will have access to INTERPOL's files. INTERPOL's rules allow the NCBs to authorise other law enforcement agencies within the relevant country to use the systems. Systems such as 'MIND' and 'FIND', designed to enable consultation of INTERPOL's databases from the field, are specifically targeted at such other users. One key 'user' of INTERPOL's systems is the corps of border control officials, often agents of the immigration authorities or border police, who carry out identity and travel document checks and can cross-reference names against INTERPOL databases. In this Report, reference is generally made to the NCB itself as shorthand for all authorised users, unless there is a specific reason to refer to a specific user.

### **INTERPOL's status**

28. There has historically been debate about INTERPOL's status, and specifically whether it is an international organisation, like the UN, the Council of Europe or the Organization of American States, or some other kind of entity. According to a meeting summary produced Chatham House, INTERPOL regards itself as 'an independent and autonomous international organisation established by international law'.<sup>23</sup> Whilst some countries agree with this, others do not. The same document states the United Kingdom does not recognise INTERPOL's status as an international organisation. In so far as passports are generally issued by subjects of international law, usually States, it is perhaps noteworthy that INTERPOL has recently developed an initiative for an 'INTERPOL travel document', currently recognised by 64 countries.<sup>24</sup>

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<sup>22</sup> Resolution AGN/2004/RES/16 authorised the Secretary-General to sign a Cooperation Agreement with the International Criminal Court. Other resolutions (AGN/63/RES/9; AGN/66/RES/10; AGN/2009/RES/8) provide for cooperation with the other international criminal courts.

<sup>23</sup> Chatham House, 'International Law Roundtable Summary: Policing INTERPOL', p. 4. This source is referred to several times hereafter as 'Chatham House meeting summary'.

<sup>24</sup> Available at <http://www.interpol.int/en/About-INTERPOL/INTERPOL-Travel-Document-initiative>.

29. We do not, however, address the theoretical point relating to INTERPOL’s status in this Report. The debate as to INTERPOL’s precise status is not relevant for the purposes of this discussion other than in relation to the issue of whether or not INTERPOL should benefit from the immunity from jurisdiction of national courts which is usually granted to international organisations. This is discussed in Part III below.

**2 – Red Notices**

**What they are and how they are issued**

30. The Red Notice is an electronic alert published by INTERPOL at the request of one of the NCBs or other entities. Its function is 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’.<sup>25</sup> Its purpose is therefore to help one country locate a wanted person in order to have them extradited from the country in which s/he is encountered.

31. Each Red Notice is based on a national arrest warrant issued by the competent authorities of the requesting state. The NCB supplies a summary of the facts which form the basis for the allegation, and specifies the offence charged, the relevant laws creating that offence and the maximum sentence, or the actual sentence imposed if the person has already been convicted. The request must also include identifiers for the person: their name, photograph, nationality and other items, including biometric data such as fingerprints and DNA profiles.

32. If the General Secretariat finds the Red Notice request compliant with the rules, the Red Notice will be published in its databases and become accessible to all other NCBs. The requesting NCB can opt to have a short extract of the Red Notice published on the INTERPOL website, including the person’s identifiers and photograph and a broad categorisation of the type of offence alleged, but not all the details of the notice.<sup>26</sup> (See opposite, the public extract of the Red Notice against the refugee web-journalist from Sri Lanka, Chandima Withanaarachchi, and a full Red Notice, anonymised, at Annex 2.)



33. A Red Notice is not an international arrest warrant. Each country decides what action to take based on a Red Notice. Some countries, such as the UK, do not consider the Red Notice to be a valid legal basis for provisional arrest,<sup>27</sup> but many others do (our casework experience suggests that Georgia, Spain, Italy, Poland and Lebanon will readily arrest those subject to Red Notices). Fair Trials is not aware of a comprehensive set of data explaining each country’s approach, though the European Commission has recently been asked about European Union Member States’ policies in this regard.<sup>28</sup> A document produced by the United States NCB states that ‘for approximately one-third of the member countries a Red Notice serves as a provisional arrest

<sup>25</sup> Article 82 RPD.

<sup>26</sup> The conditions for this are set out in the RPD.

<sup>27</sup> Chatham House meeting summary, p. 4.

<sup>28</sup> Question for a Written Answer from Charles Tannock MEP to the Commission, [E-011705-13](#).

warrant’, but that the US itself, like the UK, does not treat it as such.<sup>29</sup> Some documentation suggests that ‘enhancing the legal value of Red Notices’ is a priority for INTERPOL,<sup>30</sup> though the matter is currently at the discretion of national law. In any case, the risk of a person subject to a Red Notice being arrested is high (7,958 arrests were made on the basis of Red Notices or Diffusions (discussed below) in 2011<sup>31</sup>). Even in countries which do not regard Red Notices as a sufficient basis for arrest, officers at border points may have powers to hold a person under administrative immigration detention powers,<sup>32</sup> during which time the requesting country can be notified of an arrest and a formal request made for a provisional arrest warrant.

## **I-link**

34. In 2009, INTERPOL launched ‘i-link’, a system enabling NCBs to record the content of Red Notices directly onto INTERPOL’s databases. The Rules on the Processing of Data<sup>33</sup> (‘RPD’) provide that, while requests for notices are being examined by the General Secretariat, they are temporarily recorded in a database with an ‘indication’ so that, when consulted, these requests are not confused with published notices. This temporary record is referred to in this Report as a ‘Draft Red Notice’.
35. Fair Trials understands from the INTERPOL General Secretariat that, under the current system, a Red Notice request uploaded via i-link is immediately visible to other NCBs, with an indication stating ‘**request being processed**’, while the General Secretariat reviews it. Fair Trials was informed that initial General Secretariat review will take place within 24 hours. If a doubt arises as to the compliance of the data with INTERPOL’s rules, additional precautionary measures may be put in place such as adding a caveat visible to all countries indicating that the case is subject to legal review or blocking access to the information pending review. If the General Secretariat finds that the Red Notice request complies with INTERPOL’s rules, it will then formally issue the notice. The introduction of i-link coincided with a sharp increase in Red Notices issued: from 3,126 in 2008, the figure jumped to 5,020 in 2009.
36. Although the information recorded by way of i-link might technically not qualify as a Red Notice – which comes into being only once the General Secretariat formally ‘publishes’ or ‘issues’ the notice – it does raise the possibility that other NCBs may access this information or create local copies of it, creating a permanent risk to the individual even if the General Secretariat finds that the request was contrary to INTERPOL’s rules. This is explored further in Part III, Section 3 below.

## **An increasingly popular tool**

37. INTERPOL’s published statistics indicate that use of the Red Notice has increased steadily over the course of the last decade, with 8,136 issued in 2012. As mentioned above, the introduction of i-link in 2009 coincided with a sharp increase in the number of Red Notices issued.

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<sup>29</sup> US National Central Bureau of INTERPOL, Audit Report 09-35, September 2009, p. 11.

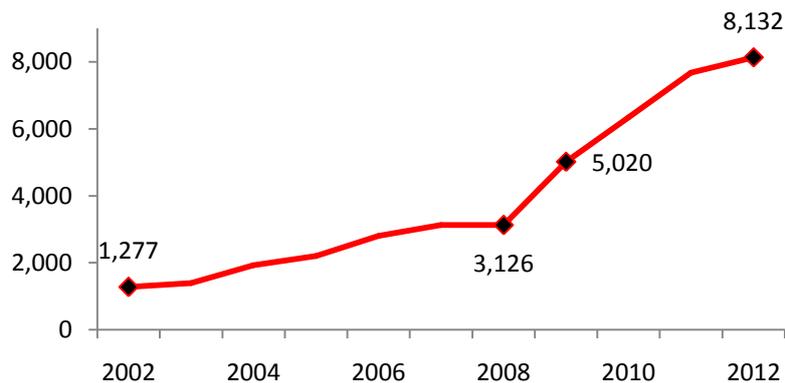
<sup>30</sup> See the Annual Activity Reports of the CCF for 2010, point 5.2.8, and 2011, point 5.2.2.

<sup>31</sup> INTERPOL, Annual Report, p. 33.

<sup>32</sup> See, for example, in respect of the United Kingdom, Immigration Act 1971, Schedule 2, paragraph 16.

<sup>33</sup> INTERPOL’s Rules on the Processing of Data, adopted at the 80th ICPO-INTERPOL General Assembly in Hanoi, Vietnam (AG/2011/RES/7).

## Red notices issued



Source: INTERPOL Annual Reports, 2001-2012

### Diffusions

38. Since the early 2000s, NCBs have also had the option of circulating ‘Diffusions’: electronic alerts which, like a Red Notice, can be used to request the arrest of a wanted person. The difference is that these are not formal ‘notices’ published by the General Secretariat.<sup>34</sup> Technically, the ‘author’ of a Diffusion is the NCB, not INTERPOL. This is to be distinguished from a Draft Red Notice, which is the draft content of a final Red Notice to be issued by the General Secretariat.
39. Diffusions are circulated to other NCBs, and at the same time recorded on INTERPOL’s databases. An NCB can use a Diffusion to limit circulation of the information to individual NCBs, groups of NCBs (called ‘zones’), or all NCBs (known as an ‘IPCQ’). Diffusions can be issued to seek a person’s arrest where the specific conditions for a Red Notice (e.g. the minimum sentence threshold) are not met, though compliance with Articles 2 and 3 of the Constitution is still required.<sup>35</sup> Diffusions thus seem to be designed as a more informal cooperation request, of lower authority and injunctive value than a Red Notice.
40. However, this distinction may be little more than a technicality, as Red Notices and Diffusions can include the same key information – a request for arrest.<sup>36</sup> The General Secretariat explained to Fair Trials that it ‘reviews all Diffusions which request coercive measures such as arrest’. Thus, as with a Red Notice, the expectation exists at the national level that the Diffusion contains a valid request which has been found to comply with INTERPOL’s rules: in other words, Diffusions implicitly carry INTERPOL’s stamp of approval.
41. Accordingly, though it is for national law of all INTERPOL member countries to draw (or not) a distinction between the two forms of request, both are widely treated as a valid basis for arrest (INTERPOL’s public statistics generally refer to ‘arrests based on Red Notices and Diffusions’ under the same heading). Indeed, Petr Silaev, whose case is discussed in Parts III and IV below, was arrested on the basis of a Diffusion (see Annex 2B). Perhaps for this reason, the CCF has

<sup>34</sup> See Article 1(14) RPD.

<sup>35</sup> See Article 99(2) and (3) RPD.

<sup>36</sup> At least within the EU, the same electronic form is used to submit a Red Notice request and to issue a Diffusion to the other Member States. See INTERPOL note to the Council of the EU, 1 April 2005 7702/05.

welcomed the introduction of equivalent compliance checks for Red Notices and Diffusions.<sup>37</sup> In general, therefore, this Report assumes that Red Notices and Diffusions requesting coercive measures are functionally equivalent. All comments relating to the review of Red Notices by the General Secretariat therefore apply equally to the review of Diffusions.

### 3 – Human impact

42. INTERPOL frequently argues that it has little power and that its only role is the exchange of information. Fair Trials’ cases demonstrate that this is not true. By circulating information, and giving it the INTERPOL ‘stamp of approval’, INTERPOL has considerable human impact. This is not to suggest that this can never be justified: in many cases, it will be. But it is important to consider the nature and force of the effects that INTERPOL’s work has on individuals. Indeed, the human impact of a Red Notice brings into focus the need for INTERPOL to detect abuses of its systems, and to ensure that these effects arise only in cases where they are justified (section 4 below).

#### *Arrest & detention*

43. The Red Notice has been described as a ‘wanted poster with teeth’,<sup>38</sup> and indeed has significant human impact. A Red Notice will be available to all NCBs and other entities connected to the I-24/7 network, which will be able to cross-check a person’s name and identifiers against INTERPOL’s databases. As stated above, it is at each country’s discretion how it acts on a Red Notice or Diffusion, but, as explained above (see paragraphs 33 and 41), many countries readily arrest people on either basis.

44. Many people will only discover they are subject to a Red Notice or Diffusion when they are arrested. This can be a devastating experience, as Ilya Katsnelson, a US Citizen, found out when he was arrested at gunpoint in Germany. He spent 50 days in detention before being allowed to return to Denmark. Such periods of detention are not unusual. Indeed, Henk Tepper, a Canadian potato farmer, spent a year detained in Lebanon in appalling conditions, as a result of a Red Notice issued by Algeria in connection with an allegedly substandard consignment of potatoes. A number of those Fair Trials has assisted have been detained in response to a Red Notice or Diffusion (see, for example, the case of Petr Silaev in Part III below).

**Ilya Katsnelson (Russia)**

*“Having spent two months in a foreign maximum-security prison, I was released having to face the challenge of explaining to my then three-year-old son why his father had been missing for so long.”*

*Ilya’s ordeal began with an INTERPOL Red Notice.*





<sup>37</sup> Annual Activity Report of the CCF for 2012, point 62.

<sup>38</sup> Ben Howard, Warner Center News, California, 21 June 2012

### *Curtailed freedom of movement*

45. A person who knows that they are subject to a Red Notice is likely to refrain from travelling for fear of arrest and detention when passing international border points. Even within the Schengen area, the space within the European Union in which border controls are abolished, an individual may hesitate to travel for fear that contact with authorities might lead to an arrest.<sup>39</sup>

46. Many national authorities will also often refuse visas to those subject to a Red Notice, sometimes severely restricting the freedom of movement of the individual concerned. Magda Osipova (not her real name), an Israeli citizen and successful entrepreneur from Russia, has spent several years unable to visit her daughter in the US because her visa has been refused due to a Red Notice, based on fraud allegations which she maintains are the product of local corruption. She has, as a result, missed seeing her granddaughter growing up.

#### **Magda Osipova (Russia)**

*“All I want is for my mother to be able to see her granddaughter grow up. It is difficult to explain to 4 year-old kids why their grandma cannot visit them” – Magda’s daughter.*



### *Employment and commercial issues*

47. The existence of a Red Notice, with consequent travel restrictions, may also make employment impossible. In some cases, the revocation of visas may lead directly to the suspension and eventual loss of employment. For instance, Rachel Baines (not her real name) became subject to a Red Notice at the request of a country in the Middle East based on a ‘bounced cheque’ offence: she gave a cheque as security for a loan for a small car, and when she was unable to keep up repayments the cheque was cashed and subsequently bounced – a criminal offence in some jurisdictions in that region. As a result of the Red Notice, Rachel lost her job: working as cabin crew on transatlantic flights, she needed a US visa, and this was revoked as a result of the Red Notice. She was suspended from work and, although Fair Trials obtained the deletion of her Red Notice, this came too late as she had, by then (six months later), been dismissed.

#### **Rachel Baines (Middle East)**

*“When I was told I was being dismissed, I just cried, it was awful...”  
Raquel, 29, lost her dream job as a flight attendant after a Red Notice issued for a ‘bounced cheque’ resulted in her losing her US visa.*



48. Equally, Red Notices may have a seriously damaging effect on business activities. Wadih Saghieh, a Brazilian-Lebanese jewellery manufacturer (discussed below in Part II), lost a number of important clients as a result of being unable to travel while he was the subject of an INTERPOL alert. Others who have approached us for help have reported that banks closed their accounts unexpectedly when they became aware of a Red Notice.

<sup>39</sup> Martha, R. ‘Remedies Against INTERPOL: role and practice of defence lawyers’, paper delivered to the European Criminal Bar Association, Lyon, 2007, paragraph 14.

### *Reputational damage*

49. Red Notices can also have a seriously discrediting effect for the individual concerned. This is particularly serious where public extracts of Red Notices are made available on INTERPOL's website, as these will associate the person's name with criminality. Business reputations may seriously suffer, and this can be equally damaging for journalists – such as Daniel Lainé, a French investigative journalist and winner of the World Press Photo Award who was subject to a Cambodian Red Notice, which was eventually removed – for whom credibility is a vital asset.



### *Restricted access to asylum*

50. A Red Notice may also have an impact on an asylum claim, being seen as a 'serious reason for considering' that a person has committed an offence, a ground for exclusion from asylum under the 1951 Convention relating to the Status of Refugees. A Canadian Federal Court judge has warned against treating a Red Notice as conclusive for this purpose,<sup>40</sup> but in regions where asylum processes are less developed, the potential impact of a Red Notice on access to asylum may be a serious issue.<sup>41</sup>

### *Long-lasting effects*

51. There are, theoretically, avenues through which to challenge a Red Notice or Diffusion but, as explained in Part IV below, these are currently unrealistic or ineffective. A person wishing to pursue these must also somehow muster the resources to hire expert lawyers, of whom there are very few and whose services may be prohibitively expensive. Whilst Fair Trials has produced a Note of Advice providing general advice as to how to challenge Red Notices or Diffusions,<sup>42</sup> this cannot, ultimately, provide a substitute for proper legal advice. As a result, the person may simply have to endure the above effects, and these may persist for many years if, for instance, no attempt is made to extradite them or if they cannot be extradited because of their refugee status.

**52. We conclude that Red Notices, despite their nature as mere electronic alerts, bring about concrete consequences and often have serious human impact, placing individuals at risk of arrest and lengthy detention, restricting freedom of movement and impacting upon the private and family life of the individual concerned.**

<sup>40</sup> *Rihan v. Minister of Citizenship and Immigration* [2010] FC 123.

<sup>41</sup> There are particular concerns about the restriction of access to asylum in Shanghai Cooperation Organisation States (China, Russia, Uzbekistan, Kirgizstan and Tajikistan): see Fédération internationale des droits de l'homme, 'Shanghai Cooperation Organisation: a Vehicle for Human Rights Violations'.

<sup>42</sup> See <http://www.fairtrials.org/wp-content/uploads/Fair-Trials-International-INTERPOL-Note-of-Advice.pdf>.

## **4 – Human impact and human rights**

### **INTERPOL’s work engages human rights**

53. Whilst INTERPOL is not directly responsible for arresting individuals who are subject to Red Notices, revoking or refusing visas, or terminating employment contracts, it publishes Red Notices very much aware that they may lead to such results. As Rutsel Martha, former General Counsel of INTERPOL, notes, accepting these consequences are attributable to INTERPOL: ‘the fact is, that in practice, subjects of Red Notices do experience consequences, because they are stopped and interrogated at control points and are often arrested provisionally pending extradition’.<sup>43</sup> Indeed, the majority judgment in the *Arrest Warrant* case suggests that the circulation of ‘wanted persons’ information, per se, entails certain legal effects.

#### ***Arrest Warrant [2002] ICJ Rep 52***

A Belgian magistrate issued an arrest warrant for an official of another country, and circulated it through INTERPOL channels as a Diffusion (no Red Notice was issued).

Whilst he was never arrested in any country, the International Court of Justice found that the Diffusion violated the official’s immunity, as he needed to travel to discharge his functions and the Diffusion, placing him at risk of arrest internationally, impeded this.

54. INTERPOL, whose networks enable this to happen, cannot escape responsibility for these restrictions. Indeed, the Draft Articles on the Responsibility of International Organizations submitted to the UN General Assembly by the International Law Commission (ILC) recognise a form of indirect liability for an international organizations which ‘aids or assists’ a State in the commission of an internationally wrongful act (a human rights infringement).<sup>44</sup> In any case, the reputational damage caused by a Red Notice, particularly where a public extract is available, and the retention and circulation of personal data represent interferences with a person’s private and family life for which INTERPOL is directly responsible.

### **Justifying the human impact of Red Notices**

55. However, it must be recalled that INTERPOL’s function is to help police cooperate to fight serious crime. Indeed, if a Red Notice is not used, the victims of crime and society at large bear the impact. Accordingly, if INTERPOL’s activities properly pursue its Constitutional goal, the human impact on those subject to alerts will not normally constitute human rights infringements. Internationally-recognised human rights standards, of course, allow justified interferences,<sup>45</sup> not least for the prevention of crime. International police cooperation represents an important aspect of this. If INTERPOL remains within its mandate, its activities and their role in restricting a person’s rights will be justified.

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<sup>43</sup> Martha, R.S.J. *The Legal Foundations of INTERPOL*, p. 118.

<sup>44</sup> Draft Articles on the Responsibility of International Organizations, *Yearbook of the International Law Commission*, 2011, vol. II, Part Two.

<sup>45</sup> See Articles 8, 9, 10, 11 of the European Convention on Human Rights; Article 51(1) of the EU Charter of Fundamental Rights; Articles 12, 18, 19, 20 and 21 of the International Covenant on Civil and Political Rights; Articles 20 and 21 of the Universal Declaration of Human Rights.

56. Conversely, where INTERPOL steps outside its remit, these interferences are no longer justified. The potentially severe human consequences of INTERPOL's activities require that it must be diligent in ensuring that use of its systems is restricted to legitimate purposes. It is therefore important to examine how INTERPOL understands its own function and the limits on its activities, in particular its cardinal rule: the strict exclusion of involvement in political matters.

### **INTERPOL's mandate**

#### *The neutrality rule*

57. INTERPOL's aim, as defined by Article 2 of its Constitution, is to promote the widest possible mutual cooperation between police forces, in the detection and suppression of 'ordinary-law crime'. This essentially means crime which is not covered by Article 3, which provides that 'it is strictly prohibited for the Organization to undertake any intervention or activities of a political, religious, racial or military character'. Together, the provisions define INTERPOL's remit: it helps police forces cooperate, but not where this would draw it into political matters.

58. On paper, this appears a perfectly sensible approach: INTERPOL must be independent and must, therefore, stay out of political matters. As explained in Part II below, however, INTERPOL's compliance with this provision is incomplete because it lacks effective safeguards to prevent countries from employing its tools to pursue political opponents.

#### *Respect for human rights*

59. Under Article 2 of its constitution, INTERPOL subscribes to 'the spirit of the Universal Declaration of Human Rights'. We understand that INTERPOL interprets this to prevent publication of a Red Notice which infringes internationally-agreed standards: if, for instance, it is based on a death sentence issued against a minor, the notice will not be published, as INTERPOL has concluded that there is an internationally-agreed standard based on the UN Convention on the Rights of the Child 1989;<sup>46</sup> whereas, if the death sentence is against an adult, it is known that some States will still extradite so the Red Notice will be published.<sup>47</sup>

60. There is one area where it is not clear how INTERPOL approaches the task: torture. The prohibition on torture and other inhuman or degrading treatment is a norm of *jus cogens*, and it could arise in INTERPOL's work in several ways. First, it might arise where the sentence is, say, stoning, which is now broadly recognised as a form of inhuman or degrading treatment.<sup>48</sup> Fair Trials understands from the INTERPOL General Secretariat that it will advise an NCB that a Red Notice will not be published for an offence carrying corporal punishment (e.g. caning) without assurances that this will not be done if the person is extradited. Secondly, it could arise where a national court has found that a person is at risk of prohibited treatment if returned to the requesting country, for instance in the context of extradition proceedings. Here, as is discussed further in Part III below, it is very unclear how INTERPOL approaches the issue. Finally, it could arise where the proceedings against the person concerned involve the use of evidence obtained

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<sup>46</sup> Chatham House, 'Policing INTERPOL' Meeting Summary, p. 9.

<sup>47</sup> Ibid.

<sup>48</sup> See the Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Mendez, to the 67<sup>th</sup> Session of the United Nations General Assembly (A/67/279), p. 6.

by torture. As the European Court of Human Rights ('ECtHR') has stated, 'fundamentally, no legal system based upon the rule of law can countenance the admission of evidence – however reliable – which has been obtained by such a barbaric practice as torture'.<sup>49</sup> If a person were able to establish this, there should be no question of INTERPOL's systems being used to secure the return of a person convicted on that basis. This is one of the reasons why it is important that people affected by Red Notice should be able to put forward evidence and arguments in support of removal of a Red Notice and a thorough review be carried out in response (see Part IV below).

### *Rules on the Processing of Data*

61. 1 July 2012 marked the entry into force of a new set of detailed rules, (the Rules on the Processing of Data ('RPD')) governing INTERPOL's data processing. These rules were drawn up in preceding years with advice from the CCF, as required by the Constitution. The rules include a number of provisions which, on their face, are to be welcomed as useful developments.

#### **Specific conditions for Red Notices – Article 83 RPD, effective 1 July 2012**

##### **Red Notice excluded for**

- Offences raising controversial issues in relation to behavioural or cultural norms
- Offences relating to family / private matters
- Offences originating from violations of administrative laws or deriving from private disputes

##### **Red Notice must meet minimum sentence thresholds**

- Offence charged punishable by maximum deprivation of liberty of at least two years
- Person sentenced to at least six months of imprisonment

##### **Minimum data**

- Name, identifiers etc
- Summary of facts 'succinct, clear description of the criminal activities of the wanted person'
- 'Reference' to a valid arrest warrant or equivalent judicial decision

### *Serious crime*

62. The *de minimis* rule mentioned above seems appropriate. The human impact and operational costs associated with Red Notices should, of course, be reserved for cases of serious allegations. Indeed, the presence of minimum sentence thresholds in extradition treaties<sup>50</sup> reflects States' common desire to use resource-intensive cooperation mechanisms only in cases which justify the cost and effort, and the same logic applies to police cooperation through INTERPOL.

63. A minimum sentence threshold is, however, a blunt tool, which may not always succeed in excluding minor offences. Indeed, certain allegations may in fact be of a very minor order despite the theoretical maximum for the offence meeting the minimum condition.

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<sup>49</sup> *Othman (Abu Qatada) v. United Kingdom* App. no 8139/09 (Judgment of 17 January 2012), paragraph 264.

<sup>50</sup> See, for example, all the treaties mentioned in note 48 *infra*.

64. Cases like that of Latvian citizen Toms Klutis (not his real name) demonstrate this. Arrested at the age of 17 in Russia for passing ecstasy pills containing 0.72g of controlled substance to a friend, he was held for three hours and then released with no further action taken. Six years later, by which time he had moved on with his life, he was arrested in Spain and was detained for two weeks at the taxpayer’s expense, before a Spanish court refused extradition as the offence was so old that it could no longer be prosecuted. It is doubtful whether INTERPOL’s systems are really intended for this sort of case.

**Toms Klutis (Russia)**

*“I was just a kid. A dumb one. But it is all in the past now. I just want to get over it.”*



*Toms, a Latvian citizen, is unable to leave Spain to visit his disabled mother and two brothers in the UK, for fear of arrest on an INTERPOL alert.*

65. Despite these limitations, the minimum sentence threshold ensures, at a basic level, legal certainty and consistency of treatment between cases. It is, however, important that INTERPOL apply the minimum sentence threshold strictly. We were concerned to see that Rachel Baines’ Red Notice was based on an allegation carrying a maximum sentence of only eight months, well below the *de minimis* rule (see Annex 2). We understand that this was because INTERPOL considered Red Notices issued prior to the entry into force of the RPD to remain valid, irrespective of their failure to comply with the newly established restrictions. The General Secretariat has informed Fair Trials that the RPD ‘does not have retroactive effect’, but that ‘the procedure regarding the renewal of Red Notices issued before the entry into force of the RPD is under review’. Fair Trials would suggest that the new rule represents recognition that police cooperation should not be used in minor cases, and impliedly confirms that earlier safeguards were insufficient. It is inappropriate to preserve an unsatisfactory situation.

*Limited purposes*

66. INTERPOL’s rules also provide an exhaustive list of the ‘purposes of international police cooperation’<sup>51</sup> for which the notices system can be used. This includes seeking the location and arrest of a person with a view to extradition, and other aims reflected in the different kinds of notices. Again, these purposes all appear reasonable and, if complied with by the NCBs, would provide a reasonable degree of assurance that INTERPOL’s systems were used only for legitimate purposes connected with INTERPOL’s constitutional purpose: international police cooperation. The problem, as explained below, is that many NCBs use INTERPOL’s systems for wholly different reasons, in particular the persecution of exiled activists and refugees.

**67. Overall, we conclude that INTERPOL’s rules properly seek to exclude inappropriate uses of its systems. They seek to restrict the human impact associated with Red Notices to only such cases as fall within INTERPOL’s remit, ensuring that human rights restrictions caused by INTERPOL are justified and proportionate. This conclusion is, however, restricted to the rules themselves, as distinct from their application in practice.**

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<sup>51</sup> Article 10(1) RPD.

## II – THE PROBLEM OF ABUSE

### 1 – Political abuses

68. Whilst INTERPOL’s rules appear generally satisfactory on paper, Fair Trials’ casework experience reveals that their application in practice is a cause for concern. The main problem area is the application of Article 3 of INTERPOL’s Constitution, which provides that:

***“It is strictly forbidden for the Organisation to undertake any intervention or activities of a political, military, religious or racial character”***

69. Unfortunately, INTERPOL’s systems are being used in cases where national authorities have previously identified political persecution, and INTERPOL’s current interpretation and application of its rules do not seem to be preventing this. A number of subcategories stand out.

#### *Public Red Notices as a public relations instrument*

70. As well as Benny Wenda’s case, where the Red Notice appeared to be used as a device to interfere with his political activities, there have been other cases in which prosecutors appear to have used Red Notices as a way of engaging in public relations battles with the individual concerned. Thus, in 2009, whilst activists within Iran were being prosecuted and frequently subjected to televised show trials, Iranian authorities sought and obtained Red Notices against a group of 12 exiled activists of the ‘Hekmatist’ group, all of whom had lived in Sweden and Germany as refugees for over 20 years, and who had continued to influence Iranian politics through satellite television and shortwave radio broadcasts.



**Swedish Kurds (Iran)**

*In 2009, shortly before the presidential elections in Iran, amid a widespread crackdown on opposition of all colours, Iranian officials had 12 Red Notices published on INTERPOL's website against a group of refugee activists who had lived in Sweden for 20 years.*

#### *Extraterritorial persecution of refugees*

71. Many of those we assisted had fled persecution in their home countries, and been granted asylum under the terms of the 1951 Convention relating to the Status of Refugees. The same authorities from whom they had fled then obtained Red Notices, placing the refugees at risk of arrest and, ultimately, extradition. Thus, in 2012, two Turkish activists recognised as refugees in Germany, Basak Sahin Duman and Vicdan Özerdem, were arrested at border points in Croatia as a result of Red Notices issued at the request of Turkey, prompting outcry among the Turkish and Kurdish community in Europe. Both were detained pending extradition proceedings, with severe effects on their mental and physical health.



**Former Turkish student leader imprisoned in Croatia**

(an information from the ICOR main coordinator), 3 June 2012

Mrs. Basak Sahin Duman, resident of Germany, faces deportation to Turkey

In Turkey a long term imprisonment awaits her due to her political activities as a student

In the morning of May 29, 2012, Basak Sahin Duman went by plane from Germany to Zagreb, Croatia. When she arrived at the airport of Zagreb, she was detained by the police. To her big surprise, the Croatian police claimed that an international warrant was issued against her. Now, she is in custody pending deportation to Turkey, one of the most repressive regimes, with thousands of political prisoners, with regular torture of prisoners according to international human rights organizations like Amnesty International, Human Right Watch, and even the Council of Europe.

72. Fair Trials also assisted Ali Caglayan, a naturalised German citizen who was a student activist in Turkey and fled after he was accused of public order offences following a May Day demonstration. Having told the German authorities about these allegations, he was granted asylum and got on with his life, only to be arrested many years later in Poland. Having been detained for two weeks, during which the German consulate raised concerns with the Polish authorities, Ali was eventually released when Turkey indicated that it had maintained no interest in him. Ali was told that he was arrested on the basis of an INTERPOL alert. Fair Trials has written to the CCF to seek confirmation of this and whether an alert remains on the system.

### Ali Caglayan (Turkey)

*"I know of about 250 Turkish and Kurdish activists living in Europe as refugees, and many have INTERPOL problems. This has to be stopped." Ali, a Turkish refugee in Germany, spent two weeks detained in Poland at Turkey's request.*



73. Whilst there are no statistics permitting a precise estimate of the scale of this issue, it is sufficiently prevalent to have caused concern for the United Nations High Commissioner for Refugees (UNHCR), the agency which assists refugees across the globe. In 2008 – prior to the spike in Red Notice use following the introduction of i-link – discussing issues which undermined international protection, UNHCR described one of its ‘main concerns’:

***“UNHCR is also confronted [with] situations whereby refugees ... when travelling outside their country of asylum ... are apprehended or detained, due to politically-motivated requests made by their countries of origin which are abusing of Interpol’s ‘red notice system’. Such persons are often left without access to due process of law, and may be at risk of refoulement or find themselves in ‘limbo’ if they are unable to return to their country of asylum” – UNHCR, 2008<sup>52</sup>***

#### *Political motivation cases*

74. Cases in which there are good grounds to believe that the person is being prosecuted on account of their political opinions are referred to as ‘**political motivation cases**’. The problem of political abuses becomes most evident in cases where, even when a national extradition court or asylum authority identifies a political motivation case, INTERPOL, aware of this, nevertheless considers the same case to fall outside the scope of Article 3 of its Constitution.

75. Indeed, Fair Trials has assisted in several cases where the person’s extradition has been refused on the basis that the prosecution was politically-motivated, yet where the INTERPOL alert has remained in place. The case of Akhmed Zakaev illustrates the point. The leader

### Akhmed Zakaev (Russia)

*An English court refused Akhmed’s extradition on the basis that the case against him was politically-motivated after a priest he was alleged to have killed gave live evidence and the main prosecution witness appeared unexpectedly to reveal he had made his statement under torture. The UK then swiftly granted asylum. The Red Notice remains on INTERPOL’s website.*



<sup>52</sup> Remarks by Vincent Cochetel, Deputy Director of the Division of International Protection Services, UNHCR, 2008, (available at <http://www.refworld.org/pdfid/4794c7ff2.pdf>).

of the Chechen Republic of Ichkeria (the unrecognised secessionist government of Chechnya) was recognised as a refugee in the UK after Russia's extradition request was very publicly refused on grounds of political motivation. Yet, the Red Notice remained in place.

76. These cases call for careful examination of INTERPOL's systems for detecting political abuses. They relate to people who are subject to criminal proceedings which are politically-motivated, and have been recognised as being at risk of persecution for that reason. The use of the Red Notice against them seems to extend the domestic political persecution to the international arena. Yet, INTERPOL's cardinal rule – its neutrality principle – is not functioning as it should, to prevent these people being the subject of international police cooperation. The result is that INTERPOL, despite its best intentions, is led to facilitate the persecution of people the international community has chosen to protect.

**77. We conclude that, in practice, INTERPOL's Red Notices are being used as political tools by NCBs, and are being issued and maintained on the basis of criminal cases which have been recognised as being politically-motivated by extradition courts and asylum authorities.**

78. It is, of course, true that there are some high-profile cases in which INTERPOL has refused to allow its systems to be used where there are strong grounds for suspecting that the prosecution is politically-motivated. For instance, in 2013, INTERPOL highlighted that it had refused to allow Russia to use its systems to pursue William Browder, the campaigner responsible for the adoption of the 'Magnitsky Law' in the US which imposed sanctions on Russian officials responsible for the death of Sergei Magnitsky. However, few people have the international profile and resources to be able to generate the same level of political support as Mr Browder. Similarly, in 2012, INTERPOL announced that it had deleted Diffusions concerning representatives of Freedom House and other US-based NGOs working in Egypt, though, again, it may be noted that the individuals enjoyed significant political support within the US.

79. These cases are also worrying in that they show that NCBs will not refrain from issuing INTERPOL alerts against political opponents, in breach of INTERPOL's rules, in the first place. Indeed, in another recent case, Russian authorities initiated steps to seek an INTERPOL alert against Anastasia Rybachenko, a respected 22 year-old Russian activist accused of participation in 'mass riots' in relation to important pro-democracy demonstrations which took place on Bolotnaya Square, Moscow, on 6 May 2012 in response to the Presidential election result. Fair Trials has written to INTERPOL inviting it not to become involved in this political case. Again, it is noteworthy that Diffusions issued concerning another person accused in relation to the Bolotnaya Square events, Georgian MP Givi Targamadze, were apparently deleted only after the intervention of the then President of Georgia, Mkiheil Saakashvili. Unsurprisingly, Anastasia Rybachenko sought support from Estonian politicians in her case, a reflection of the perceived need for heavyweight political backing in order to benefit from protection from an INTERPOL alert.

**Anastasia Rybachenko (Russia)**

*"INTERPOL's Constitution prohibits it from helping the pursuit of political opponents. Let's see if democracy fares better in Europe than in Russia." Anastasia, 22, gained support from many German and Estonian politicians in her campaign to prevent INTERPOL publishing a Red Notice against her.*



## 2 – Corruption cases

80. Through our casework experience, we have also become aware of the use of Red Notices to further criminal proceedings which are, in reality, the result of well-connected people using their influence to push prosecutors and judges into issuing unfounded criminal proceedings. We refer to these types of cases as ‘**corruption cases**’.

81. This was alleged to be a factor in the case of the Saudi Prince, Abdulaziz bin Mishal al-Saud, who, according to reports of *The Guardian* and *Financial Times*, caused Saudi prosecutors to obtain a Red Notice against businessman Faisal Almhairat. It was also reported that the Jordanian authorities, apparently further to lobbying of Prince Abdulaziz, used INTERPOL’s channels to seek Mr Almhairat’s extradition or deportation to Jordan.<sup>53</sup>



82. Another case which appears to be of this type is that of Wadih Saghie (‘Woody’) a Lebanese merchant who built up a successful business selling precious stones and jewellery. One of his transactions involved delivering jewels of a value of USD 150,000 to a powerful person in the United Arab Emirates, who subsequently refused to pay the agreed sum. When Woody took civil proceedings to recover the sum, his brother was unexpectedly imprisoned in Abu Dhabi and an international alert (issued by the ‘Interpol branch’ of the Abu Dhabi judicial police) was circulated against Woody himself, relating to an unspecified fraud allegation. As a result, Woody could not travel and, being unable to maintain client relationships, he lost several key clients to competitors, causing significant prejudice to his business. He was also ordered to leave Thailand, where he lived with his wife, after his visa was revoked because of the Red Notice. He subsequently discovered that the prosecutor involved had a 50% share in the company which owed him the debt, and lodged a criminal complaint against the prosecutor, shortly after which the Abu Dhabi Attorney General withdrew the alert.



83. Article 83 of the RPD, in force since July 2012, makes it clear that Red Notices cannot be issued in offences which ‘derive from private disputes’. These cases emphasise the importance of adherence to this rule, and the requirement for the organisation to act within the spirit of the Universal Declaration of Human Rights as required by Article 2 of the Constitution, since the presence of judicial corruption necessarily renders the criminal proceedings unfair and leads to an infringement of that provision.

<sup>53</sup> *Financial Times* ‘Saudi Prince pressed Jordan to make arrest, court papers claim’, 19 May 2013; *The Guardian* ‘Saudi princes lose battle to keep court documents secret’, 16 May 2013 (available at <http://www.theguardian.com/world/2013/may/16/saudi-princes-court-documents-secret>).

84. Realistically, it will not be possible for INTERPOL to detect such abuses when reviewing a Red Notice request or a Diffusion: there may be little or no information in the public domain, which may make it impossible for INTERPOL to identify when a corruption issue arises. Corruption cases do, however, underline the need for the individual to be able to bring the relevant information before an impartial authority and explain their case in a fair, transparent procedure (see Part IV below on the CCF).

**85. We conclude that INTERPOL's systems are also being used in respect of criminal cases which arise as a result of prosecutorial and judicial corruption, sometimes deriving from private disputes with powerful individuals. INTERPOL cannot necessarily be expected to detect such abuses *ab initio*, but those affected need an opportunity to present their complaint before an independent authority.**

### **3 – *Sui generis* abuse: the failure to seek extradition**

86. In many cases we dealt with, people have remained subject to Red Notices for extended periods of time, suffering significant prejudice, but their extradition was never sought. This may raise an issue under the RPD, which provide that the purpose of a Red Notice is to seek the location of a person 'with a view to extradition'. The NCBs are required to provide assurances that they will seek extradition upon the arrest of the person (under Article 84(b) of the RPD).

87. However, an arrest may simply not happen. This may be because there is no extradition agreement between the countries concerned, meaning extradition proceedings could not occur. Equally, if there is an arrest, the issuing country may not seek the person's extradition, assuming that this would fail for the lack of a bilateral agreement, the policy of the arresting country of not extraditing its own nationals, or a lack of reciprocity. In both scenarios, the Red Notice is still technically being used for its intended purpose; it is simply not possible to give effect to that purpose in the particular case.

88. However, where a country is in a position to request the extradition of a person, and there is no clear legal bar such as the absence of an extradition agreement, the failure to seek extradition of the person becomes a violation of INTERPOL's rules. Indeed, at this point, the General Secretariat can reasonably conclude that the requesting NCB is content to inflict the coercive effects of a Red Notice upon the individual, and is not actually using the notice 'with a view to extradition'. The use of Red Notices otherwise than for their intended purpose in itself represents an abuse, as INTERPOL's rules allow use of its systems only for limited purposes.

89. For example, Canadian authorities sought and obtained a Red Notice against Lorraine Davies, a British Citizen who has been subject to an INTERPOL alert for over 20 years, resulting in Lorraine being denied employment in the UK where she lives, and having to rely on social security at the taxpayer's expense. The Canadian authorities told Lorraine that she would have to pay for her own tickets to go back to Canada to face the charges, refusing to seek her extradition.

**Wanted by Interpol for 20 years while living minutes from police headquarters**

A mother has spent 20 years on Interpol's most wanted list – while living less than two miles from police headquarters.



90. This form of abuse is particularly serious in that it may lead to futile arrests, causing unnecessary impact and wasted costs for the arresting country. This is illustrated by the case of Ali Caglayan, discussed above. Following his arrest in Poland, Turkish authorities indicated to the Polish authorities that they had no interest in him, meaning he was needlessly detained for two weeks. Fair Trials has written to the CCF pointing out that, if the arrest was the result of an INTERPOL alert, this would constitute an abuse since it appears clear that Turkey had no intention to seek his extradition.
91. The failure to seek extradition may also provide further evidence of political motivation, particularly where the NCB has opted for a public extract of the Red Notice to be made available on the INTERPOL website. For instance, in the cases of Benny Wenda and the Swedish Kurds, neither Indonesia nor Iran made any effort to seek extradition, and the use of public notices suggest that the real aim was in fact to prejudice the image of effective political opponents.
92. Article 81(d) of the RPD provides that where an NCB obtains data allowing it to carry out the requested action but has not taken steps to this end and, when consulted, does not provide reasonable grounds for this lack of access, the General Secretariat shall cancel a notice. Fair Trials understands from the General Secretariat that it interprets this rule as requiring the removal of a Red Notice where the country is in a position to request extradition and fails to do so, and fails to justify this.
- 93. We conclude that, in some cases, countries are failing to seek extradition when this would be possible. This represents a misuse of a Red Notice and breaches INTERPOL's rules, and may provide evidence of political abuse. INTERPOL recognises this as an abuse.**

### III – DETECTING AND PREVENTING ABUSE

94. The above abuses arise because police, prosecutors and judges at the national level allow or intend the misuse of criminal law enforcement tools in certain cases, either for political motives or because of improper influence. The problem for INTERPOL is that these abuses are then extended to the international arena when Red Notices are obtained on the basis of the criminal proceedings so initiated. The following section identifies the reasons why, as things stand, INTERPOL's systems too easily fall prey to such abuses.
95. There are five main reasons: (1) INTERPOL's interpretation of Article 3, whilst in need of clarification, appears to be out of step with international extradition and asylum law; (2) the practical review mechanisms of the General Secretariat are not rigorous enough; (3) the use of Draft Red Notices through i-link creates risks to those targeted by abuses even where INTERPOL ultimately refuses to publish a Red Notice; (4) information coming to light after the publication of the Red Notice, in particular asylum grants and extradition refusals, are not being given enough weight; and (5) while there is a system of sanctions for abuse in the rules, it is not clear how effective this is.
96. Addressing these issues is central to the reliability of INTERPOL alerts. In his speech to the 2013 INTERPOL General Assembly, the Chairman of the CCF, Billy Hawkes, stated that 'if Red Notices are to be granted the enhanced status that the Organisation aspires to, it is essential that NCBs can be assured that each Notice has been subject to rigorous quality control before issue. Our inspections, in 2012, suggested that further improvement was required in this area'.<sup>54</sup>

#### **1 – INTERPOL's understanding of Article 3**

##### **INTERPOL's understanding of Article 3**

###### *Summary of the issue*

97. Fair Trials has endeavoured to analyse the legal framework to establish exactly how INTERPOL interprets and applies Article 3 of its Constitution. The overall conclusion is that – principally because there is no body of reasoned decisions interpreting the provision – it is simply not clear. However, from the available information, Fair Trials believes that INTERPOL is applying an approach to the assessment of political motivation which has no equivalent elsewhere in international law. Fair Trials considers this approach to be flawed in that it allows the retention of information on INTERPOL's files even when a national authority has legitimately determined, in the context of an asylum or extradition procedure, that the criminal proceedings which form the basis for the Red Notice or Diffusion are politically-motivated.

###### *Background: political refusal grounds in extradition law*

98. In order to put INTERPOL's rules in context, it is necessary to review briefly the two main concepts of extradition law relating to political cases:

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<sup>54</sup> Speech of Mr Billy Hawkes to the 82<sup>nd</sup> General Assembly in Cartagena, Columbia, 21-24 October 2013 (available at <http://www.interpol.int/en/About-INTERPOL/Structure-and-governance/CCF/Publications>).

- a. The ‘political offence’.<sup>55</sup> This concept is reflected in, for example, Article 3(1) of the European Convention on Extradition 1957 and Article 3(a) of the United Nations Model Extradition Treaty. It covers ‘pure’ political offences such as treason or espionage which are by their nature political. It also covers ‘relative’ political offences – offences against the ordinary criminal law which are considered political by reason of their context and the motive for which they were committed. The authoritative approach is the ‘predominance test’ established by the Swiss *Bundesgericht* (Federal Court). According to this analysis, an offence could acquire political character if it is committed in the context of a struggle for power, and if the private harm done is proportionate to the political interest at stake.<sup>56</sup> The French *Conseil d’État* takes a similar approach, for instance allowing the extradition to Spain of a person accused of participation in killings by armed organised groups, noting that the fact that the acts were allegedly committed in the context of the struggle for the independence of the Basque country could not, in light of the seriousness of the offence, mean they should be regarded as political.<sup>57</sup> Courts in the US, Canada and UK developed a different but analogous approach based on the concept of ‘incidence’, refusing to regard offences involving bombings killing civilians as political, even if committed in the context of political struggles, since such harm cannot be seen as ‘incidental’ to the struggle (‘for politics are about government’).<sup>58</sup> These are *substantive analyses of the alleged facts* – not the motive of the prosecuting authority. The ‘political offence’ concept has, however, fallen out of favour over time, as the concept that private harm can ever be justified by political ends has lost currency. Even in 1996, the test was described by the UK House of Lords as being ‘out of date’.<sup>59</sup>
- b. The ‘discrimination clause’.<sup>60</sup> This concept is reflected in, for example, Article 3(2) of the European Convention on Extradition of 1957 (the ‘ECE’) and Article 3(b) of the United Nations Model Treaty on Extradition (the ‘UNMTE’), which provides for the refusal of extradition where there are ‘substantial grounds for believing that the request for extradition for an ordinary offence is made in order to prosecute or punish the person on account of their race, religion, nationality or political opinion, or that the person’s position may be prejudiced for this reason’. Following this approach, the Swiss *Bundesgericht* refused a request for extradition from Zaïre based on embezzlement charges initiated against a political figure by the President of Zaïre, prosecution of which had been accompanied by aggressive official press statements calling the accused a traitor.<sup>61</sup> This implies an *evidential analysis of the motive of the prosecution* – not the nature of the allegation and how serious it is. The extradition court is essentially called upon to establish whether the prosecution may be politically-motivated. Such findings are often expressed as a finding that the person’s position would be prejudiced for

<sup>55</sup> For a thorough analysis, see Kapferer, S. *The Interface between Extradition and Asylum Law*, UNHCR, PPLA/2003/05, November 2003 (available at <http://www.unhcr.org/3fe84fad4.html>) paragraphs 72-87.

<sup>56</sup> ATF 90 I 298, Judgment of 7 October 1964 *Watin v. Federal Prosecution Office (Bundesgericht, Switzerland)*; ATF 87 I 134, Judgment of 17 May 1961 *Ktir v. Federal Prosecution Office (Bundesgericht, Switzerland)*.

<sup>57</sup> Decision of 25 September 1984 *Galdeano (Conseil d’État, France)*.

<sup>58</sup> See *Gil v Canada (Minister of Employment and Immigration)* [1995] 1 F.C. 508 and the US authorities cited.

<sup>59</sup> *T. v Immigration Officer* [1996] A.C. 472, at 753, C. The political offence exception has not existed in English laws implementing extradition treaties since the passing of the Extradition Act 2003.

<sup>60</sup> For a thorough analysis, see Kapferer, op. cit., paragraphs 88-101.

<sup>61</sup> ATF 99 Ia 547, Judgment of 11 July 1973 *Losembe v. Federal Prosecution Office (Bundesgericht, Switzerland)*.

political reasons if they were extradited. This is analogous to an asylum authority finding that a person is at risk of persecution on the basis of a risk of politically-motivated prosecution. Indeed, the discrimination clause overlaps with the definition of a refugee in the 1951 Convention, and is thought to be intended to reflect it.<sup>62</sup> It should be noted that such findings will often be made when the person states that they have done nothing wrong and that they are being prosecuted on trumped-up charges because of who they are. Clearly, the finding in their favour may support this. However, the only legal test being applied is whether there are good grounds to believe the person is being prosecuted for political reasons. This approach is alive and well in international law and has been applied by both extradition courts and asylum authorities in the cases of Akhmed Zakaev, Dmitrij Radkovich and Petr Silaev (see Annex 3). Yet, in all of these cases, INTERPOL alerts remained in place despite the national findings. As explained below, this appears to be at least in part because INTERPOL is applying an unorthodox legal approach.

### *INTERPOL's approach*

99. INTERPOL's Constitution, as mentioned above, provides that it is strictly prohibited for the organisation to undertake any intervention or activities of a political character. This provision is interpreted in accordance with a General Assembly resolution<sup>63</sup> which prohibits the use of INTERPOL's systems for offences of 'predominantly political ... character'. INTERPOL's Repository of practice on Article 3<sup>64</sup> (the 'Repository of Practice') states that this resolution 'applied the predominance test under international extradition law'.<sup>65</sup> Thus, the starting point seems to be that INTERPOL adopted the test in Article 3(a) of the UNMTE and Article 3(1) of the ECE, interpreted in line with the 'predominance test' discussed above. Indeed, the Repository of Practice includes a number of examples of *substantive analyses* of fact patterns supplied by the NCB: for example, some activists assaulted other activists and destroyed a polling booth to impede an election campaign; this private harm is considered disproportionate and the offence is therefore considered predominantly criminal in nature.<sup>66</sup>
100. In 2008, INTERPOL also subsequently adopted a rule,<sup>67</sup> now reflected in Article 34(3) of the RPD, which specifies matters to be taken into account when determining whether Article 3 applies. These include the nature of the offence (the charges and underlying facts), the status of the person concerned, the identity of the source of the information, and the 'general context of the case'. This provision would seem to allow a sufficiently broad factual enquiry for INTERPOL to apply a straightforward political motivation test of the kind discussed in paragraph b. above. Only that does not seem to be INTERPOL's current approach.

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<sup>62</sup> Goodwin-Gill, G. *The Refugee in International Law*, 2<sup>nd</sup> Ed, Oxford: 1996, p. 148.

<sup>63</sup> AGN/20/RES/11.

<sup>64</sup> INTERPOL Repository of Practice: Application of Article 3 of INTERPOL's Constitution in the context of the processing of information via INTERPOL's channels (hereinafter 'Repository of Practice').

<sup>65</sup> Repository of Practice, page 5.

<sup>66</sup> Repository of Practice, page 17, example case 1.

<sup>67</sup> Rule 40(a) of the Implementing Rules for the Rules on the Processing of Information for the purposes of International Police Cooperation (AGN/2007/RES/9). These rules were superseded by the RPD from 1 July 2012.

101. Upon reviewing a draft of this Report, the General Secretariat has stated that although a political motivation test ‘is not explicitly mentioned in the rules it is regularly assessed as part of an Article 3 review in application of factors such as “the general context of the case”’. Whilst this might initially be considered encouraging, the CCF explained that –

***“the fact that there may be an element of political motivation behind a charge of criminal conduct does not in itself invalidate a request for extradition; it is something to be factored into the overall ‘predominance’ assessment carried out by the General Secretariat and the CCF”*** – Commission for the Control of INTERPOL’s Files, 2013.

102. The latter statement of the CCF indicates some confusion in that it suggests that INTERPOL is applying a hybrid approach whereby a ‘predominance test’ is applied but where ‘political motivation’ is one of the elements which is weighed in the balance.

#### *The difficulty with INTERPOL’s approach*

103. There are several difficulties with this approach. First, it has no equivalent in international law, and there is therefore no body of authoritative case-law to guide its application. Each extradition law test has authoritative judicial decisions associated to it, notably from the Swiss, US and English courts,<sup>68</sup> yet if the two tests are combined, as the CCF suggests they are, the usefulness of these decisions falls away. Secondly, whatever the existing approach, it is too unclear to be understood with certainty by anyone external to INTERPOL. The above statements from the CCF and General Secretariat are entirely new and there are no other public sources indicating how INTERPOL considers political motivation. Indeed, the Repository of Practice refers explicitly to Article 3(a) of the UNMTE (political offence), but conspicuously fails to mention Article 3(b) of that document (political motivation test). The CCF’s public resources speak of its balancing the ‘ordinary law aspects’ of the case against the ‘political aspects’, but there is no body of published decisions from which to infer what is meant by these expressions.

104. Further, INTERPOL’s apparent ‘hybrid’ approach is problematic from the point of view of international law. INTERPOL is required by its Constitution to act ‘within the spirit of the Universal Declaration of Human Rights’, Article 14 of which protects the right to seek and enjoy asylum. In addition, there is authoritative scholarship indicating that international organisations are bound by customary international law,<sup>69</sup> and the protection enshrined in the 1951 Convention is increasingly seen as customary international law.<sup>70</sup> From either point of view, it is clear that INTERPOL should consider itself bound to ensure consistency with international law protecting individuals from persecution.

105. Finally, and most fundamentally, INTERPOL’s current approach seems to mean – as explicitly recognised by the CCF in its suggestion that the presence of political motivation does not invalidate the request – that an alert can remain in place even where a national court has found

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<sup>68</sup> See above and the other case-law covered in Kapferer, op. cit., paragraphs 72-101.

<sup>69</sup> De Schutter, O. ‘Human Rights and the Rise of International Organizations: the logic of sliding scales in the law of international responsibility’, Working Paper, Democratic Governance and Theory of Collective action, 2008.

<sup>70</sup> See Messineo, F. ‘Non-refoulement Obligation in Public International Law: Towards a New Protection Status’, Research Companion to Migration Theory and Policy, Ashgate 2011.

the prosecution to be politically-motivated, as in the cases of Akhmed Zakaev, Dmitrij Radkovich and Petr Silaev. This is unsatisfactory. As Sybille Kapferer, an expert on extradition and asylum law, writes in a UNHCR background paper: ‘Situations in which a request for the arrest and subsequent surrender of a refugee is rejected by one or more States, but where the INTERPOL “red notice” nevertheless remains in force are particularly worrying. In such cases, the persons concerned continue to be at risk of *refoulement* every time they travel to another country’.<sup>71</sup>

106. The shortcoming is all the more important because, in modern times, it is common practice to use criminal prosecution on trumped-up charges of serious offences as the vehicle for political persecution. As Margaret Sekaggya stated to the United Nations General Assembly in 2012:

***“Human rights defenders have been detained, arrested, prosecuted, convicted, sentenced and harassed by Governments under the guise of the enforcement of anti-terrorism legislation and other legislation relating to national security. In the past few years, defenders exercising their rights to freedom of expression, freedom of association and ... freedom of peaceful assembly have been at particular risk”*** – UN Special Rapporteur on Human Rights Defenders<sup>72</sup>

107. National courts and authorities around the world are alive to this challenge and, despite the demise of the ‘political offence’ exception, continue to grant asylum to, or refuse extradition of, those accused of offences where satisfied that the charges are politically-motivated. There is no good reason for INTERPOL not to follow suit. Indeed, since Article 3 is explicitly intended, as the Repository of Practice explains, to ‘reflect extradition law’ and ‘protect individuals from persecution’,<sup>73</sup> it follows that INTERPOL should follow the approach of Article 3(b) of the UNMTE and Article 3(2) of the ECE.

108. There may be pragmatic reasons which make this undesirable for INTERPOL: since it essentially questions the legitimacy of a prosecution, a political motivation test implies a value judgment on the prosecuting state and its practices, and INTERPOL is founded on confidence in its members. But other international organisations founded on common values, such as the European Union, Council of Europe or Organisation of American States, all have independent bodies which hold member States in violation when they infringe those values. The General Secretariat may also feel that it does not always possess the evidence necessary to make the required assessment; however, if the finding has already been made by a national extradition court or asylum authority, and it is made aware of this, its job should be easy. The CCF, for its part, may be informed of the national findings and is able to consider evidence put forward by the person concerned. Whilst the CCF has repeatedly stated that it is ‘not an extradition court’, in terms of Article 3, Fair Trials does not consider that it has so far pointed to any real legal or institutional reason why the CCF should approach allegations of political motivation differently from an extradition court.

**109. We conclude that INTERPOL’s interpretation and application of Article 3 is unclear. We recommend that INTERPOL provide detailed information about how it assesses political motivation and the significance it attaches to extradition refusals and asylum grants.**

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<sup>71</sup> Kapferer note, paragraph 311.

<sup>72</sup> Sekaggya, M., UN Special Rapporteur on Human Rights Defenders, Report to the General Assembly, 2012, A/67/292, paragraph 14.

<sup>73</sup> Repository of Practice, p. 6.

**110. We conclude that, on the basis of the available information, it appears that INTERPOL is applying a test under Article 3 which is out of step with international asylum and extradition law. We recommend that INTERPOL adopt the test in Article 3(b) of the UNMTE as it is applied by extradition courts. As a first step, INTERPOL could commission and publish an expert study analysing relevant international extradition and asylum law and its own obligations.**

**2 – Ex ante review by the General Secretariat**

**General observations**

111. The primary safeguard against political abuses of INTERPOL is the General Secretariat, which is responsible for formally publishing Red Notices and keeping them under review after publication. INTERPOL has stated<sup>74</sup> that it reviews every Red Notice (8,136 in 2011) and every Diffusion (20,130 in total in 2011, though it is not known what proportion of these requested coercive measures). In response to a statement by Fair Trials that it was unclear what these reviews entailed,<sup>75</sup> INTERPOL responded stating that ‘the review includes an assessment of the information provided by the requesting country in the Notice form as well as additional relevant background information on the case’.<sup>76</sup>

112. We were keen to know more about the types of materials considered to be relevant background, as well as more general information on human resources dedicated to this work, staff training and guidance provided to those reviewing Red Notice requests and Diffusions. In September 2012 we asked the General Secretariat a number of questions to this effect but the General Secretariat cited operational reasons for not providing any response.

113. It has since been reported that INTERPOL maintains a ‘watch-list’, updated on a regular basis, and it will occasionally revert to the country concerned to obtain more information about a Red Notice request.<sup>77</sup> Fair Trials has also been provided with some further information regarding the ‘Quality Assurance Process’, involving human reviews of Red Notice requests by specially trained staff, specific aspects of which are discussed further in context below. However, some key unknowns remain and we continue to believe that more clarity is needed.

**General Secretariat – key unknowns:**

**Human resources:**

- the number of staff responsible for reviewing Red Notice requests and Diffusions
- whether country or regional experts are employed to advise on individual cases

**Rules and guidance:**

- content of internal guidance and manuals on the application the Constitution
- the criteria on the basis of which the ‘watch-list’ is drawn up and maintained

<sup>74</sup> ‘The Power of the INTERPOL Red Notice: INTERPOL’s Comments’, *International Enforcement Law Reporter*, Vol 28 (10), October 2012.

<sup>75</sup> ‘The Power of the INTERPOL Red Notice’, *International Enforcement Law Reporter*, Vol 28 (9), September 2012.

<sup>76</sup> ‘The Power of the INTERPOL Red Notice: INTERPOL’s Comments’, op. cit.

<sup>77</sup> Chatham House, ‘Policing INTERPOL: meeting summary’, p. 7.

114.A Senior Counsel at INTERPOL has written academically about how the General Secretariat approaches its task. For instance, in relation to the ‘general context of the case’ criterion, it is stated that this might lead INTERPOL to refuse a Red Notice request where this was found to be similar to other cases which it had concluded were ‘attempts to persecute ... under a disguise of “ordinary law crimes”’.<sup>78</sup> The crucial question, in our opinion, is precisely how the General Secretariat detects an attempt at ‘disguised persecution’, such as that found in political motivation cases, in the first place. As set out above, INTERPOL’s approach to political motivation does not appear to correspond to the establish approach so this issue is unclear.

**115.We conclude that there is insufficient information available to understand how INTERPOL approaches the task of reviewing Red Notice requests and Diffusions after they have been published. We recommend that INTERPOL make more information publicly available about this, within reasonable limits.**

### **Specific aspects of General Secretariat review**

#### *Background research*

116.The extent to which INTERPOL researches the background to individual cases prior to publication – in particular the profile of the person concerned, and the rule of law situation in the country requesting the Red Notice – is, in our view, important. There are two main reasons for this.

117.First, the application of the ‘predominance test’ is, or ought to be, context-sensitive: in the approach of the Swiss *Bundesgericht*, considered above, no crime can be considered ‘proportionate’ in a democratic state, since criminal action is presumed unnecessary for the purposes of achieving change.<sup>79</sup> Conversely, where state repression is intense, committing the same offence might be considered proportionate.

118.Secondly, assuming Article 3 does include a political motivation test, human rights reports produced by independent organisations and international monitoring bodies become crucial. Such reports will, for instance, document the use of broad, vaguely defined ordinary-law offences in order to criminalise political dissent. In addition, material in the public domain is important in establishing the ‘status of the person’, which INTERPOL is required to take into account. The fact that a person is, for example, the former president of a country may be common knowledge but, in some cases, basic research may reveal not only the political profile of the person but also important details regarding historical antagonism with their country, the fact that they have been granted asylum, and so on.

119.Fair Trials understands from the General Secretariat that, as part of its ‘Quality Assurance Process’, it will take account of human rights reports if these are relevant, stating that ‘when reports issued by a UN Special Rapporteur addressed the concrete case subject to review, they were decisive in a decision to deny publication. In other cases and where the reports were more general, their conclusions were taken into consideration as part of the overall review’. INTERPOL

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<sup>78</sup>Gottlieb, Y. ‘Article 3 of INTERPOL’s Constitution: balancing international police cooperation with the prohibition on engaging in political, military, religious or racial activities’, 23 *Florida Journal of International Law*, p. 135.

<sup>79</sup> See Kapferer, op. cit., paragraph 79.

also monitors the media to make sure it is familiar with the relevant information, presumably through its Command and Coordination Centre which operates around the clock.

120. These are encouraging statements, though it would also seem that some cases have fallen through the cracks of the existing mechanisms. For instance, Patricia Poleo, an award-winning journalist, had been brought before military tribunals and been threatened for her reporting on government involvement with Columbian rebels, prompting the Inter-American Court of Human Rights to issue public decisions ordering precautionary measures to safeguard her safety. Her profile as a radical journalist was well-established at the time the Red Notice was issued. National news outlets had also reported the breakdown of a previous criminal allegation implicating Patricia and other oppositionists.

### Patricia Poleo (Venezuela)

*"It is like walking out of prison after years of captivity."*



*Patricia, an award-winning journalist living as a refugee in the United States, reacts to the news that INTERPOL had deleted alerts against her and her husband, Nixon Moreno, targeted by Venezuela under Hugo Chavez.*

121. The General Secretariat cannot, of course, be expected to guess certain facts about the case, nor is it in a position to hear the person concerned in advance of publishing the Red Notice. But it can identify such material as is available in the public domain. Given that the General Secretariat is the main safeguard against abuse, it should be proactive in running these sorts of checks in order to ensure that it does more than simply 'rubber-stamp' the request.

**122. We conclude that proactive background research into the requesting country's human rights record, and the circumstances of the case, are essential to detecting political motivation cases. We recommend INTERPOL provide more disclosure about the extent to which it does this.**

#### *Scrutiny of arrest warrants*

123. The RPD require there to be a 'reference' in a Red Notice request to an arrest warrant or equivalent decision, that is, a simple statement that one exists with basic details (date, the name of the court etc). Fair Trials believes it would be more prudent to require the NCB to provide the actual arrest warrant.

124. For one thing, the requirement to furnish proof of allegations may avoid inaccurate information, with potentially worse effects for the individual, from being recorded on INTERPOL's systems. For instance, in 2013, Australian media raised alarm after Sayed Abdellatif, who had claimed asylum and was living in a family asylum reception centre, was found to be the subject of a Red Notice stating that he had been convicted in Egypt of murder and violent crimes. However, upon further enquiry from his lawyers, it was discovered that those convictions had never existed, and INTERPOL updated the Red Notice to reflect this, leaving in place other allegations for membership of an illegal organisation.

125. Analysing the text of a criminal allegation may also help identify issues of compliance with Article 3. As the current Minister of Justice of the Federal Republic of Germany stated in a 2009 Report to the Council of Europe Parliamentary Assembly:

***“unclear charges, either in terms of the legal classification of the crime of which a person is accused or in terms of the acts or other facts which a person has allegedly committed ... are typical indications of motivations on the side of the prosecution that go beyond neutral enforcement of criminal justice”*** – Sabine Leuthesser-Scharrenberger, 2009<sup>80</sup>

126. Such flaws would be highly relevant to the General Secretariat’s assessment of whether it would be contrary to Article 3 of INTERPOL’s Constitution to circulate the information on the ground that the request relates to a political motivation case. However, it is also true that information in arrest warrants may simply reproduce the summary of facts provided in the INTERPOL request.

127. Nevertheless, in its 2011 Annual Activity Report,<sup>81</sup> the CCF noted its difficulties in obtaining copies of arrest warrants when processing individual complaints,<sup>82</sup> suggesting that it considered these valuable for its analysis. It must of course be recognised that there may be practical difficulties in providing arrest warrants, and there may be cases where urgency does not allow them to be produced immediately. Issues would also arise as to the costs of translating arrest warrants. However, it seems desirable for the General Secretariat to request arrest warrants in general, and at least insist upon detailed factual information in the Red Notice request or Diffusion.

**128. We conclude that the provision of arrest warrants may help detect cases of abuse. We recommend that INTERPOL require NCBs to supply arrest warrants, either at the point of requesting a notice or promptly thereafter if the matter is urgent. INTERPOL should also insist upon complete factual circumstances being provided in Red Notice requests and Diffusions.**

129. The case of Petr Silaev draws together all of these issues. Petr is a young activist and writer who took part in a demonstration against a controversial motorway development through the Khimki forest in Moscow. After Petr escaped the ensuing police crackdown, Moscow police issued a Diffusion (see Annex 2B) seeking his arrest for an offence of ‘hooliganism’, failing to specify in the vague, short description of facts how Petr had allegedly committed any criminal action.

130. Fair Trials is not aware how INTERPOL approaches ‘hooliganism’ offences or whether these feature on its ‘watch-list’. In response to our questions in this regard, INTERPOL explained that it checks offences based on hooliganism against Articles 2 and 3 of the Constitution, though without supplying specifics or examples. In Petr’s case, we do not know whether INTERPOL requested further information from the Russian NCB when reviewing the Diffusion, the extent to which it had regard to the available human rights reports noting concerns about the Khimki forest movement and related prosecutions, or whether experts with knowledge of the case were consulted. In any case, Petr was recognised as a refugee by Finland (after the Diffusion was issued) but was subsequently arrested in Spain, where he was detained, before a Spanish court refused his extradition, determining that there were clearly grounds to believe the prosecution against him was politically-motivated. Despite this, once made aware of both the Finnish and

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<sup>80</sup> Council of Europe Parliamentary Assembly, *Allegations of politically-motivated abuses of the criminal justice system in Council of Europe Member States*, Doc 1193, August 2009, p. 37.

<sup>81</sup> Annual Activity Report of the CCF for 2011, (available at: <http://www.interpol.int/content/download/19070/169143/version/1/file/ccf2011.pdf>).

<sup>82</sup> Paragraphs 71-74.

Spanish decisions, the CCF took the view that the alert could be retained on INTERPOL’s systems. Precisely what test it applied to reach this finding is unclear because no reasons were provided (for a full description of the process in Petr’s case, see paragraph 222 in Part IV below).

### Petr Silaev (Russia)

<b>Subject</b>	<i>Well-known civil activist, writer and musician from Moscow</i>	
<b>Charge</b>	<i>‘Hooliganism’ – the offence for which Pussy Riot were tried</i>	
<b>Details</b>	<i>Helped convene a group of 150 people to support the Khimki forest defenders. The group disrupted public order by firing rubber balls and throwing stones at the town hall building, causing about € 9,000 of damage</i>	
<b>Asylum</b>	<i>Granted April 2012 by Finland (reported on Russian television). The decision-maker had regard, inter alia, to the following material, which was available to INTERPOL:</i> <ul style="list-style-type: none"> <li>• <i>Information from the Russian Human Rights Ombudsman</i></li> <li>• <i>Amnesty International report on prosecutions of other Khimki forest activists</i></li> <li>• <i>Contemporaneous reports of the protest, country of origin information</i></li> </ul>	
<b>Extradition</b>	<i>Refused February 2013 by Spain, on the basis that the request was politically-motivated. It noted:</i> <ul style="list-style-type: none"> <li>• <i>The prosecution appeared to be led by police without judicial oversight</i></li> <li>• <i>The failure of the Russian authorities to provide any substantiated allegation</i></li> <li>• <i>The Finnish asylum decision and the background considered in it</i></li> </ul>	
<b>INTERPOL</b>	<i>Refused to remove the Diffusion from INTERPOL’s files – no reasons given</i>	

### 3 – Issues surrounding i-link

#### Overview of the issue

131. The usefulness of even the General Secretariat’s seemingly limited review has, however, been diminished by the introduction of the ‘i-link’ system in 2009. This put the NCBs in charge of issuing notices in temporary form, with the General Secretariat reviewing them and formally publishing them afterwards. As INTERPOL’s website explains:

**i-link**  
**“Via I-link, NCBs can now directly issue Red Notices rather than requesting them through the General Secretariat”**  
**INTERPOL Annual Report, 2009**

**“In a matter of seconds, member countries can draft and submit an alert seeking the arrest of a wanted criminal, with the information recorded instantly ... and immediately accessible to police around the world” – INTERPOL, 2013<sup>83</sup>**

132. i-link thus enables NCBs to record wanted persons information directly onto INTERPOL’s databases. This is then immediately available to other NCBs.<sup>84</sup> As noted earlier, this ‘Draft Red Notice’ is then reviewed by the General Secretariat and, while this is ongoing, it bears the

<sup>83</sup> <http://www.interpol.int/INTERPOL-expertise/Data-exchange/I-link> (accessed 6 November 2011).

<sup>84</sup> Article 76(3) RPD.

indication ‘**request being processed**’. It is clear that this system, as initially conceived, posed risks. The development is essentially grounded in a reallocation of responsibilities, with the NCBs becoming the first guardians of compliance with INTERPOL’s rules.

133. This ‘role reversal’<sup>85</sup> in the publication of Red Notices is further reflected in the RPD provisions concerning Article 3 of the Constitution. The former rules required the General Secretariat to consider certain criteria when assessing the application of Article 3: the ‘status of the person concerned’, the ‘general context of the case’ and other factors.<sup>86</sup> Under the revised rules, applicable since 2012, the same criteria remain relevant – only now they are framed as the relevant factors on which the General Secretariat is to establish a repository of practice,<sup>87</sup> though they apply equally to INTERPOL itself. This devolution of responsibilities to NCBs poses issues, not least because the opening up of the system made it more popular, with a 60% increase in the year following its introduction.

**60%**

**more Red Notices issued in 2009, the year i-link was launched, than in 2008**

134. Given that many of the countries whose authorities use Red Notices the most also suffer from serious corruption problems and are known for political abuses of justice, this reliance on NCBs’ conscientiousness entailed significant risk. For instance, in 2010, a study commissioned by the Consortium of Investigative Journalists<sup>88</sup> examined the number of public Red Notices issued for each country. In first place was the United States (710), with Russia (456) and Belarus (411) in fourth and fifth place respectively.<sup>89</sup> In the same year, Transparency International’s Corruption Perceptions Index placed Russia 154<sup>th</sup>, and Belarus 127<sup>th</sup> out of 178 countries surveyed. Around the same time, the Council of Europe raised concerns about political abuses of justice in Russia,<sup>90</sup> and the United Nations Human Rights Council appointed a Special Rapporteur to monitor the situation in Belarus<sup>91</sup> in response to consistent concerns about political prisoners, enforced disappearances, torture and discrimination raised by many UN bodies in previous years.<sup>92</sup> It was perhaps unrealistic to expect countries to refrain from abusing INTERPOL’s tools when the rule of law is not observed at the national level. The i-link innovation ran counter to this reality.

135. By way of example, the Russian Federation implements its devolved responsibilities by a set of instructions to law enforcement agents agreed by various agencies including the Federal Security Service (FSB), the former KGB, which simply reiterates that ‘the international search for persons

<sup>85</sup> The expression is that of the report of the Centre de Recherche Information, Droit et Société, Notre Dame de la Paix University, Namur: *Data Protection at ICPO-INTERPOL: Assessment, Issues and Outlook*, 29 April 2011, referred to below in Part IV.

<sup>86</sup> Article 40 of the Implementing Rules for the Rules on the Processing of Information for the Purposes of International Police Cooperation (AG/2007/RES/9 as amended by AG/2008/RES/14).

<sup>87</sup> Article 34(3) RPD.

<sup>88</sup> International Consortium of Investigative Journalists, ‘INTERPOL’s Red Flag’, available at [www.icij.org](http://www.icij.org).

<sup>89</sup> See The Ujima Project, INTERPOL Red Notices as of 10 December 2010 (the reference is to *public* Red Notices), available at <http://ujima.tumblr.com/post/6373804693/interpol-red-notices-as-of-dec-10-2010>.

<sup>90</sup> Council of Europe Parliamentary Assembly, *Allegations of politically-motivated abuses of the criminal justice system in Council of Europe Member States*, Doc 1193, August 2009.

<sup>91</sup> Resolution 20/12 of the Human Rights Council.

<sup>92</sup> A full list of all Treaty Body reports concerning the human rights situation in Belarus is available at [http://ap.ohchr.org/documents/dpage\\_e.aspx?c=18&su=29](http://ap.ohchr.org/documents/dpage_e.aspx?c=18&su=29).

alleged to have committed crimes of a political, military, religious or racial character is not performed'.<sup>93</sup> As noted above, this has not stopped Russia seeking to abuse INTERPOL's systems.

136. Of course, INTERPOL processes the information and, in trusting the NCBs to respect the Constitution, it assumes responsibility for the occasions when they fail to do so. Indeed, the data exists on INTERPOL's own databases, and action is taken by other NCBs because the data carries INTERPOL's implicit imprimatur.

137. However, Fair Trials recognises that i-link has the advantage of channelling more information through the Red Notice system, arguably diverting traffic away from Diffusions which likewise appear to carry INTERPOL's approval but cannot be reviewed before formal issuance. In addition, it is true that in some circumstances an NCB may need to act quickly – for instance if a person is about to board a plane to flee a jurisdiction – and a Draft Red Notice may show an NCB's serious intention to pursue the person.

138. It should, further, be recognised that the CCF, advising the General Secretariat on a horizontal basis, has consistently recommended improved checks to counterbalance the risks associated with the system (see further in Part IV below). As a result, Fair Trials understands that Draft Red Notices are now reviewed relatively promptly: the CCF told us that human checks occur within 24 hours. This at least minimises the possibility of a person targeted by an abusive Red Notice request being arrested on the basis of the Draft Red Notice. However, other issues arising from the i-link system appear to remain current.

### The 'loss of control' issue

139. The use of Draft Red Notices still means that the information is visible to other NCBs. During this time, however short, the information may be accessed and a local copy created on national police databases. Thus, even if the Red Notice request is eventually refused by the General Secretariat, this local record may remain in existence. Although it is possible for INTERPOL to issue a message to other NCBs informing them of its decision to refuse to publish a notice, INTERPOL does not possess the power to compel them to amend their records.

140. The risks this entails are illustrated by the case of Ales Michalevic, one of the politicians who stood against President Lukashenko in the December 2010 elections in Belarus. He was one of several opposition leaders imprisoned for leading demonstrations against perceived vote-rigging, but was able to leave Belarus and was immediately recognised as a refugee by the Czech Republic. Yet soon afterwards, reportedly in April 2011, Belarus sought a Red Notice. INTERPOL refused this (according to public sources, in July 2011). However, in December 2011, Ales was detained at Warsaw airport, apparently on the basis that his name appeared in local databases populated with wanted persons data sourced

### Ales Michalevic (Belarus)

*Ales was arrested in Poland and the United States,*



*despite INTERPOL refusing a Red Notice request. Fair Trials has asked the CCF to explain what happened to the information about Ales which was sent to INTERPOL. One year on, a response is still awaited.*

<sup>93</sup> Order Approving Instructions for the Organisation of Information Security Cooperation through INTERPOL, (available at: [http://www.businesspravo.ru/Docum/DocumShow\\_DocumID\\_118103.html](http://www.businesspravo.ru/Docum/DocumShow_DocumID_118103.html)).

from INTERPOL. Thus, it appears that Belarus had been able to use INTERPOL's systems to create a permanent scourge on Ales' life, despite INTERPOL recognising that Article 3 applied and deleting the Draft Red Notice from its own databases.

141. Ales Michalevic's arrest in Warsaw was also an embarrassment for Poland: the Ministry of Foreign Affairs bought Ales a new air ticket at the time, and Minister for the Interior Jacek Cichocki called publicly for reforms of INTERPOL. Similarly, Italian authorities recently expressed their apologies to Rafael Poleo, a journalist and the father of Patricia Poleo, after they arrested him at a hotel and kept him overnight in a police cell on the basis of a Red Notice which they did not appreciate had been deleted. This sort of incident should be avoided by preventing information uploaded via i-link in abusive cases from becoming available to other NCBs.

142. A 2011 study by the University of Namur,<sup>94</sup> commissioned by the CCF (the 'CRIDS Report'), expressed concern at the risks inherent in making data available for download by other NCBs without any mechanism for INTERPOL to retain ownership of the information. As the CRIDS Report noted, this problem is particularly serious because of the risk attaching to wanted persons information.

143. Self-evidently, requesting national authorities to remove information from their police databases will not be a straightforward task, particularly for someone who cannot afford legal services. There is therefore a need to minimise the access of other NCBs to Draft Red Notices as defined in this Report.

**144. We conclude that the i-link system, allowing NCBs to issue draft Red Notices, unrealistically assumed that all NCBs will respect INTERPOL's rules. This said, human checks within 24 hours minimise the risk of arrest on the basis of abusive Draft Red Notices. However, there remains a risk of NCBs accessing and copying Draft Red Notices, which may create a permanent risk to the person concerned even if INTERPOL eventually refuses the Red Notice request.**

#### **An alternative model**

145. Fair Trials understands from the General Secretariat that, in principle, a Draft Red Notice will be available to other countries in the standard form, complete with the 'request being processed' indication, *unless* the General Secretariat adds a caveat to the file stating that it is under legal review or blocks access to the information while that review is carried out. This assumes that it is necessary for the information to be immediately available in all cases. Whilst, of course, there may be cases where a person is about to cross a border and interim visibility is needed, it seems difficult to imagine that these would be anything other than a minority of cases.

146. Fair Trials therefore believes that it would make sense for NCBs to keep uploading the information as a Draft Red Notice, but for the latter to not, in principle, be automatically visible to other NCBs. If the urgency of the situation justifies it, the NCB should be able to make the notice visible immediately in individual cases, provided they supply a statement of the factual circumstances requiring urgent action.<sup>95</sup> The General Secretariat and CCF would then be able to

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<sup>94</sup> Centre de Recherche Information, Droit et Société, Notre Dame de la Paix University, Namur: *Data Protection at ICPO-INTERPOL: Assessment, Issues and Outlook*, 29 April 2011.

<sup>95</sup> This could be described in simple terms as an 'emergency override' option.

assess whether this function was being used appropriately (if used in every case, this would show a failure to respect the urgency criterion). Such a system would ensure that fewer Draft Red Notices were made available via i-link, leaving fewer people targeted by abusive requests, faced with the uphill battle of getting their data removed from national police databases.

**147. We recommend that INTERPOL change the standard process of the i-link system so that Draft Red Notices are, by default, not visible to other NCBs while they are under review by the General Secretariat. In urgent cases, the NCB should be able to push an ‘override’ button, providing an explanation of the circumstances justifying this. The General Secretariat and CCF would then be required to assess carefully whether this power was being used appropriately.**

#### **4 – Continual review**

148. Article 3 imposes a ‘strict’ prohibition on INTERPOL undertaking any activities or intervention in cases of political character. It follows from the general nature of this prohibition that INTERPOL is required to police compliance with its rules not only at the point of approval of a notice or Diffusion, but on an ongoing basis thereafter. This is significant as the General Secretariat may become aware of information which may reveal a violation of INTERPOL’s rules, in particular an asylum grant or extradition refusal.

#### **Extradition refusals and asylum grants**

149. The RPD require NCBs to inform the General Secretariat when a person subject to a notice is found, so the General Secretariat is in a position to know about the outcome of any extradition proceedings. The General Secretariat may also find out that a person has been granted asylum. This will not happen systematically, as States are bound to respect the confidentiality of an asylum claim, but the General Secretariat may nevertheless become aware of an asylum grant when, for example, national authorities directly inform it that a person has been granted asylum, or the person may inform the General Secretariat themselves.

#### *The current practice: use of ‘addenda’*

150. From the available material, it appears that the usual response to an extradition refusal or asylum grant is to add an ‘addendum’ to the file, reflecting the fact.<sup>96</sup> This appears to follow, at least in part, from the narrow interpretation of Article 3 discussed above: the Repository of Practice refers to the 1984 General Assembly resolution reiterating the ‘predominance test’ and states that ‘refusals of one or more countries to act on a request ... does not mean that the request automatically comes under Article 3; rather, it will be reported to other NCBs in an addendum’.<sup>97</sup> The logic is that other authorities will be able to take this information into account if they encounter a person subject to a Red Notice.<sup>98</sup> The approach is also consistent with INTERPOL’s concept of ‘national sovereignty’, as it means that it can reflect both countries’ decisions in its files, treating each as valid. It also spares INTERPOL having to decide whether the Red Notice is or is not caught by Article 3, recognising instead that it may have ‘doubts’ as to compliance with INTERPOL’s rules and shifting the decision-making burden to the NCBs.

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<sup>96</sup> Annual Activity Report of the Commission for the Control of INTERPOL’s Files, 2011, paragraph 79.

<sup>97</sup> AGN/53/RES/7; Repository of Practice on Article 3, p. 5.

<sup>98</sup> Martha, R., op. cit; CCF Annual Activity Report 2010 & 2011.

151. The General Secretariat has expressed reservations about using addenda. The CCF explained in its report of 2010 that '[t]he General Secretariat raised concerns about front-line national (particularly at border check-points) being "contaminated" by information which was likely to be a source of confusion and hinder international police cooperation'.<sup>99</sup>

152. However, it appears to be the CCF's view that addenda should be used to reflect political refugee status or extradition refusals.<sup>100</sup> This is not a satisfactory approach. Indeed, the person may still be arrested, and possibly detained for several days, before the matter is given any substantive consideration by the relevant authorities. Either this harm is justified, or it is a persecutory use prohibited by Article 3. INTERPOL should decide one way or the other if it has the information available to it. Practitioners we spoke to expressed the view that an addendum is at least 'better than nothing', and should be included where it is not possible to conclude that Article 3 is infringed. This may be the case (though, in the absence of data as to how countries' arrest policies differ when a file is marked by an addendum, Fair Trials reserves judgement on the point). However, it is important that, as the CCF has explained,<sup>101</sup> addenda should not be seen as an alternative to deleting the notice. This is particularly the case for certain asylum grants and extradition refusals which establish that the specific criminal proceedings underlying the Red Notice are politically-motivated.

*Extradition refusals and asylum grants which mean Article 3 should apply*

153. If a court refuses extradition on the basis that the proceedings are politically-motivated, then, if these are the same proceedings which give rise to the Red Notice, this should trigger the prohibition under Article 3. Similarly, if asylum is granted despite a known outstanding criminal allegation, then, if that allegation is the same as that underlying the Red Notice, this should also establish the Red Notice as being contrary to Article 3. This is because the 1951 Convention, at Article 1F, excludes from asylum those in respect of whom there are 'serious reasons for considering' they have committed a 'serious non-political crime' (Article 1F(b)), or other serious criminal activity (Article 1F(a) and (c)). If asylum is granted, it means either the allegation is political in nature, or that it has been considered to be an incidence of persecution, not legitimate prosecution. Article 3 requires INTERPOL to 'protect individuals from persecution', so such an asylum grant ought to lead to the removal of the Red Notice.

154. The application of a clear rule to this effect would have the benefit of ensuring a simple, straightforward process by which refugees could obtain the removal of the Red Notice. It would also avert potential confidentiality issues: as the UNHCR has noted, significant risks attach to processes whereby information regarding asylum grants is made available to the country of origin.<sup>102</sup> Requiring a refugee to demonstrate political motivation to INTERPOL requires them to disclose sensitive information, incompatibly with the precautionary approach advocated by the UNHCR. If INTERPOL considered itself bound by the asylum and extradition decisions of its member countries, the need for information exchange would be minimised.

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<sup>99</sup> CCF Annual Activity Report, 2011.

<sup>100</sup> CCF Annual Activity Reports, 2010 & 2011.

<sup>101</sup> Annual Activity Report of the CCF for 2010, paragraph 84.

<sup>102</sup> See, for instance, the Advisory Opinion of the UNHCR Representation in Japan of 31 March 2005 on the rules of confidentiality regarding asylum information (available at <http://www.refworld.org/pdfid/42b9190e4.pdf>).

155. There are, of course, cases where asylum is granted on a diplomatic basis and the label 'political asylum' is used, but where this is in fact not a faithful application of the 1951 Convention. Equally, people may obtain protection under national constitutional forms of asylum which are separate from the 1951 Convention. A state seeking a Red Notice could quite legitimately ask INTERPOL to take account of this. Equally, extradition may be refused simply because there is no treaty in place, and/or because the requested person is a national of the requested state and cannot be surrendered. In principle, such refusals have no bearing on the application of Article 3. However, if there is no doubt that the asylum grant is a faithful application of the 1951 Convention or that the extradition refusal is based on a 'political offence' or 'discrimination clause' in an extradition treaty, this should lead to the removal of the Red Notice since it establishes reasonable grounds to believe that the criminal proceedings are politically-motivated.

156. Equally, the asylum-granting country may have been advised of certain allegations, and granted asylum on the basis that these were a guise for persecution, while the Red Notice concerns separate allegations. It is, however, unlikely that other proceedings against the same person would *not* be prejudiced, in light of the finding that the others were, particularly given that the test is whether there are 'reasonable grounds' to believe this.

157. In the process of determining what action to take upon learning of an grant, it is clear that it may be useful for INTERPOL to liaise with the country of asylum not only for the purposes of verifying the authenticity of the refugee status, if this needs confirming, but also regarding the substance of that decision. Indeed, some countries may be willing to explain further the basis for the decision and comment on the continuing validity of the Red Notice. However, in order to ensure that the treatment of cases does not depend upon the policy of each country – many countries may be reluctant, for diplomatic reasons, to 'defend' their asylum grants in this way – it is more desirable for INTERPOL to apply a clear rule applicable in like manner in all cases. The same considerations would apply to proceedings before the CCF, which should likewise be bound by a clear rule enabling it to treat each case indiscriminately.

**158. We recommend the adoption of a clear rule requiring the deletion of a Red Notice or Diffusion when either (a) a request for extradition based on the proceedings giving rise to the Red Notice/Diffusion has been rejected on political motivation grounds or (b) asylum has been granted under the 1951 Convention on the basis of the of the criminal proceedings giving rise to the Red Notice/Diffusion.**

**159. We recommend that, where the extradition refusal or asylum grant is made on the basis of criminal allegations which are not the same as those giving rise to the Red Notice, this should give rise to a strong presumption in favour of deleting the Red Notice.**

**160. In either case, the NCB concerned should have the opportunity to bring information to the attention of INTERPOL in order to maintain the Red Notice. However, the burden should be on the NCB to justify why neither of the above rules should apply.**

*Whether extradition refusal and international protection grants engage Article 2 of the Constitution*

161. As mentioned in the introductory part of this Report, it is not clear what significance INTERPOL attributes to decisions finding that a person cannot be removed to a State because of the risk of inhuman or degrading treatment which they would face on return. Again, the General Secretariat may become aware of such a risk through an asylum grant or extradition refusal. For instance, courts in the United Kingdom and France have recently refused extraditions to Russia on the basis of the risk of inhuman or degrading treatment in pre-trial detention.<sup>103</sup> Equally, national authorities may grant international protection under other international standards. For instance, in the US, people denied asylum under the 1951 Convention may still qualify for protection under the Convention Against Torture,<sup>104</sup> in Council of Europe countries, removal may be prohibited by reason of Article 3 ECHR,<sup>105</sup> and within the EU they may qualify for ‘subsidiary protection’.<sup>106</sup> Equally, a grant of asylum under the 1951 Convention may establish that such a risk exists, as the recognition that a person faces a risk of ‘persecution’ means they face serious harm, which will often equate to inhuman or degrading treatment (e.g. physical violence).

162. As stated above (at paragraph 59), INTERPOL considers itself bound to respect universally-shared human rights standards, which include the prohibition on *refoulement*. It can therefore be argued that the grant of any internationally-recognised form of asylum, or a refusal of extradition on human rights grounds, means a Red Notice cannot be published, or maintained. This is an area where INTERPOL’s understanding of Article 2 of its Constitution is not entirely clear. Indeed, the respected French lawyer William Bourdon, formerly Secretary General of the *Fédération internationale des droits de l’homme*, underlined this in a letter to *The Telegraph* newspaper, pointing out that one of his clients had been granted subsidiary protection by France, but that ‘INTERPOL continues to help [Russia] pursue him ... all our appeals to INTERPOL have fallen upon deaf ears’.<sup>107</sup> INTERPOL could usefully address this issue by providing examples of how it approaches this issue currently, as it has done in respect of Article 3 with its Repository of Practice. This would also help the legal community understand how INTERPOL approaches the task of identifying an ‘international standard’ by which it considers itself to be bound under Article 2 of its Constitution.

**163. We conclude that it is not clear how INTERPOL understands the significance of a grant of international protection or a refusal of extradition on human rights grounds for the validity of a Red Notice or Diffusion. We recommend that INTERPOL publish a Repository of Practice on the interpretation and application of Article 2 of its Constitution.**

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<sup>103</sup> See the Decision of Senior District Judge Howard Riddle of 21 March 2013 signalling that UK courts would not extradite to Russia absent evidence of significant improvement in prison conditions.

<sup>104</sup> The Treaty basis for this is Article 3(1) of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>105</sup> Among many others, see *Ahmed v. Austria* App. no 25964/94 (Judgment of 17 December 1996).

<sup>106</sup> At the time of writing, the legal basis for this is Council Directive 2004/83/EC.

<sup>107</sup> The Telegraph, letters, 30 May 2013, INTERPOL’s role in tracking down political dissidents, (available at <http://www.telegraph.co.uk/comment/letters/10087494/Interpols-role-in-tracking-down-political-dissidents.html>).

## *Finding out about asylum grants and extradition refusals*

164. Cases like that of Dmitrij Radkovich (not his real name) bring into focus the need for effective monitoring systems and clear rules requiring the removal of alerts in appropriate cases. INTERPOL learned of Dmitrij's refugee status and was in a position to enquire from the Italian authorities as to the outcome following his first arrest. It was therefore in a position to learn that the Italian court had ordered his release because he had earlier been recognised as a refugee in need of protection because of the specific criminal proceedings which now formed the basis for the INTERPOL alert. It is not known what action INTERPOL took at the time. In any event, it was insufficient to prevent Dmitrij's subsequent arrest in Bulgaria, leading to further distress for Dmitrij and his family and unnecessary expense for the Bulgarian court, which, predictably, concluded that he could not be extradited. The application of a simple rule would have led to the removal of the alert, with no need for Fair Trials to challenge the alert subsequently, triggering an undesirable exchange of information with Belarus in the context of the CCF proceedings.

### **Dmitrij Radkovich (Belarus)**

*"I have now been arrested three times in the presence of my family. Every time I tell them I am a refugee, but it keeps happening" – Dmitrij*



**Summary** *Independent Belarusian entrepreneur and financier of the two main opposition candidates to President Lukashenko in the December 2010 elections in Belarus, Nikolaj Statkevich and Andrei Sannikov, as well as independent Belarusian media outlets, arrested several times despite INTERPOL learning of his refugee status and being in a position to know about extradition refusals.*

**Sept 2009** *Dmitrij flees Belarus to Lithuania after the search of his apartment*

**Sept 2010** *During the run-up to the elections, Belarus issues INTERPOL alert against Dmitrij alleging financial offences.*

**July 2011** *Lithuania recognises Dmitrij as a refugee under the 1951 Convention*

- *Evidence confirms he is being prosecuted because of his political activities*
- *Cites arrest warrant circulated via INTERPOL as proof of risk of persecution*

**Jan 2012** *Dmitrij is arrested in Italy on New Year's day in presence of his family after checking into a hotel and his passport details were sent to police who checked INTERPOL files.*

- *Italian authorities supply INTERPOL with a copy of Dmitrij's refugee document.*
- *INTERPOL confirms that it will consult with Lithuania as to its authenticity.*
- *Lithuanian embassy confirms Dmitrij's refugee status to Italian authorities*
- *Italian court releases Dmitrij, citing Article 33 of the 1951 Convention*

**Jun 2012** *Dmitrij is again arrested in Bulgaria on the basis of the INTERPOL alert*

- *Spends two months under curfew while extradition request considered*
- *Court refuses extradition on the basis that the case is politically-motivated*
- *Refers expressly to previous decisions of the Lithuanian and Italian authorities*

**Dec 2012** *Fair Trials applies to CCF requesting disclosure of the file and asking what action was taken in Jan 2012 after INTERPOL learned of Dmitrij's refugee status. No response.*

**Sept 2013** *Fair Trials applies to CCF requesting deletion of the file, having had no response, pointing out that Dmitrij's extradition would be contrary to the 1951 Convention.*

165. It has to be recognised that the INTERPOL General Secretariat will not always know that a person has been granted asylum or even that their extradition has been refused. Indeed, countries generally take the view that an asylum grant, or even the fact of an asylum claim, should be kept confidential. Likewise, although the NCBs are required to inform INTERPOL of information calling into doubt the validity of information recorded on INTERPOL's files,<sup>108</sup> there is no guarantee that they will do so. It should instead fall to INTERPOL to seek this information, in a reasonably systematic yet not excessively burdensome manner.

166. In its Annual Reports of recent years, INTERPOL has highlighted the number of arrests made by national authorities based on Red Notices and Diffusions. This means that NCBs are informing the General Secretariat of arrests, as in the cases of Dmitriy Radkovich and Petr Silaev. This, in turn, puts the General Secretariat in a position to enquire as to the outcome of the proceedings. It might, as a result, be informed of a failure to seek extradition by the country which issued the INTERPOL alert, enabling it to detect *sui generis* abuse. It might, alternatively, be informed that an extradition request was made but that this was refused, and why it was refused. Extradition decisions which Fair Trials has seen in the cases mentioned in this Report explicitly mention the fact of asylum being granted in another country. INTERPOL may thus also be able to learn of asylum grants. Provided this does not become disproportionately burdensome, INTERPOL should assume responsibility for carrying out systematic enquiries in this regard.

**167. We recommend that INTERPOL institute a practice whereby the General Secretariat, when informed of an arrest, systematically follows up with the NCB of the arresting country either six or 12 months after the event, and asks standard questions as to whether an extradition request was made and whether this was accepted or refused, and on what grounds. INTERPOL should then review the continuing validity of the information on its systems in light of the information obtained.**

## **5 – Sanctions**

### **Suspension of access rights**

168. If an NCB does not fulfil its obligations under the RPD, the General Secretariat can supervise that NCB's information-processing for a period of three months, dispatch an assessment team to the NCB, or suspend 'access rights' granted to the users of the NCBs. To do this, the General Secretariat submits a proposal to the Executive Committee.<sup>109</sup>

169. Fair Trials is not aware whether this power has ever been exercised, or precisely what test is applied to determine whether an NCB or other user has infringed INTERPOL's rules. Nor is it known whether 'access rights' include both 'direct access', the right to record information directly in INTERPOL's databases, and 'indirect access', the right to enter and obtain data in INTERPOL's systems with the General Secretariat's assistance.<sup>110</sup>

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<sup>108</sup> Article 79(1)(c) RPD.

<sup>109</sup> Article 131 RPD.

<sup>110</sup> The definitions appear in Article 1(16) and (17) RPD.

170. The issue of sanctions came to the fore in 2013 when it was reported that Russian authorities had used INTERPOL's systems to target the British businessman William Browder (see paragraph 78 above). In response, there were calls for Russia to be banned from using INTERPOL,<sup>111</sup> though Fair Trials does not subscribe to this as a solution to the problem of political abuse.



171. The presence of sanctions within the RPD reflects INTERPOL's own acknowledgment that NCBs cannot necessarily be trusted to police themselves. However, they apply only where doubts arise, and the presumption is that information supplied by NCBs is accurate and relevant. More importantly, the present sanctions system provides some oversight after the event, but cannot prevent abuse. Given the human impact involved, this is unsatisfactory. Primary responsibility for preventing abuse rests with INTERPOL and it should therefore concentrate on enhancing its *ex ante* and continual review processes.

**172. We conclude that sanctions for misuse of INTERPOL's systems can play a part in preventing future abuses. We recommend that INTERPOL explain what criteria are applied to determine when an NCB has failed to fulfil its obligations, and how many times this power has been used.**

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<sup>111</sup> Law and Order in Russia 'Russia Ignores Interpol's Ruling and Re-Appplies to Interpol for a Red Notice for William Browder to Block Magnitsky Justice Campaign', 5 June 2013.

## IV – CREATING EFFECTIVE REMEDIES

### 1 – The need for an effective remedy

173. While we believe that there is more that INTERPOL could do to detect and prevent attempted abuses of its systems, it would be unrealistic to expect that errors would never occur. When this happens, those affected by the significant human impact of such errors must have a mechanism available for obtaining redress in appropriate cases:

***“Without the availability to rights holders of avenues to seek and obtain effective remedies and reparations for violations, human rights guarantees may be illusory and go unrealized”*** –

International Commission of Jurists, 2012<sup>112</sup>

**174. We conclude that, given the human impact of Red Notices and Diffusions, those affected must have access to effective remedies to obtain redress when NCBs abuse INTERPOL’s systems.**

#### *Absence of effective remedy at the national level*

175. The CCF has pointed out to Fair Trials that ‘an individual’s primary mechanism for recourse is the national government who is seeking them. The root issue is the actions of the national body, and not INTERPOL’. Whilst this is technically true, it appears unrealistic to expect a recognised refugee, known to be at risk of persecution, to challenge criminal proceedings against them from exile, particularly if the criminal proceedings are the very reason they were given asylum.

176. INTERPOL has also suggested that it is possible for an individual to request their country (of citizenship or residence) to object to a Red Notice.<sup>113</sup> Clearly, if the person is a refugee, they cannot appeal to their country of citizenship, though they could potentially seek assistance from their country of asylum. In other cases, it is true that a person could appeal to their country of citizenship. However, Fair Trials has seen examples of cases in which the British government, for example, has stated explicitly that it will not assist with INTERPOL matters, and we therefore do not believe reliance on such support to represent a satisfactory option.

177. Moreover, national remedies cannot be considered adequate as, while a Red Notice always has the same potential impact on the person, the availability and adequacy of the national remedy will vary according to the government policy of the country concerned, and such inequality is not the hallmark of a system governed by the rule of law.

#### *Absence of external judicial oversight of INTERPOL*

178. To date, INTERPOL’s decisions have not, to our knowledge, been scrutinised by national courts. Indeed, INTERPOL does not have a physical presence within most countries, and challenges lodged against the NCBs have failed for lack of connection between the NCB and INTERPOL.<sup>114</sup>

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<sup>112</sup> ICJ Declaration on Access to Justice, December 2012, Geneva.

<sup>113</sup> See Noble, R. *Strong safeguards underpin Interpol’s mission for a safer world*, EU Observer, 30 August 2013.

<sup>114</sup> See Martha, R. ‘Challenging Acts of INTERPOL in Domestic Courts’, in *Challenging Acts of International Organizations Before National Courts*, Reinisch (Ed.), Oxford, 2010.

Where it does have a physical presence, for instance in France and the United States, it is protected from national courts' jurisdiction by formal immunity agreements.<sup>115</sup>

179. Its Headquarters Agreement with the French Government<sup>116</sup> makes it immune from civil suits in that country. In 1991, a case was brought against INTERPOL before the *Tribunal de Grande Instance de Lyon*, which dismissed it at the admissibility stage. The court, relying in part on the Headquarters Agreement in force at the time, found that INTERPOL was an international organisation 'falling outside the jurisdiction of States' internal laws as well as their courts'.<sup>117</sup>

#### *Absence of external data protection oversight*

180. The Headquarters Agreement also makes INTERPOL's files 'inviolable'. This term, well-known in international law, can be understood as precluding any action by the national authorities in relation to those files. In 1978, France passed its cornerstone law on data protection, establishing the *Commission nationale de l'informatique et des libertés* ('CNIL'), an independent supervisory authority with the power to grant individuals access to public authorities' files which related to them. INTERPOL's files are not within the jurisdiction of this body. As a condition for this exemption, INTERPOL established its own data protection mechanism, the Commission for the Control of INTERPOL's Files (originally known as the 'Supervisory Body').<sup>118</sup>

#### *The requirement for alternative remedies*

181. It is now increasingly well-established that international bodies which are not subject to the jurisdiction of national or regional authorities should provide their own remedies, so as not to leave the individual in a vacuum of legal protection. For example, in the wake of the war in the Balkans, and the consequent collapse of law enforcement and administration of justice within Kosovo, the United Nations Mission in Kosovo ('UNMIK') was mandated to discharge essential functions of law and order. Since there was no State judicial system capable of adjudicating claims against UNMIK itself, a Human Rights Advisory Panel was set up to handle individual complaints against UNMIK, for instance in respect of failure to investigate deaths effectively as required under international human rights treaties.<sup>119</sup>

182. The same principle – that an individual must have access to a remedy for rights violations – has led to acceptance that national courts can only decline to adjudicate claims against international organisations if the affected individual has access to a remedy within the organisation. This doctrine has been elaborated by the European Court of Human Rights (the 'ECtHR'), which has held that immunities granted to international organisations are permissible under the European Convention on Human Rights (the 'ECHR') only if the person concerned '[has] available to them reasonable alternative means to protect effectively their rights under the Convention'.<sup>120</sup> However, the local court cannot refuse to adjudicate if there is a 'manifest deficiency' in the

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<sup>115</sup> See Headquarters Agreement, and Executive Order 13524, amending Executive Order 12425.

<sup>116</sup> Agreement between INTERPOL and the Government of the Republic of France, re-signed in April 2008.

<sup>117</sup> *Balkir v. INTERPOL*, Decision of 17 March 1993, TGI de Lyon, available from the Registry of the Tribunal.

<sup>118</sup> See Martha, R. 'Remedies Against INTERPOL', op. cit.

<sup>119</sup> A recent Opinion of the Human Rights Advisory Panel found UNMIK had failed to investigate a death properly and recommended that UNMIK publicly acknowledge its responsibility and take a number of reparatory steps.

<sup>120</sup> *Waite and Kennedy v. Germany*, App no. 26083/94 (Judgment of 18 February 1999).

system of enforcement of fundamental rights within the international organisation.<sup>121</sup> Applying these principles, the ECtHR has found that national courts' refusals to hear employment cases directed at international organisations (NATO and the European Space Agency) were acceptable, since internal employment dispute procedures existed within these bodies.<sup>122</sup> However, it has yet to consider a case where the complaint concerns a measure with effects as serious as those of a Red Notice.<sup>123</sup>

183. Analogous principles have been developed by the Court of Justice of the European Union ('CJEU') in its judgments concerning EU measures implementing United Nations Security Council ('UNSC') Resolutions imposing sanctions against individuals. The issue before the CJEU in the famous *Kadi*<sup>124</sup> case was whether the CJEU could judicially review such an implementing measure, which in principle imposes an overriding legal obligation. The CJEU found itself obliged to review the measure: within the European Community (as it then was), the right to judicial protection and the right to be heard were fundamental rights which the CJEU had to ensure, as the individuals concerned had no form of effective redress within the UNSC against their 'listing' as a person whose assets had to be frozen. Indeed, at the time, such individuals had access to only very basic processes to ask for their 'de-listing', with no right to petition the UNSC directly and no possibility to receive reasons for an adverse decision. As the CJEU explained, the de-listing procedure provided at the UN level '[did] not offer the guarantees of judicial protection', was 'in essence diplomatic and intergovernmental', the Sanctions Committee was not required 'to communicate to the applicant the reasons and evidence justifying his appearance in the ... list', and was under 'no obligation to give reasons' for adverse decisions.<sup>125</sup> Thus, disclosure, impartiality, and binding, reasoned decisions are seen by the CJEU as essential elements of the right to a remedy, the absence of these at the UN level justifying intervention the 'in principle full review' of implementing measures at the municipal level.

184. Following the *Kadi* judgment, the UN undertook reforms creating a UN Ombudsperson,<sup>126</sup> who can be approached directly by affected individuals and is able to see certain evidence provided to support a listing, subject to the States providing it. However, the UN Ombudsperson cannot issue binding decisions and, while she produces a report which comments on the evidence, the report is not communicated to the complainant.<sup>127</sup> In its recent '*Kadi II*'<sup>128</sup> judgment, the CJEU found that judicial review of implementing measures by the EU courts remained necessary, stating that this was 'all the more essential since, despite improvements ... [to] the procedure for

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<sup>121</sup> See *Gasparini v. Italy and Belgium* App no. 10750/03 (Admissibility decision of 12 May 2009); the 'manifest deficiency' test derives from *Bosphorus Hava Yollari Turizm Ve Ticaret Anonim Sirketi v. Ireland* App no. 45036/98 (Judgment of 30 June 2005).

<sup>122</sup> *Waite and Kennedy; Chapman v. Belgium* App. no 39619/06 (Admissibility decision of 5 March 2013).

<sup>123</sup> It is to be noted that the Court takes seriously long-term restrictions on freedom of movement resulting from measures adopted by international organisations: see *Nada v. Switzerland* App no. 10593/08 (Judgment of 12 September 2012).

<sup>124</sup> Joined Cases C-402/05 P and C-415/05 P *Yassin Abdullah Kadi and Al Barakaat International Foundation v Council and Commission* [2008] ECR I-6351.

<sup>125</sup> Paragraphs 322-325.

<sup>126</sup> See Resolution S/RES/1904 (2009), Adopted by the Security Council at its 6247<sup>th</sup> meeting, on 17 December 2009.

<sup>127</sup> The procedure followed by the Ombudsperson is described in Annex II of Resolution S/RES/2083 (2012), Adopted by the Security Council at its 6890<sup>th</sup> meeting, on 17 December 2012.

<sup>128</sup> Joined Cases C-584/10 P, C-593/10 P and C-595/10 P *Commission v Kadi* [2013] ECR I-0000.

de-listing ... at UN level they do not provide to the person whose name is listed ... the guarantees of effective judicial protection’, pointing out that this view was also endorsed by the ECtHR.<sup>129</sup> Commentators interpret this to mean that, until such time as a system of independent judicial protection exists at the UN level, municipal courts will continue to consider themselves obliged to apply full judicial review.<sup>130</sup> Applying this approach in this context by analogy, the conclusion should be that INTERPOL’s immunity from municipal jurisdiction should only properly be applied if the remedy within INTERPOL offers guarantees amounting to effective judicial protection.

185. The CJEU’s judgment is of still further relevance to INTERPOL, however. The CJEU specifies what is required at the EU level to ensure effective judicial protection: the EU Courts must review the implementing measure based only on such evidence as has been disclosed to the person concerned. If there are security reasons which militate against disclosure of the evidence to the person concerned, these should be accommodated by disclosing a summary of the evidence. The EU courts must have regard to the impossibility for the person to comment on the evidence when considering its probative value.<sup>131</sup> The *Kadi II* judgment thus shows that even in the face of the highest demands of international peace and security, international organisations that subscribe to human rights principles must make utmost effort to ensure that individual redress mechanisms meet essential guarantees of procedural fairness. INTERPOL is committed through Article 2 of its Constitution to upholding fundamental rights and it should likewise strive to ensure an equitable remedy. As explained below, the current procedures before the CCF are inadequate.

**186. We conclude that, in so far as INTERPOL currently escapes the jurisdiction of national courts, it is under a responsibility, in accordance with Article 2 of its Constitution, to provide effective remedies within its own internal structure. This is also a condition of its judicial immunity.**

## **2 – The Commission for the Control of INTERPOL’s Files**

187. INTERPOL’s answer to the requirement for international organisations to provide internal avenues of redress is the CCF. Indeed, as noted above, its creation followed from the French Government’s adoption of data protection laws providing individuals with a right of access to personal information via the CNIL, which INTERPOL believed should not have access to its files which belonged to the States and not to INTERPOL itself. The solution was the Headquarters Agreement, which made INTERPOL’s files ‘inviolable’, and INTERPOL created the CCF within its own internal structure.<sup>132</sup>

### **The CCF as a data protection advisory body**

188. Whilst the CCF’s function of handling requests from individuals is of key significance for this Report, it is important to bear in mind that it also has an advisory function, focused on data protection. For example, whenever the General Secretariat wishes to establish a new database

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<sup>129</sup> *Kadi II*, paragraph 133.

<sup>130</sup> See De Wet, E. ‘From Kadi to Nada: Judicial Techniques Favoring Human Rights Over United Nations Security Council Sanctions’, paper accepted for publication in (2013) 12 *Chinese Journal of International Law*, paragraphs 29 and 30.

<sup>131</sup> *Kadi II*, paragraphs 123 to 129.

<sup>132</sup> Rutsel M. ‘Remedies Against INTERPOL’, op. cit., paragraphs 21-29.

or cooperation system, or whenever it draws up new rules for submission to the Executive Committee and INTERPOL General Assembly, it must obtain the opinion of the CCF. This is, of course, important work, and it appears that the CCF is performing this task responsibly.

#### The CCF's pedagogical guidance to INTERPOL regarding i-link

- 2009: stresses to General Secretariat the importance of 'immediate automatic checks' and 'reducing the time between a country recording information in the INTERPOL system and its validation by the General Secretariat';<sup>133</sup>
- 2010: urges the General Secretariat to 'rapidly put into effect' such checks, stressing that formal automatic checks should be followed by manual, substantive reviews.<sup>134</sup>

**189. We conclude that the CCF, in its broader role of advising INTERPOL on a horizontal basis, appears to be working responsibly. This conclusion is, however, without prejudice to our assessment of its function of handling individual complaints.**

#### The CCF as an avenue of redress

190. The CCF's role of handling individual requests is a source of significant concern. In handling these requests, the CCF has to meet a two-fold challenge. Ostensibly, its purpose is to provide an independent avenue for those affected by INTERPOL's activities to gain access to, and request the deletion of, information concerning them which is stored on INTERPOL's files.

191. At the same time, it is clear that, by offering an internal avenue of redress, the CCF is also intended to strengthen INTERPOL's position in relation to the jurisdiction of national courts. As the former Chairman of the CCF explained in a 2006 speech to the INTERPOL General Assembly, the CCF is essentially 'a strategic tool to preserve INTERPOL's judicial immunity'. Indeed, in the above-mentioned study commissioned by the CCF, the University of Namur stated that 'pursuant to our contract, special attention was paid to the mechanisms that would allow the Organization's immunity to be safeguarded', as the CCF had asked it to consider what its obligations were under international law and whether it should consider developments to protect INTERPOL's immunity from legal process at the national level.<sup>135</sup> It is therefore important to examine how the CCF performs as an avenue of redress, as INTERPOL clearly sees the CCF as a key pillar of its claims to immunity before national courts.

192. The ARIOs reflect the basic proposition that an international organisation should provide remedies, stating that an international organisation responsible for a wrongful act is 'under an obligation to cease that act, if continuing', and to offer 'guarantees of non-repetition'.<sup>136</sup> However, the ARIOs do not specify procedural requirements for the mechanism put in place to comply with this obligation, reflecting the fact that the law is still developing in this area.

193. More useful for an assessment of the procedural requirements of an international organisation's internal remedies system is the study of Dr Bardo Fassbender commissioned by the UN Office of

<sup>133</sup> Annual Activity Report of the CCF in 2009, paragraph 15.

<sup>134</sup> Annual Activity Report of the CCF in 2010, paragraph 46.

<sup>135</sup> Centre de Recherche Information, Droit et Société, Notre Dame de la Paix University, Namur: *Data Protection at ICPO-INTERPOL: Assessment, Issues and Outlook*, 29 April 2011.

<sup>136</sup> ARIOs, op. cit., Article 30.

Legal Affairs,<sup>137</sup> which derives from a thorough analysis of international law a set of essential criteria according to which the effectiveness of such systems can be assessed: (i) accessibility, (ii) speed and efficiency, (iii) power to provide interim measures, (iv) due process, (v) quality of decision-making (vi), compliance with the decision and (vii) follow-up.

194. The same study refers to the 'Basic Principles on the Independence of the Judiciary', according to which '[t]he judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason'.<sup>138</sup> These criteria and the succinct description of the concept of independence provide an appropriate yardstick against which to assess the effectiveness of the CCF. In applying these below, we separate the CCF's handling of the two types of request: simple requests for access to information, and requests for the deletion of information. We do not apply each criterion systematically, but draw out those which are most relevant.

### **3 – Applications to access information**

#### *Accessibility*

195. The Rules on the Control of Information ('RCI') and RPD provide a clear avenue for people to request access to information. Such requests have to be made by original letter, but this is not a significant barrier and an application for access to the file can be little more than a page long. This is also manageable for an individual without the services of a lawyer. This is important as many people will experience brief detentions at airports, leaving them uncertain as to what information there might be about them. Such people at least have a simple, direct and inexpensive route to ask INTERPOL whether there is information about them.

#### *Due process: the national sovereignty principle*

196. Disclosure by the CCF is not automatic. The CCF, as an organ of INTERPOL, is bound by the principle of 'national sovereignty'. According to this concept, INTERPOL does not own any of the information stored on its databases, which instead remains under the control of the NCB which supplied it. In order to disclose information on file, INTERPOL therefore needs the NCB's authorisation. In some cases, national authorities will allow this. In others, they will refuse INTERPOL permission to even confirm or deny whether there is any information about the person. Thus, a person may receive a response like this:

*'Indeed, in application of the principles of national sovereignty and indirect access to information, on which INTERPOL's applicable rules for processing information are based, the Commission is not authorized to disclose whether or not there is any information in INTERPOL's files about the person subject of the request, or to allow access to such information if it exists, unless it obtains the necessary authorization from the appropriate authorities of any countries concerned by the request.'*

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<sup>137</sup> Fassbender, B. *Targeted Sanctions and Due Process*, Humbolt University, 20 March 2006 (final); see point 12.10.

<sup>138</sup> *Ibid*, point 12.11.

*However, the Commission has not been authorized by the NCB to disclose to you whether or not there is any information about your client registered in INTERPOL's files.'*

197. Although this is undoubtedly a frustrating response for the individual, we recognise that national police forces may legitimately refuse to let a person know whether or not they are being pursued, as this is, by its nature, sensitive information.

#### *Due process: exceptions to the national sovereignty principle*

198. The CCF has, over the years, developed a number of exceptions to the principle of national sovereignty and claimed for itself the authority to disclose information from INTERPOL's files even without the consent of the State concerned by the request. If the NCB opted to have an extract of the Red Notice placed on the website, the CCF will, in principle, disclose to the person copies of any documents held on file, unless the NCB can produce persuasive grounds as to why this should not be done. The CCF has also extended this practice to cover cases where the person can demonstrate that they know there is information about them on file.<sup>139</sup> Fair Trials regards this as a sound approach, but has only seen it applied one case; in others – where the Red Notices were public – disclosure has not been provided after several months.

199. Further, Fair Trials considers it unfortunate that the availability of this exemption should depend on providing concrete evidence of the existence of information on INTERPOL's files. If a person is arrested and obtains a court document which happens to mention 'INTERPOL', the person would hope to insist on disclosure, but if the court document uses a generic reference to an 'international arrest warrant', they may not be able to invoke the exemption. If the person has been arrested and has not been extradited it is possible that they will have a case for deletion of the alert, and yet their ability to make an effective challenge depends upon the drafting of the documents that they happen to have. A person in this position should be able to insist on disclosure.

#### *Speed and efficiency*

200. The effectiveness of the access procedure provided by the CCF is marred by delays. Since 2005, the CCF has developed a practice, now reflected in its formal rules, whereby it indicates deadlines by which it wishes to hear from the NCB in response to a request for permission to disclose information. If the NCB does not comply, the CCF presumes that the NCB has no objection to disclosure of the existence or absence of information.<sup>140</sup> Nevertheless, it appears from our casework that, notwithstanding this practice, requests can take a very long time to process, at the cost of prolonged uncertainty for the person concerned and mounting legal fees incurred through follow-up correspondence.

#### **Dolkun Isa (China)**

**24**

**months**

**The time it took the CCF to respond to**

**the access request made on Dolkun's behalf. China did not authorise the CCF to say whether or not there was a file concerning Dolkun.**



<sup>139</sup> Annual Activity Report of the CCF in 2009, paragraph 35 (second indent).

<sup>140</sup> Annual Activity Report of the CCF of 2006, paragraph 5.5.

201. The CCF has stated to Fair Trials that ‘failure of an NCB to respond promptly to requests for information increasingly results in a recommendation from the CCF that the information be blocked and deleted if information is not provided within a specified period (usually one month)’. Fair Trials found this surprising in so far as, at the time this comment was made, two of Fair Trials’ requests had been pending for over a year – at the cost of prolonged uncertainty for the individual. Indeed, Mourad Dhina, head of the Alkarama Foundation in Geneva, had spent six months in detention in France as a result of an ‘international arrest warrant’ issued by Algeria. He was released after the Paris court stated that it took an ‘utterly unfavourable’ opinion on the extradition request and rejected it. Fair Trials then wrote to the CCF in August 2012 to ask whether his arrest had been caused by an INTERPOL alert. At the time of writing this report in November 2013, this request remains unanswered. It would seem highly important to establish the ‘one-month’ rule mentioned by the CCF as a clear rule, which should be strictly enforced, to avoid people in Mourad’s situation living in uncertainty as to whether they face further arrests in other countries despite the refusal of an extradition request.

**Mourad Dhina (Algeria)**

**14 months**  
*The time Mourad has been waiting for an answer to Fair Trials’ CCF access request. In the meantime, he cannot be certain whether he is at risk of another arrest, a French court having already refused his extradition once.*



**202. We conclude that the ability to withhold disclosure is not inherently objectionable, provided the exemptions recognised by the CCF are interpreted broadly so as to enable a person who has been arrested to access their file, even if they do not possess documents specifically mentioning INTERPOL. However, the access process works far too slowly, because NCBs do not respond swiftly enough to the CCF’s enquiries.**

**203. We recommend that the CCF and/or INTERPOL establish a clear rule requiring NCBs to respond to access requests within one calendar month. Failure to comply with this time limit should result in disclosure of the full file and, thereafter, deletion of the information.**

**4 – Applications to delete information**

204. In relation to the CCF’s procedure for complaints, where a person seeks to challenge information they know is on INTERPOL’s files, it is important to note at the outset that the analogy with the CNIL ceases to be relevant. In this context, the CCF is called upon to adjudicate on a question of substance: whether the information recorded on INTERPOL’s files is in compliance with its rules, including Article 3 of the Constitution.

205. This establishes the CCF as the arbiter of the complex issues of fact and law which may arise under that provision. It thus has a much wider remit than either the CNIL or the Joint Supervisory Body (‘JSB’), which oversees the European Union’s equivalent of INTERPOL, Europol, which has no equivalent of Article 3 with which to ensure compliance. The CCF is also called upon, potentially as a matter of urgency, to provide a remedy to an individual suffering often serious, concrete human impact. It is in light of this much wider responsibility that the CCF’s complaints procedure must be assessed.

206. The CCF's Annual Activity Reports also suggest that the CCF endeavours to meet this challenge within the limits of its resources and competence. It has noted, for instance, that the provision of an arrest warrant is 'essential' in order to enable it 'to provide a serious, independent and informed opinion on a file', and that it seeks to work with NCBs to obtain these in cases where they have not been required beforehand by the General Secretariat.<sup>141</sup> However, despite its best intentions, CCF procedure is in need of improvement.

207. In general terms, the procedure to be navigated by individuals seeking redress against Red Notices lacks transparency and essential indicators of procedural fairness. There are also doubts as to whether this procedure is equipped to perform the task incumbent upon it, particularly where political abuse is alleged. In response to a recent question from US Senator Benjamin Cardin in 2013, Jeh Johnson, a nominee for the Department of Homeland Security Secretary, recalled an individual case in which political abuse of INTERPOL was suspected, stating:

***“the bureaucracy seemed impenetrable and uninterested, and I was struck by how little the individual traveller and I could do to get the notice removed ... there ought to be added flexibility to address an INTERPOL notice that has been triggered by an underlying action that is ‘politically-motivated’”*** – Dept. of Homeland Security Secretary nominee Jeh Johnson, 2013<sup>142</sup>

#### *Accessibility*

208. Neither the RCI nor the RPD contain an explicit provision providing the right for an individual to challenge information on INTERPOL's files which concerns them, although the CCF assumes this function, upon request, given its role of ensuring compliance with INTERPOL's rules. Indeed, the CCF section on the INTERPOL website, under the heading 'What are your rights?', refers to 'access to [INTERPOL's] files', but does not mention any right to ask for the deletion of information. There is a 'Frequently Asked Questions' section, which contains some limited guidance on challenging information and the evaluation of arguments under Article 3. This is to be welcomed as a step toward greater transparency, though, as explained above in Part III, INTERPOL's approach to Article 3 appears convoluted, so the ultimate usefulness of the document is not quite as laudable as the spirit within which it was created.

#### *Interim relief*

209. The CCF, upon receipt of a request which raises doubts as to compliance of the information with INTERPOL's rules, is able to recommend to the General Secretariat that, as an interim measure pending completion of the CCF's review, it block access to the information so that it becomes invisible to other NCBs (though they may, of course, have created national records of their own). The CCF adopted this approach when dealing with Fair Trials' requests on behalf of Benny Wenda and Petr Silaev. Practitioners have also reported to us that public extracts of Red Notices on INTERPOL's website have been withdrawn pending consideration of the request.

210. The availability of a mechanism to request immediate urgent relief may allow the avoidance of irreparable harm and preserve the usefulness of the ultimate decision, so this approach of the

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<sup>141</sup> Ibid; see also Article 14(5) of the Operating Rules of the CCF.

<sup>142</sup> Post-hearing question approved on 18 November 2013.

CCF's is positive. However, the CCF's Operating Rules do not contain clear provisions which a person can invoke in order to request that interim measures be taken.

#### *Due process*

211. In evaluating the due process standards of the CCF's work, the breadth of the analysis required by INTERPOL's rules, and in particular Article 3 of the Constitution, on which many complaints will be based, becomes crucial. Indeed, Article 3, which reflects principles of asylum and extradition law, requires the CCF to scrutinise arrest warrants, background materials, the complainant's own evidence and/or the significance of asylum and extradition decisions. The CCF's compliance with due process standards must be judged by its ability to perform this analysis effectively.

212. Unfortunately, the effectiveness of the CCF in handling complaints is compromised by a serious lack of transparency. When a request is filed, the CCF invites the party applying to submit all relevant information. Clearly, if the applicant does not know the specifics of the allegation because they have never seen the Red Notice or underlying documents, they cannot comment on them. This leaves the person in a very weak position when challenging the Red Notice.

213. Indeed, unless there is paperwork available from previous extradition proceedings, Fair Trials has generally taken the approach of asking for access to the information first, in order to know precisely what to respond to. This is necessary given that the CCF's rules provide that it will treat a case as closed after responding to the first application unless a new fact arises.<sup>143</sup> This effectively requires the person to make arguments based largely on speculation, knowing that they will not have the opportunity to make supplementary submissions further down the line. Whilst the CCF will consult the NCB, several times if necessary, there is no direct 'dialogue' between the complainant and NCB. Instead the CCF acts as a mediator, shuttling to and fro to the extent that it considers necessary.

214. Most people wishing to challenge information on INTERPOL's files will know that there is information about them on file: it may be a public notice, or they may have been arrested and been told this was as a result of a Red Notice or Diffusion. Chea Wui Ling, a former Legal Officer at INTERPOL, has suggested that, as stated above, a person in this situation can benefit from the exemption from the requirement for the source of the information (e.g. the relevant NCB) to authorise disclosure.<sup>144</sup> Indeed, there is no reason why, if the person knows they are subject to a Red Notice or Diffusion, it should not be possible to provide sufficient disclosure to enable the person to challenge the case against them. However, this is not the case in our experience (see the case of Petr Silaev, described below).

215. The process of information exchange between the requesting party and the NCB also has to be assessed in light of confidentiality considerations. As mentioned above (paragraph 154), a recognised refugee may understandably object to confidential information being disclosed to the NCB. Although the CCF's Operating Rules do, in principle, protect the confidentiality of a request, they also recognise that certain information may have to be passed to the General

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<sup>143</sup> Article 19(1) of the Operating Rules of the Commission for the Control of INTERPOL's Files.

<sup>144</sup> Cheah Wui Ling, 'Policing INTERPOL: the Commission for the Control of INTERPOL's Files and the Right to a Remedy', *International Organizations Law Review* 7 (2010) 375, p. 399.

Secretariat, which may record information in INTERPOL's files used for police cooperation.<sup>145</sup> It is, at present, unclear to what extent a person concerned by a Red Notice can insist upon information not being disclosed to the General Secretariat or NCB. Fair Trials has obtained explicit assurances from the CCF in respect of the non-disclosure of identity documents, but there is no clear guidance as to what information is and is not disclosed. Unlike the NCB, the refugee cannot be said implicitly to have consented to the disclosure of their information.

216. Further, although the CCF's rules do create a power for it to meet with a complainant,<sup>146</sup> the CCF has confirmed to us that this power has never been used, reasoning that 'given INTERPOL's limited role and the fact that it is not competent to question national arrest warrants, it is difficult to see what benefit could be served by a hearing'. We disagree: properly interpreted, Article 3 should include a political motivation test, which requires a more complete assessment of the background to the case, the profiles of the individual and the requesting country, the person's evidence, and analysis of extradition and asylum decisions. Open discussion could be conducive to all of these. Of course, systematically holding hearings would risk slowing proceedings down, but excluding the possibility altogether needlessly removes a useful option.

#### *Quality of decision-making*

217. Similarly, the requirement for context-sensitive assessments, consideration of asylum and extradition judgments, and human rights arguments mean that the CCF's members should possess the specialist expertise necessary in order to make complex judgments about politically-motivated prosecutions, asylum decisions and extradition decisions. Whilst it is clear that data protection forms part of the general discipline of human rights, the subject matter covered by Article 3 is highly specialised and one would expect to see recognised extradition, asylum and criminal law specialists on the panel. For instance, in France, panels determining asylum claims include 'assessors' nominated by the UNHCR,<sup>147</sup> which helps ensure confidence in those asylum determination processes.<sup>148</sup>

218. The RCI specify that CCF members should include a Chairperson who 'holds or has held a senior judicial or data protection post', two 'data protection experts', an 'electronic data processing expert', and 'an expert with recognised international experience in police matters'.<sup>149</sup> There is no doubt that the CCF are experts in these areas. As Fair Trials has recognised above, they play an important role in advising the General Secretariat on a horizontal basis, in a pedagogical capacity. This said, the emphasis is on data protection and, to some extent, police matters. Thus, despite Article 3 of the Constitution being designed to reflect extradition and asylum law, the CCF is not required to possess any recognised expertise in precisely those areas. This is reflected in the profiles of the current CCF members, detailed below.

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<sup>145</sup> See Articles 20(1) and 20(2) and (3) respectively.

<sup>146</sup> Article 22 of the Operating Rules of the CCF.

<sup>147</sup> The *Conseil Constitutionnel*, in Decision no. 98-399 of 5 May 1998 stated that the presence of the panel of a member nominated by the UNHCR did not infringe the principle of national sovereignty, noting that the role of the asylum tribunal was to ensure compliance with France's international obligations on refugee protection.

<sup>148</sup> CIMADE, a respected French asylum watchdog, approves several times of the contribution of these panellists in the report [Voyage au centre de l'asile: enquête sur la procédure de détermination d'asile](#) (2010).

<sup>149</sup> Article 2(a) RCI.

#### The current CCF (see Annex 4)

- **Billy Hawkes, Data Protection Commissioner of Ireland**
  - 20 years in the Foreign Service of Ireland
  - Experience in Finance and Enterprise, Trade and Employment Departments
- **Drudeisha Madhub, Data Protection Commission of Mauritius**
  - LLM in human rights law from Essex University, UK
  - Six years working for the Attorney-General of Mauritius
- **Jean Frayssinet, Professor Emeritus, Faculty of Law of Aix-en-Provence, France**
  - Many publications on data protection (including in the police cooperation context)
  - Supervised several PhD theses on data protection and information law
- **Andrew Patrick, I.T. Research Analyst, Office of the Privacy Commissioner of Canada**
  - Adjunct Professor of Computer Science at Carleton University
  - 20 years' experience working on privacy and security in public and private sector
- **Sharif Al-Omari, Director, Planning and Organization, Public Security Directorate, Jordan**
  - Former Director of the Jordanian NCB, the Correction & Rehabilitation and Criminal Information Departments, Public Security Directorate, Jordan
  - Postings with UNMIK, UN Mission in Haiti, and the UN Support Mission in Libya

219. In addition, despite the complexity of its task, and the significant impact of the CCF's decisions on individuals' rights, the CCF does not have the benefit of external judicial review (by contrast, in France, the *Conseil d'État* (Council of State) is able to review the legality of CNIL decisions against overriding norms of administrative law, whilst respecting the CNIL's independence). There is thus no authority capable of ensuring that the rule of law is adhered to by the CCF, even in terms of due process, when it handles individual complaints.

220. Another key driver of good practice is the requirement to give reasons. The most respected courts in the world recognise the importance of this. As the Supreme Court of Canada has noted:

***“Reasons ... foster better decision making by ensuring that issues and reasoning are well articulated and, therefore, more carefully thought out. The process of writing reasons for decision by itself may be a guarantee of a better decision. Reasons also allow parties to see that the applicable issues have been carefully considered, and are invaluable if a decision is to be appealed, questioned, or considered on judicial review ... Those affected may be more likely to feel they were treated fairly and appropriately if reasons are given”*** – Supreme Court of Canada, 1999<sup>150</sup>

221. This requirement is not complied with by the CCF, making it impossible to assess the quality of its decision-making. Indeed, CCF correspondence which Fair Trials has seen is rarely more than a page or two, and it does not explain how it interprets key provisions of the Constitution or RPD.

222. As a result of the shortcomings discussed above, it is very difficult to have confidence in the decision-making process of the CCF. This is made clear by the decision in the case of Petr Silaev, which was reached in a manner inconsistent with the principles recognised by the CJEU in its case-law mentioned above. The CCF placed reliance on material which was not disclosed to Petr,

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<sup>150</sup> *Baker v Canada (Minister of Citizenship and Immigration)* [1999] 2 S.C.R. 817, paragraph 39.

and provided a terse one-page letter addressing none of the facts of the case or the arguments made by Fair Trials, and failing to provide substantiated reasons for its decision. Even if the CCF was staffed by internationally-respected extradition, criminal and asylum law judges, confidence in the system would still be lacking in these circumstances. Moreover, the fact that the decision was only drafted two days after the outcome was announced publicly by the Russian NCB (whereas Petr had been informed that the information had been blocked, and may have taken the risk of travelling on this basis) does not display an advanced degree of regard being had to individual rights.

## Petr Silaev (Russia)

**Facts** *Activist from Moscow. Fled a police crackdown after a demonstration against a controversial motorway project. Recognised as a refugee by Finland. Arrested in Spain further to an INTERPOL Diffusion issued by Russian NCB. Spanish court refused extradition on the basis that the case was politically-motivated, expressing strong suspicion of the Russian police.*



**Jan 2013** *Fair Trials lodges access application on behalf of Petr*

**May 2013** *Fair Trials, having received no response, lodges 28-page complaint:*

- *Points out that allegations in the Diffusion are vague and unsubstantiated*
- *Highlights asylum grant by Finland and Spanish extradition refusal*
- *Extensive arguments on political motivation and reliance on UNHCR materials*

**June 2013** *CCF responds:*

- *Provides copy of arrest warrant against Petr*
- *States that it will ask Russian NCB to clarify the allegations*
- *Information blocked pending review*

**July 2013** *Fair Trials responds:*

- *Arrest warrant also vague and unsubstantiated – confirms earlier arguments*
- *Arrest warrant a ‘rubber-stamp’ decision, no signs of proper judicial oversight*
- *Requests disclosure of questions asked of Russian NCB and the NCB’s responses*

**21 Oct 2013** *Russian Interior Ministry announce publicly that alert against Petr reinstated*

**23 Oct 2013** *Upon Fair Trials’ urgent request, CCF supplies one-page letter dated 23 Oct 2013:*

- *No mention of specific facts of the case*
- *Reliance placed on material submitted by Russian NCB – not seen by Fair Trials*

**24 Oct 2013** *Fair Trials responds to CCF:*

- *Expresses alarm that CCF letter drafted two days after Russia announced result*
- *Demands access to material supplied by Russian NCB so as to comment on it*

**Nov 2013** *No response yet received. No mechanism available to challenge the CCF’s decision.*

223. In addition, CCF decisions are not published. This can be contrasted with, for instance, the Europol JSB or the Human Rights Advisory Panel, which provide complaints mechanisms for Europol and UNMIK respectively, who both publish their decisions. The publicity of decisions helps engender confidence in these systems. The CCF’s approach has so far been to include

separate statements in its Annual Activity Reports, describing in general terms and without reference to specific facts the manner in which it approaches its task. However, so long as case-specific decisions are not made public, the interpretation of INTERPOL's rules will remain unclear and the CCF's activities will inevitably be surrounded by question marks. Though individuals may have reasonable objections to the full details of cases being made available, a balance could be struck, in particular by anonymising decisions to the extent necessary.

### *Speed and efficiency*

224. The handling of applications to delete information is slow. Recalling the human impact of a Red Notice – employment issues, reputational harm, restricted freedom of movement, privacy and family life interferences – these delays can lead to irreversible damage, as in the case of Rachel Baines. The maximum sentence for the allegation in question was eight months, well below the minimum threshold, so the Red Notice should have been deleted automatically. However, by the time the CCF had reached its decision, Rachel had already lost her job as a result of the Red Notice.

#### **Rachel Baines (Middle East)**

- *May 2012: Rachel's visa is revoked owing to the Red Notice, leading to her suspension from work.*
- *July 2012: FTI applies to CCF, requesting urgent disclosure in order to challenge the notice.*
- *Oct 2012: Rachel is dismissed by her employer, having been unable to resolve the situation.*
- *Dec 2012: CCF responds, stating the information has been deleted. By this time, it was too late.*

225. The CCF has stated that these delays are attributable to NCBs, noting problems with obtaining answers to its questions.<sup>151</sup> This is unsatisfactory. It will be recalled that the introduction of i-link followed from NCBs' desire for ultra-fast information-sharing, yet the NCBs appear not to show the same urgency where individual rights are at issue. This drastically reduces the effectiveness of the remedy offered by the CCF. In national courts, the failure of a public authority to respond promptly to judicial requests would be sanctioned by concrete penalties – for instance, the discharge of a person in extradition proceedings. There appears to be no effective sanction to guarantee speed and efficiency in the CCF procedure.

### *Independence*

226. The final important question in the assessment of whether the CCF meets the demands of basic standards of effectiveness for internal remedy systems is whether it is sufficiently independent. CCF decisions are non-binding. Instead of decisions, it makes 'recommendations'. The General Secretariat can ask it to reconsider if it disagrees with a recommendation, though we understand that as a matter of practice, the General Secretariat will comply with a recommendation. However, it is difficult to see the CCF as a robust remedy when it does not have the power to issue binding decisions.

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<sup>151</sup> Annual Activity Report of the CCF in 2009, section 6.13.

227.Indeed, the possibility for the General Secretariat to contest the CCF’s decisions, one would expect, will lead the CCF to approach its task mindful of the possibility of conflict. The practice of using ‘addenda’ to ‘balance’ the needs of police cooperation with Article 3 (discussed earlier) creates a possibility of accommodating conflicting views in a compromise solution, instead of ordering an outcome on an independent basis. The presence of such inducements and pressures can only operate to detract from the CCF’s independence.

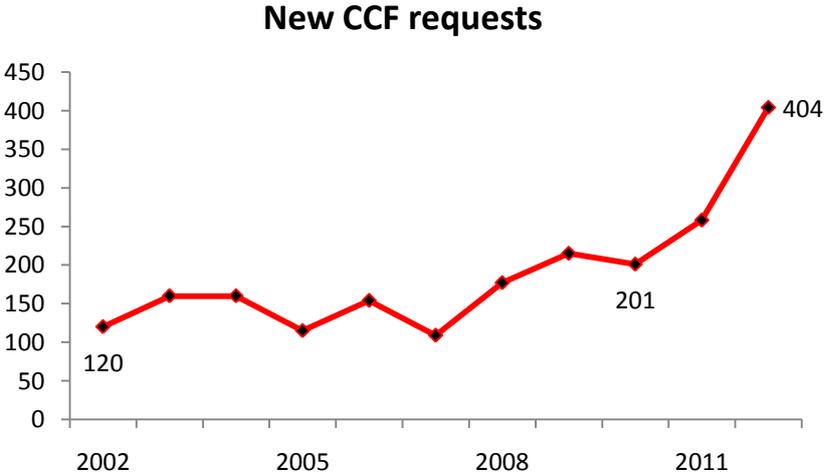
228.It is also noteworthy in this regard that the CCF has stated in its Annual Activity Reports that it has sought – though it is not bound by it – the legal advice of the Office of Legal Affairs (‘OLA’) of the General Secretariat. Commenting upon the draft of this Report, the CCF stated that ‘the Commission does not need to rely on the advice of the [OLA] but needs to consult it where issues of the general applicability of the Rules arise (e.g. whether an organisation is judged to be ‘terrorist’) ... The Commission’s consultation of the General Secretariat on the procedures and implementing rules ... cannot be interpreted as a loss of independence’. We did not entirely understand these comments but would remark that, in other contexts, they would seem surprising. One would not, for example, expect the CJEU to seek legal advice from the European Commission on the interpretation of EU law, save by hearing its submissions as a party to a case.

**229.We conclude that the CCF, in handling complaints requesting the deletion of information, falls far short of basic standards of fairness, effectiveness and independence. In light of these shortcomings, INTERPOL’s judicial immunity is currently unjustifiable.**

**5 – The underlying reasons for CCF ineffectiveness**

**Overstretched and underappreciated**

230.None of this is to suggest that the CCF is not endeavouring to perform as best it can. Indeed, we believe that the reasons for the CCF’s current ineffectiveness result largely from structural issues and its overstretched resources. Indeed, demand on the CCF’s resources has been increasing steadily with the increased use of INTERPOL over the last decade.



Source: CCF Annual Activity Reports, 2001-2012

## Structure and staffing

231. Yet, the CCF seems to be somewhat undervalued by INTERPOL generally. We were alarmed to learn that, between 2010 and 2012, only roughly 0.2% of INTERPOL's annual budget was allocated to the CCF. This translates into significant practical difficulties for the CCF: it told us that it spends on average one day of its three yearly meetings of two days on handling individual complaints, and that at its last sessions, it had handled between 57 and 82 complaints. This would seem to provide worryingly little time at each session to consider individual requests, though Fair Trials was informed by the CCF that the Rapporteur will work on requests in between sessions and that contentious files are likely to be the focus at the sessions themselves.

**€70 000 000**

INTERPOL operating income, 2012

**€120 000**

CCF annual budget (max), 2010-12

232. As mentioned earlier, the CCF is composed of five volunteer members, each with other commitments, who attend three yearly sessions. The CCF does have a secretariat based at the INTERPOL Headquarters in Lyon, but this appears to be limited in size. All CCF case correspondence Fair Trials has seen bears the same signature. In addition, it does not appear to have adequate legal support of its own, as reflected in the practice of seeking legal advice from the OLA on apparently important legal issues.

**233. We conclude that the CCF's failure to meet basic standards in the processing of individual complaints results from its relatively weak position within INTERPOL, in particular its meagre resources and over-dependence on the General Secretariat for finance and legal expertise. It is also essentially a data protection body required to perform the role of a specialised human rights tribunal.**

## 6 - Towards reform

234. In its above-mentioned CRIDS Report, the University of Namur concluded that, in light of the developments in case-law concerning the responsibility of international organisations to provide alternative remedies (which the CRIDS Report referred to as the 'counterbalance principle'), INTERPOL should explore two possible areas: (i) providing the CCF with a power to issue binding decisions, and (ii) reparations for harm done.

235. This conclusion was based upon the lack of clarity, on the basis of the existing case-law, as to precisely how far international organisations were required to provide due process guarantees within their internal remedies. Indeed, as mentioned above, the CJEU's focus upon the procedural characteristics of the remedy available within the international organisation is a recent development, making it difficult to identify an exact international standard.

236. Fair Trials believes that, while the case-law may still be developing, alternative avenues within an international organisation cannot meet the requirements of international law or justify INTERPOL's immunity from the jurisdiction of national courts unless they provide the affected person with an effective opportunity to bring the violation of their rights to an end. Given the real ambit of the analysis implied by Articles 2 and 3 of its Constitution – in particular, the

requirement to consider background evidence supporting allegations of political motivation – a transparent, adversarial process is essential.

237. While the CRIDS Report's suggestion of a system of reparations for violations would undoubtedly be a driver of good practice, it would be of limited use if those affected could not obtain such redress because of a lack of due process within the CCF, leaving them unable to demonstrate the presence of a violation. Further, unless compensatory obligations were passed on to the responsible State (which is unlikely to be agreed by INTERPOL's member countries), INTERPOL's resources would, at this juncture, be better spent improving and developing the existing procedures, in line with the recommendations made in this Report.

238. As an organisation which has assisted many people whose lives have been seriously affected by Red Notices, Fair Trials believes that the first priority should be to develop the competence and expertise of the CCF and improve the speed and transparency of its proceedings, so as to provide an avenue whereby violations can be brought to an end promptly. Given that the current CCF operates reasonably as a data protection advisor to the General Secretariat, Fair Trials sees considerable value in INTERPOL exploring the possibility of creating a separate chamber of the CCF, composed of more specialised personnel, responsible for handling complaints.

239. In the abstract, it would seem desirable for this body to possess the power to issue binding decisions. The Chairman of the CCF recently stated in his speech to the INTERPOL General Assembly that 'the Commission ... is very alive to the accusation that it colludes with [inappropriate use of INTERPOL] by not adopting a more challenging approach in cases that come before it. The fact that the CCF's decisions are formally only recommendations contributes to this negative perception. Since the General Secretariat invariably accepts our recommendations, there is clearly a case for formalising this position'.<sup>152</sup>

240. Whilst the statement that the General Secretariat 'invariably' accepts the CCF's recommendations is inconsistent with the fact stated in the CCF's Annual Activity Report for 2012 that only 36 of its 37 recommendations for destruction of information were implemented,<sup>153</sup> it is clear that binding decisions might enable the CCF to approach its task more confidently. However, a power to issue binding decisions should be granted concomitantly with the creation of procedural guarantees in the processing of requests, to ensure that INTERPOL is bound only by qualitatively reliable decisions reached in a procedurally fair manner.

**241. We recommend that INTERPOL seek to enhance the competence and expertise role of the CCF, and develop its procedures to be more transparent, adversarial, and effective. We suggest INTERPOL explore the idea of creating a separate chamber of the CCF, responsible for handling complaints. Reforms of the complaints procedure should ensure, as a minimum, (i) a functioning disclosure system, (ii) a right to be heard in appropriate cases, (iii) binding and reasoned decisions, which should be published on INTERPOL's website subject to necessary anonymisation, and (iv) a requirement for NCBs to cooperate so as to achieve reasonable time frames for proceedings.**

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<sup>152</sup> Speech delivered by Mr Billy Hawkes, Chairman of the Commission, to INTERPOL's 82<sup>nd</sup> General Assembly, October 2013, (available at <http://www.interpol.int/About-INTERPOL/Structure-and-governance/CCF/Publications>).

<sup>153</sup> CCF Annual Activity Report for 2012, Appendix, p. 22.

## V – CONCLUSIONS AND RECOMMENDATIONS

### General Conclusions

218 Red Notices, despite their nature as mere electronic alerts, bring about concrete consequences and often have serious human impact, placing individuals at risk of arrest and lengthy detention, restricting freedom of movement, and impacting upon the private and family life of the individual concerned.

242. INTERPOL's rules properly seek to exclude inappropriate uses of its systems. They seek to restrict the human impact associated with Red Notices to only such cases as fall within INTERPOL's remit, ensuring that human rights restrictions caused by INTERPOL are justified and proportionate. This conclusion is, however, restricted to the rules themselves, as distinct from their application in practice.

### The Problem of Abuse

243. In practice, INTERPOL's Red Notices are being used as political tools by NCBs, and are being issued and maintained on the basis of criminal cases which have been recognised as being politically-motivated by extradition courts and asylum authorities.

244. INTERPOL's systems are also being used in respect of criminal cases which arise as a result of prosecutorial and judicial corruption, sometimes deriving from private disputes with powerful individuals. INTERPOL cannot necessarily be expected to detect such abuses *ab initio*, but those affected need an opportunity to present their complaint before an independent authority.

245. In some cases, countries are failing to seek extradition when this would be possible. This represents a misuse of a Red Notice and breaches INTERPOL's rules, and may provide evidence of political abuse. INTERPOL recognises this as an abuse.

### Detecting and Preventing Abuse

246. INTERPOL's interpretation and application of Article 3 is unclear. We recommend that INTERPOL provide detailed information on how it assesses political motivation and the significance it attaches to extradition refusals and asylum grants.

247. On the basis of the available information, it appears that INTERPOL is applying a test under Article 3 which is out of step with international asylum and extradition law. We recommend that INTERPOL adopt the test in Article 3(b) of the UN Model Extradition Treaty as it is applied by extradition courts. As a first step, INTERPOL could commission and publish an expert study analysing relevant international extradition and asylum law and its own obligations.

248. There is insufficient information available to understand how INTERPOL approaches the task of reviewing Red Notice requests and Diffusions after they have been published. We recommend that INTERPOL make more information publicly available about this, within reasonable limits.

249. Proactive background research into the requesting country's human rights record and the circumstances of the case are essential to detecting political motivation cases. We recommend INTERPOL provide more disclosure about the extent to which it does this.

250. The provision of arrest warrants may help detect cases of abuse. We recommend that INTERPOL require NCBs to supply arrest warrants, either at the point of requesting a notice or promptly thereafter if the matter is urgent. INTERPOL should also insist upon complete factual circumstances being provided in Red Notice requests and Diffusions.
251. The i-link system, allowing NCBs to issue draft Red Notices, unrealistically assumed that all NCBs will respect INTERPOL's rules. This said, human checks within 24 hours minimise the risk of arrest on the basis of abusive Draft Red Notices. However, there remains a risk of NCBs accessing and copying Draft Red Notices, which may create a permanent risk to the person concerned even if INTERPOL eventually refuses the Red Notice request.
252. We recommend that INTERPOL change the standard process of the i-link system so that Draft Red Notices are, by default, not visible to other NCBs while they are under review by the General Secretariat. In urgent cases, the NCB should be able to push an 'override' button, providing an explanation of the circumstances justifying this. The General Secretariat and CCF would then be required to assess carefully whether this power was being used appropriately.
253. We recommend the adoption of a clear rule requiring the deletion of a Red Notice or Diffusion when either (a) a request for extradition based on the proceedings giving rise to the Red Notice/Diffusion has been rejected on political motivation grounds or (b) asylum has been granted under the 1951 Convention on the basis of the of the criminal proceedings giving rise to the Red Notice/Diffusion.
254. We recommend that, where the extradition refusal or asylum grant is made on the basis of criminal allegations which are not the same as those giving rise to the Red Notice, this should give rise to a strong presumption in favour of deleting the Red Notice.
255. In either case, the NCB concerned should have the opportunity to bring information to the attention of INTERPOL in order to maintain the Red Notice. However, the burden should be on the NCB to justify why neither of the above rules should apply.
256. It is not clear how INTERPOL understands the significance of a grant of international protection or a refusal of extradition on human rights grounds for the validity of a Red Notice or Diffusion. We recommend that INTERPOL publish a Repository of Practice on the interpretation and application of Article 2 of its Constitution.
257. We recommend that INTERPOL institute a practice whereby the General Secretariat, when informed of an arrest, systematically follows up with the NCB of the arresting country either six or 12 months after the event, and asks standard questions as to whether an extradition request was made and whether this was accepted or refused, and on what grounds.
258. Sanctions for misuse of INTERPOL's systems can play a part in preventing future abuses. We recommend that INTERPOL explain what criteria are applied to determine when an NCB has failed to fulfil its obligations, and how many times this power has been used.

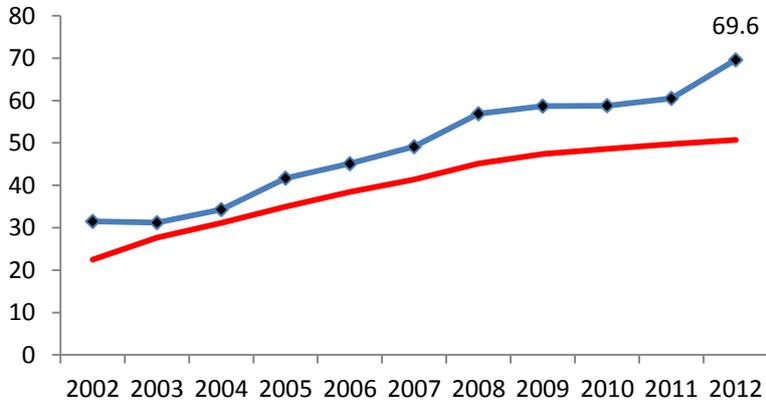
## **Creating Effective Remedies**

259. Given the human impact of Red Notices and Diffusions, those affected must have access to effective remedies to obtain redress when NCBs abuse INTERPOL's systems.
260. We conclude that, in so far as INTERPOL currently escapes the jurisdiction of national courts, it is under a responsibility, in accordance with Article 2 of its Constitution, to provide effective remedies within its own internal structure. This is also a condition of its judicial immunity.
261. The CCF, in its broader role of advising INTERPOL on a horizontal basis, appears to be working responsibly. This conclusion is, however, without prejudice to our assessment of its function of handling individual complaints.
262. The ability to withhold disclosure is not inherently objectionable, provided the exemptions recognised by the CCF are interpreted broadly so as to enable a person who has been arrested to access their file, even if they do not possess documents specifically mentioning INTERPOL. However, the access process works far too slowly, because NCBs do not respond swiftly enough to the CCF's enquiries.
263. We recommend that the CCF and/or INTERPOL establish a clear rule requiring NCBs to respond to access requests within one calendar month. Failure to comply with this time limit should result in disclosure of the full file and, thereafter, deletion of the information.
264. The CCF, in handling complaints requesting the deletion of information, falls far short of basic standards of fairness, effectiveness and independence. In light of these shortcomings, INTERPOL's judicial immunity is currently unjustifiable.
265. The CCF's failure to meet basic standards in the processing of individual complaints results from its relatively weak position within INTERPOL, in particular its meagre resources and over-dependence on the General Secretariat for finance and legal expertise. It is also essentially a data protection body required to perform the role of a specialised human rights tribunal.
266. We recommend that INTERPOL seek to enhance the competence and expertise role of the CCF, and develop its procedures to be more transparent, adversarial, and effective. We suggest that INTERPOL explore the idea of creating a separate chamber of the CCF, responsible for handling complaints. Reforms of the complaints procedure should ensure, as a minimum, (i) a functioning disclosure system, (ii) a right to be heard in appropriate cases, (iii) binding and reasoned decisions, which should be published on INTERPOL's website subject to necessary anonymisation, and (iv) a requirement for NCBs to cooperate so as to achieve reasonable time frames for proceedings.

## ANNEX 1 – STATISTICAL INFORMATION

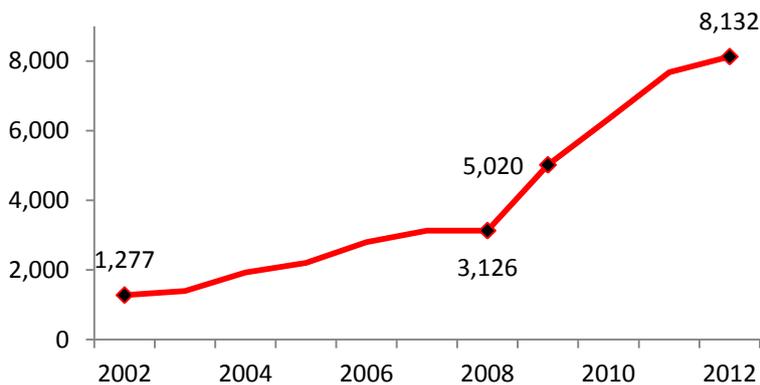
### PART A – Budget, Red Notices, arrests based on Red Notices & Diffusions

#### INTERPOL operating income (€ million)



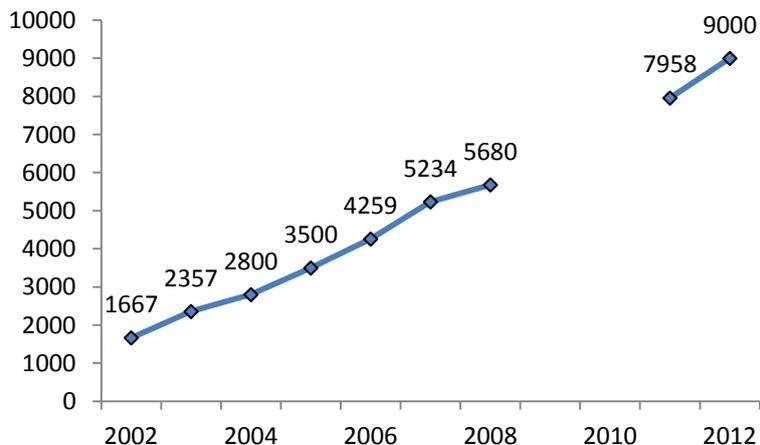
*INTERPOL's operating income has increased consistently over the last decade (NB – the graph is not inflation-adjusted). Statutory member contributions (the lower curve, shown in red) have accounted for the majority of this income in the same period. Source: INTERPOL Annual Reports, 2002-2012*

#### Red notices issued



*The number of Red Notices issued has grown considerably over the last decade. The figure jumped by 62% in 2009, coinciding with the introduction of the i-link system, allowing NCBs to issue Draft Red Notices themselves. Source: INTERPOL Annual Reports, 2002-2012*

#### Arrests on Red Notices / Diffusions



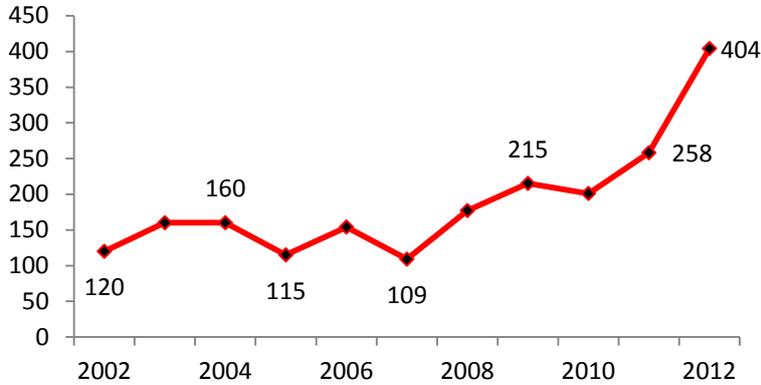
*The number of arrests made on the basis of Red Notices or Diffusions has increased consistently over the last decade. There is no data indicating the outcome in each case (ie. whether the arrest led to extradition, and if not, why not). Source: INTERPOL Annual Reports, 2002-2012<sup>1</sup> (no data available for 2009 or 2010).*

<sup>1</sup> The figure for 2012 is based on an article written in the EU Observer by INTERPOL Secretary General Mr Ronald K. Noble, stating that 'Over 9,000 arrests were reported in 2012 across Interpol channels' (see <http://euobserver.com/opinion/121262>).

## ANNEX 1 – STATISTICAL INFORMATION

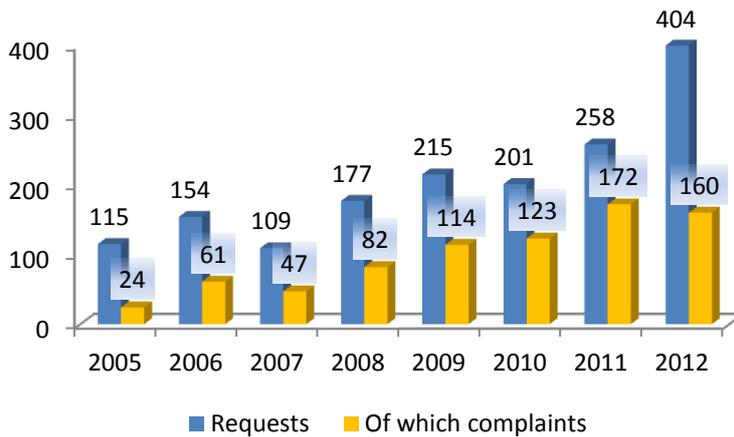
### PART B – CCF Requests

#### New CCF requests



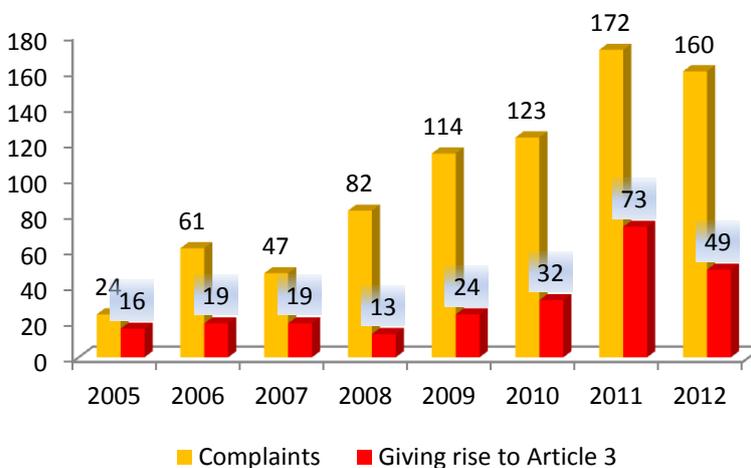
The term 'requests' includes both simple requests for access to INTERPOL's files, and complaints seeking the deletion or amendment of information. Source: CCF Annual Activity Reports, 2002-2012.

#### Proportion of complaints, 2005-2012



The CCF has, since 2005, made available figures showing how many of the requests it received were complaints (the 2011 figure includes a number of interconnected complaints). Source: CCF Annual Activity Reports, 2002-2012.

#### Complaints raising Article 3, 2005-2012

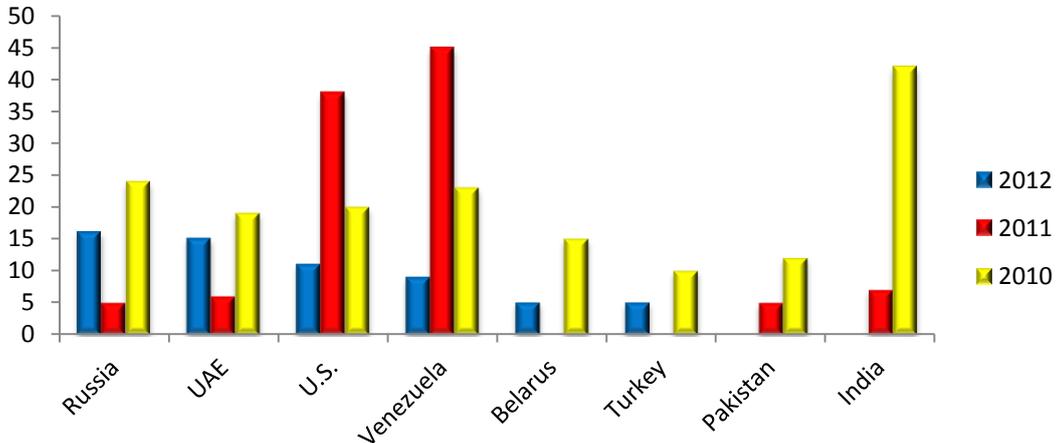


The CCF has, in the same time period, recorded the number of complaints 'giving rise to Article 3' (it is not known whether this means Article 3 is raised by the application, or whether Article 3 is considered to arise by the CCF). Source: CCF Annual Activity Reports, 2002-2012.

**ANNEX 1 – STATISTICAL INFORMATION**

**PART B – CCF Requests (continued)**

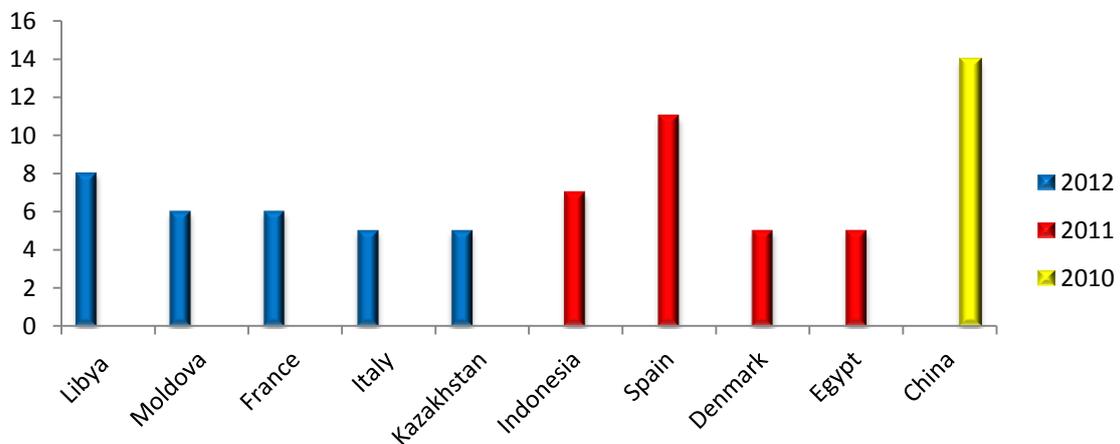
**Countries to which highest number of requests relate  
2010-2012**



Since 2010, the CCF has made available a breakdown of the countries to which requests relate. The chart above features only countries which featured twice over the period 2010-2012. It would appear that this covers the total requests (both simple access requests and complaints), as the combined figures for each year exceed the number of complaints in each year. It should also be noted that these figures do not confirm whether, in each case, there was information on INTERPOL’s files or whether this information was found by the CCF to be compliant or non-compliant with INTERPOL’s Rules, including Article 3 of the Constitution.

For completeness, the chart below shows the other countries which featured in only year in the period 2010-2012. Again, the statistics do not necessarily imply that the request (whether complaint or request for access) resulted in the removal of information.

**Other countries to which requests relate in individual  
years, 2010-2012**

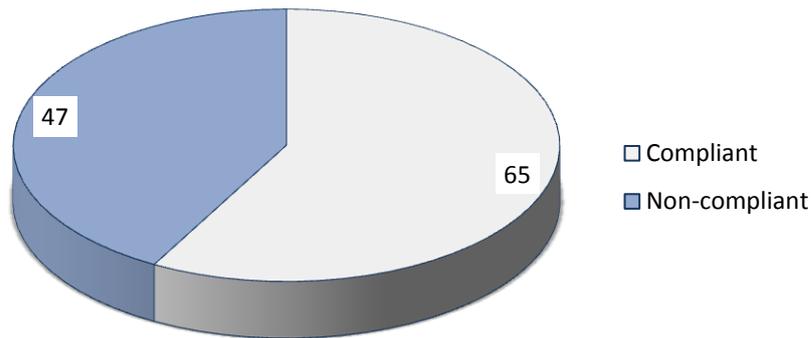


## ANNEX 1 – STATISTICAL INFORMATION

### PART B – CCF Requests (continued)

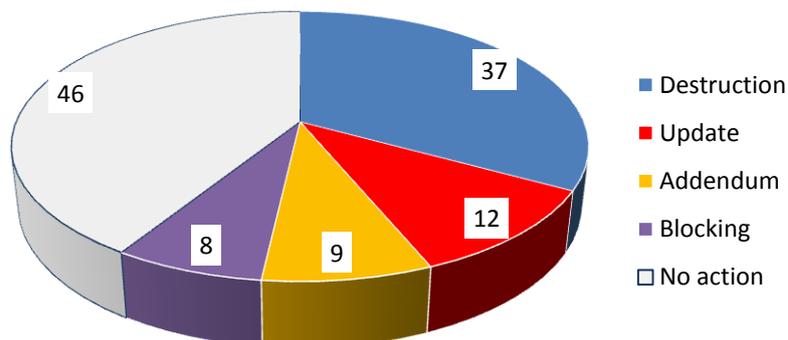
In its 2012 Annual Activity Report, the CCF provided more thorough statistical information than it has in previous reports, including a breakdown of the findings it made in the 112 cases that it examined during its sessions.

#### CCF's conclusions on 112 files examined in sessions, 2012



The figures are difficult to interpret: it appears that 47 files were found non-compliant (as shown above), but that the CCF recommended destruction of only 37 files (as shown below). Adding to these the eight files in which information was blocked, this would suggest that there were two files in which the CCF found the information to be non-compliant, and yet recommended neither blocking nor destruction of the information. NB – the 'no action' category in the chart below is not stated expressly in the CCF's report; the figure is reached by subtracting the other figures from 112.

#### Final CCF recommendations on 112 files examined in session, 2012



The figures also show that of the 37 cases in which the CCF recommended destruction of the file, only 36 were implemented. In the other case, the CCF's recommendation 'gave rise to comments' of the General Secretariat, causing the CCF to reconsider its position. The complete set of figures is available in the CCF Annual Activity Report, 2012, Appendix, pp. 21 and 22.

[SURNAME, Name]

Control No.:

Requesting Country:

File No.:

Date of Publication:



CIRCULATION TO THE MEDIA (INCLUDING INTERNET) OF THE EXTRACTED VERSION OF THE RED NOTICE AS PUBLISHED ON INTERPOL'S PUBLIC WEBSITE: NO

FUGITIVE WANTED FOR PROSECUTION

Type of notice: in this case, red. Other notices against individuals include green notices, identifying potential threats.

1. IDENTITY PARTICULARS

[Photograph appears here]

Photograph: This enables police, immigration officers and other authorities to identify the person. We have edited it out in this example for confidentiality reasons.

Publicity: This bar reflects the choice of the NCB to have an extract of the red notice published on Interpol's website or not.

Family Name:

Family Name in the Original Script or Chinese Telegraphic Code:

Family Name at Birth: N/A

Forenames:

Forenames in the Original Script or Chinese Telegraphic Code:

Date and Place of Birth:

Sex: Female

Nationality: BRITISH (CONFIRMED)

Also Known As / Other Dates of Birth Used: N/A

Marital Status: N/A

Father's Family Name and Forenames: N/A

Mother's Maiden Name and Forenames: N/A

Occupation: Air Hostess

Languages Spoken: N/A

Regions/Countries Likely to Be Visited: N/A

Additional Information: N/A

Identity Documents: British passport No.

issued on

in the United Kingdom (expires

DNA Code: N/A

Description: N/A

Distinguishing Marks and Characteristics: N/A

Summary of facts: This is the factual information used to explain what offence is alleged against the person. In this case, there are just two lines.

2. JUDICIAL INFORMATION

The summary of facts and judicial information reflect the original request from the NCB and are not modified by the General Secretariat.

Summary of Facts of the Case: made out an unfunded cheque for 000 in the course of commercial transactions.

Additional Facts of the Case: N/A  
Accomplices: N/A

**Maximum penalty:** The limit now applicable is two years where the person is accused of an offence. This red notice remained in place despite this threshold.

**FUGITIVE WANTED FOR PROSECUTION  
ARREST WARRANT OR JUDICIAL DECISION 1**

Charge: Uttering an unfunded cheque  
Law Covering the Offence: Article  
amendments until 2006

Penal Code and its

Maximum Penalty Possible: 8 months' imprisonment

Time Limit for Prosecution or Expiry Date of Arrest Warrant: N/A

Arrest Warrant or Judicial Decision Having the Same Effect: No, issued on  
by the office of the Public Prosecutor

Name of signatory: N/A

Copy of Arrest Warrant Available at the General Secretariat in the Language Used by the Requesting Country: No

**3. ACTION TO BE TAKEN IF TRACED**

**LOCATE AND ARREST WITH A VIEW TO EXTRADITION**

The country at the request of which the present notice has been published has given assurances that extradition will be sought upon arrest of the person, in conformity with its national laws and/or the applicable bilateral and multilateral treaties.

**PROVISIONAL ARREST**

For the country at the request of which the present notice has been published, this red notice is to be treated as a formal request for provisional arrest. Please apply provisional arrest, in conformity with national laws and/or the applicable bilateral and multilateral treaties.

Immediately inform NCB (NCB reference: of 2012)  
and the ICPO-INTERPOL General Secretariat that the fugitive has been found.

**Arrest Warrant:** This field contains the required reference to the arrest warrant on which the red notice is based, and informs authorities whether the General Secretariat has a copy on file. In this case, there is none.

**Purpose:** This field spells out that the notice is there to facilitate extradition. It states that the country has given assurances that it will seek extradition upon arrest of the person.

**Notification:** The arresting country is supposed to inform INTERPOL of the arrest, enabling the General Secretariat to monitor the situation.

**Request for arrest:** Provisional arrest is requested, in accordance with national laws and relevant extradition treaties.

ANNEX 2B – PRINTOUT OF A DIFFUSION CONCERNING PETR SILAEV

21. AGO. 2012 12:01

00 34 915822980

Nº4419 P. 3

**Author:** the Diffusion is the NCB of the Russian Federation (known as Interpol Moscow).

I-247 Grupo 2 Interpol

Da: ncbmoscow [ncb.moscow@ru.ipcs.int]  
Enviado el: martes, 28 de abril de 2011 15:18  
Para: ZONE2 (ZONE2)  
Asunto: 279/14845

**Addressees:** the Diffusion was sent to all countries in Europe – Zone 2.

.IP MOSCOW 11014845 DATED 26.04.2011  
OUR REFERENCE: 49172/FF/118/10 NON URGENT  
OFFICER: 118  
TO: IP Interpol  
-----<text>-----  
ZONE 2  
YOUR REF. NEW  
Esp. IP The Hague  
IP BRUSSELS YOUR REF. PF/AEL11/O-22031-11-1 IP VILNIUS YOUR REF.: IP/1231/69/RU/11 IP  
WIESBADEN YOUR REF.: SOS2-1 - 177 Ref: 2011-0001435619 IP RIGA YOUR REF.: 5240/11  
(11/5104) IP MINSK YOUR REF.: IP/1617/IS/32/2011 IP LISBON YOUR Ref: 3344.11.BC.PROP  
IP FRANCE YOUR REF. DCPJ /OCLCO/ BANDITISME / 2011 / 2088 IP COPENHAGEN YOUR MESSAGE  
SV: 279/5691 DATED 21.02.2011

**Charge:** The Diffusion specifies that Petr is wanted for 'hooliganism' under Article 213(2) of the Russian Criminal Code – the same offence as was charged against Pussy Riot and the 'Arctic 30' Greenpeace activists.

IF ANY REPLY PLEASE MENTION OUR REF.

SUBJECT: Fugitive wanted for prosecution Silaev (Silayev) f/n Petr s/o Yury, born 31.01.1985

Photographs: available made in 2008  
Fingerprints: not available  
Present family name: Silaev (Silayev)  
First names: Petr  
Date of birth: 31.01.1985  
Place of birth: Moscow  
Sex: male  
Nationality: Russian Federation  
Also known as: n/a  
Father's family name and forenames: f/n Yury Mother's family name and forenames:  
Silaeva (Silayeva) f/n d/o , born . 1956 Identity documents: Russian  
travel passport 70 nr. 126  
Description: 165-170 sm. heigh, normal build, dark short hair, broad forehead.  
Distinguish marks: n/a  
DNA Code: n/a  
Occupation: n/a  
Languages spoken: usual - Russian, others - n/a  
Regions/countries likely to be visited: Ukraine, Belarus, Denmark, Portugal, Germany,  
France, Lithuania, Latvia, Belgium, Netherlands.  
Additional information (previous criminal activities etc.): n/a

**Summary of facts:** this vague allegation fails to specify any specific criminal conduct on Petr's part. It refers explicitly to the Khimki forest dispute, enabling INTERPOL to research the background. The second box names alleged accomplices. Numerous public reports detailed the acquittal of one for lack of evidence.

2. Judicial information

Summary of facts of the case:

Date: 28.07.2010

Place: Khimki, Moscow region/Russia

Events, circumstances, modus operandi, etc.: the subject together with the accomplices collected a group of 150 people under the pretext of support of the defenders of Khimki forest which had to be cut down for the subway to be layed through. The a/m group came to the building of the town administration and breaking public order began to shoot from traumatic pistols and throw stones and smoke grenades to the windows and the entrance door. The inflicted damage to the building of the town administration amounts to 395 000 rubles.

Accomplices (name, forename, dob, comments): Solopov f/n Denis s/o Viktor, born 17.12.1987, Solopov M.V., Gaskarov A.V.

For fugitive wanted for prosecution:

Charge: hooliganism with use of weapon and other objects used as weapon committed by an organized group

Law covering the offence: section 2, article 213 of the Russian Penal Code

Maximum penalty possible: 5 years of imprisonment

Time-limit for prosecution: according to our legislation the time-limit for prosecution for such crime is 6 years, but the course of this term is suspended

because the accused person hid himself from investigation.

Arrest warrant (number, date and place of issuance): without number (criminal case number 91938) issued on 11/08/2010 by Khimki town court of Moscow region/Russia

Name of signatory: judge Zepalova N.N.

Our police authorities have information that: the subject left Russia for abroad. According to the information from IP Minsk, Vilnius and Wiesbaden the subject crossed the state border of Belarus, Lithuania, Netherlands, Germany and Belgium in August - November 2011.

3.Action to be taken if traced

In that connection you are kindly requested to take appropriate measures in order to determine the subject's whereabouts. Please check your criminal and immigration records and supply us with any useful information you may have about the subject.

In case the wanted person is located in your country we hereby formally request his provisional arrest pending extradition. In case of arrest the extradition documents will be sent through the appropriate channels within the prescribed time.

Extradition will be requested from any country with which the requesting country is linked by a bilateral extradition treaty; an extradition convention or by any other convention or treaty containing provisions on extradition. Extradition will also be requested from countries where this is possible on the basis of reciprocity.

If it is not possible in your country to search for the subject with a view to arrest and extradition to Russia, you are kindly requested to search for the subject with a view to establishing his whereabouts.

If, in lieu of extradition, your authorities can exclude, expel, deport, or otherwise remove this fugitive, please advise.

If this fugitive is located in a country that cannot extradite or otherwise remove the fugitive directly to the Russian Federation, please record his movements and immediately notify Interpol Moscow, citing our reference number above.

Thank you for co-operation.

Regards,

IP Moscow.

**Arrest warrant:** Fair Trials was provided with a copy of the 'arrest warrant' by the CCF. It contained nothing more specific than the summary of facts on the first page of the Diffusion, and can fairly be described as a 'rubber stamp' decision. It was issued under Article 108(5) of the Criminal Procedure Code of the Russian Federation, which provides for 'in absentia arrest' orders, the precondition for initiating an international search via INTERPOL. At the time of publication of this report, such a decision had just been taken in respect of the 22 year-old political activist Anastasia Rybachenko, living in exile in the European Union, who is accused in relation to another demonstration in Moscow.

## ANNEX 3 – SHORT SUMMARIES OF FAIR TRIALS CASES

(in the order in which they appear in the report)

NAME	LIVES IN	WANTED BY	ARRESTED IN
<b>Benny Wenda</b> 	<b>United Kingdom</b>	<b>Indonesia</b>	
		<ul style="list-style-type: none"> <li>UK citizen originally recognised as a refugee from Indonesia.</li> <li>Leader-in-exile of the movement for the independence of West Papua, a province of Indonesia.</li> <li>Public Red Notice in place for 18 months, featuring a photograph taken from his campaign website, associating his work with criminality.</li> <li>Had to address a conference in the Australian Parliament by video-link because he could not travel to attend in person for fear of arrest.</li> </ul>	
<b>Chandima Withana.</b> 	<b>United Kingdom</b>	<b>Sri Lanka</b>	
		<ul style="list-style-type: none"> <li>UK citizen originally recognised as a refugee from Sri Lanka.</li> <li>Formerly a lawyer in Sri Lanka; acted in high-profile cases.</li> <li>Editor of the Lanka News Web site, which is banned in Sri Lanka.</li> <li>Red Notice relates to a forgery allegation dating back to 1999.</li> <li>Fair Trials applied for access to his file and this was granted promptly.</li> <li>Despite his location being well known, and UK law allowing for ad-hoc extradition arrangements, Sri Lanka has not sought his extradition.</li> </ul>	
<b>Ilya Katsnelson</b> 	<b>Denmark/United States</b>	<b>Russia</b>	<b>Germany</b>
		<ul style="list-style-type: none"> <li>US citizen and former executive of the Volgotanker Group, a shipping company connected to the Yukos oil company of Mikhail Khodorkovskiy.</li> <li>Denmark refused his extradition on the ground that the Russian authorities had failed to provide sufficient evidence of wrongdoing.</li> <li>Arrested at gunpoint in Germany on INTERPOL Red Notice and detained in a high-security prison for 50 days before being returned to Denmark.</li> <li>CCF reflected the Danish refusal as an 'addendum' on his Red Notice.</li> </ul>	
<b>Magda Osipova*</b> 	<b>Israel</b>	<b>Russia</b>	
		<ul style="list-style-type: none"> <li>Russian/Israeli citizen and successful entrepreneur from Russia.</li> <li>While visiting Israel, learned she was being prosecuted in Russia on what she maintains are trumped-up charges arising out of local corruption.</li> <li>Israel indicated that it would entertain an extradition request if Russia allowed observers to monitor trial fairness. No request was ever made.</li> <li>Has been denied a visa to enter the U.S., where her daughter lives with her family. Her health has suffered considerably from her isolation.</li> </ul>	
<b>Rachel Baines*</b> 	<b>United Kingdom</b>	<b>Middle East</b>	
		<ul style="list-style-type: none"> <li>UK citizen who lost her job after her US visa, which she needed for transatlantic flights, was revoked because of a Red Notice.</li> <li>The Red Notice was based on an offence of 'uttering an unfunded cheque' for failing to keep up loan repayments.</li> <li>The Red Notice was for an offence carrying a sentence of eight months, well below the two-year threshold which came into force in July 2012.</li> <li>The Red Notice was deleted further to Fair Trials' application, but only after Rachel lost her job because of the Red Notice.</li> </ul>	

## ANNEX 3 – SHORT SUMMARIES OF FAIR TRIALS CASES

(in the order in which they appear in the report)

NAME	LIVES IN	WANTED BY	ARRESTED IN
<b>Toms Klutis*</b> 	Spain	Russia	Spain
	<ul style="list-style-type: none"> <li>Latvian/Russian citizen who, aged 17, was arrested for selling ecstasy pills containing 0.72g of controlled substances to a friend in Moscow.</li> <li>Aged 23, he was arrested in Spain on an INTERPOL alert and detained for two weeks while an extradition request was considered.</li> <li>The Spanish court refused his extradition, pointing out that the offence was too old to be prosecuted under both Russian and Spanish law.</li> <li>Fair Trials has written to the CCF to enquire as to the status of the alert and informing it of the refusal of extradition.</li> </ul>		
<b>Swedish Kurds</b> 	Sweden	Iran	
	<ul style="list-style-type: none"> <li>Group of 12 naturalised EU citizens (mostly Swedish).</li> <li>Activists with 'Hekmatist', a leftist opposition party, who had fled Iran in the late 1990s and lived as political refugees in the EU for over 20 years.</li> <li>Continued activism from exile by broadcasting political messaging into Iran via shortwave radio and satellite television.</li> <li>Shortly before the 2009 elections, Iran caused INTERPOL simultaneously to publish Red Notices against all 12 activists, for offences of 'terrorism'.</li> <li>Fair Trials assisted three of the group – Khalid Haji Mohammadi, Assad Golchini, and Rahman Hossienzadeh – with applications to the CCF. Pictured is another member, Koorosh Modaresi.</li> <li>The Red Notices were eventually deleted in March 2013 – two-and-a-half years after lawyers acting for the group had originally contacted INTERPOL and media had reported the case.</li> </ul>		
<b>Ali Caglayan</b> 	Germany	Turkey	Poland
	<ul style="list-style-type: none"> <li>German citizen originally recognised as a refugee from Turkey.</li> <li>Was involved in May Day demonstrations in Istanbul in 1994.</li> <li>Recognised as a refugee in 1995 by the German government.</li> <li>Arrested in Poland in 2012 as a result of an international alert.</li> <li>Spent two weeks detained before Turkey declined to seek his extradition.</li> <li>Fair Trials has applied to the CCF to ask whether his name is on INTERPOL's Files, suggesting any alert would likely be abusive.</li> </ul>		
<b>Akhmed Zakaev</b> 	United Kingdom	Russia	UK, Poland, Denmark
	<ul style="list-style-type: none"> <li>Chechen citizen, leader of the secessionist Chechen government-in-exile.</li> <li>Played a leading role in peace negotiations in both Chechen wars.</li> <li>Arrested in Denmark on a Red Notice. After a month in custody he was released for lack of evidence supporting the request (a priest whom he was alleged to have killed turned out to be alive).</li> <li>Arrested again upon his return to the UK on the Red Notice. Bow Street Magistrates Court refused his extradition on the basis that the case was politically-motivated. The UK then granted him political asylum in 2003.</li> <li>Arrested again in Poland on the Red Notice; released within hours and returned to the UK.</li> <li>Fair Trials has applied to the CCF to ask for access to his file, relying on the CCF's stated policy of granting access where the Red Notice is published on INTERPOL's website. However, six months later, no response has yet been received.</li> </ul>		

## ANNEX 3 – SHORT SUMMARIES OF FAIR TRIALS CASES

(in the order in which they appear in the report)

NAME	LIVES IN	WANTED BY	ARRESTED IN
<b>Anastasia Rybachenko</b> 	<b>Estonia</b>	<b>Russia</b>	
		<ul style="list-style-type: none"> <li>• Russian citizen, a long-serving active member of the ‘Solidarnost’ movement, a mainstream opposition party in Russia.</li> <li>• Regular participant in public political protests, including post-election demonstrations on Bolotnaya Square, Moscow, on 6 May 2012.</li> <li>• Accused of ‘participation in mass riots’ following the demonstrations.</li> <li>• Fair Trials wrote to the General Secretariat of INTERPOL to ask it not to allow use of its systems in the case, highlighting its political nature.</li> </ul>	
<b>Wadiah Saghieh</b> 	<b>Thailand/Lebanon</b>	<b>UAE</b>	
		<ul style="list-style-type: none"> <li>• Lebanese citizen, a precious stones and jewellery trader.</li> <li>• Entered into a contract of sale of jewels with a powerful person in Abu Dhabi. When he took proceedings to recover sums due, his brother was detained and an arrest warrant circulated internationally against him.</li> <li>• The inability to travel left him unable to maintain client relationships.</li> <li>• The arrest warrant was withdrawn after he took proceedings against the prosecutor.</li> </ul>	
<b>Patricia Poleo</b> 	<b>United States</b>	<b>Venezuela</b>	<b>Peru</b>
		<ul style="list-style-type: none"> <li>• Venezuelan citizen, journalist, winner of the King of Spain Award, 2001.</li> <li>• Several times brought before the courts on account of her journalism, raising the concerns of the Inter-American Human Rights Commission.</li> <li>• Shortly after she was recognised as a refugee by the US in 2009, Venezuela issued an INTERPOL alert against her. Arrested in Peru, 2010.</li> <li>• Following her application in March 2011, the CCF eventually responded in August 2012 stating that the information had been deleted.</li> </ul>	
<b>Petr Silaev</b> 	<b>Finland</b>	<b>Russia</b>	<b>Spain</b>
		<ul style="list-style-type: none"> <li>• Russian citizen, an anti-fascist activist and writer from Moscow.</li> <li>• Participated in a demonstration in Moscow in 2010 against a controversial motorway development through the protected Khimki forest.</li> <li>• Fled Russia after police began arresting other activists involved.</li> <li>• Recognised as a political refugee by Finland, which was aware of the outstanding allegations against him.</li> <li>• Arrested in Spain on a Diffusion based on an offence of ‘hooliganism’.</li> </ul>	
		<ul style="list-style-type: none"> <li>• Spent nine days in a high-security prison outside Madrid, and six months unable to leave Spain and under restrictive bail conditions while the court considered Russia’s extradition request.</li> <li>• The Spanish court refused his extradition on the basis that the case against him was politically-motivated, noting that the request contained only unsubstantiated allegations made by police.</li> <li>• Fair Trials sent a detailed 28-page application to the CCF requesting the destruction of the Diffusion, which is available for consultation at <a href="http://www.fairtrials.org/cases/petr-silaev/">http://www.fairtrials.org/cases/petr-silaev/</a>.</li> <li>• The CCF eventually responded with a one-page letter, which did not address the facts of the case, explaining that it had found to reason to recommend the destruction of the alert.</li> <li>• The CCF’s letter was drafted only two days after Russian authorities began announcing the result – and only following an urgent request from Fair Trials.</li> </ul>	

## ANNEX 3 – SHORT SUMMARIES OF FAIR TRIALS CASES

(in the order in which they appear in the report)

NAME	LIVES IN	WANTED BY	ARRESTED IN
<b>Ales Michalevic</b> 	<b>Czech Republic</b>	<b>Belarus</b>	<b>Poland, United States</b>
	<ul style="list-style-type: none"> <li>• Belarusian citizen, member of the political opposition.</li> <li>• Stood against President Lukashenko in the 2010 Presidential elections.</li> <li>• Imprisoned, along with other opponents, in the wake of the elections.</li> <li>• Left Belarus and was recognised as a refugee by the Czech Republic.</li> <li>• Belarus sought a Red Notice, but INTERPOL refused this.</li> <li>• However, he was arrested and held briefly in both Poland and the US as the Belarusian request had been copied into local databases.</li> </ul>		
<b>Dmitrij Radkovich*</b> 	<b>Lithuania</b>	<b>Belarus</b>	<b>Italy, Bulgaria, Latvia</b>
	<ul style="list-style-type: none"> <li>• Belarusian entrepreneur who financed opposition candidates in elections of 2010, Andrei Sannikov and Nikolaj Statkevich.</li> <li>• Fled Belarus and was recognised as a refugee by Lithuania on the basis that he faced politically-motivated prosecution in Belarus.</li> <li>• Arrested in Italy on New Year's Day in presence of his family on the basis of INTERPOL alert based on the same criminal prosecution.</li> <li>• Italian authorities passed copy of his refugee travel document to INTERPOL, which contacted the Lithuanian authorities to verify this.</li> <li>• Italian authorities discontinued proceedings after Lithuanian authorities confirmed that he had been granted asylum on the basis of the criminal proceedings underlying the INTERPOL alert.</li> <li>• Arrested again in Bulgaria; spent four months under curfew before the court refused Belarus's extradition request on the ground that the case against Dmitrij was politically-motivated.</li> <li>• Fair Trials applied to the CCF for access to Dmitrij's file, but – almost a year later – no access has been provided. Fair Trials has also applied to have the alert deleted from INTERPOL's files.</li> </ul>		
<b>Dolkun Isa</b> 	<b>Germany</b>	<b>China</b>	
	<ul style="list-style-type: none"> <li>• German citizen originally recognised as a refugee from China.</li> <li>• Leader-in-exile of the movement for the emancipation of the Uyghur population of East Turkestan, a province of China.</li> <li>• Was shown a fax from INTERPOL by German police in 1999 and was advised against travelling to Central Asia.</li> <li>• Applied in January 2010 for access to his file. In January 2012 the CCF responded, refusing to confirm or deny if there was information on file.</li> </ul>		
<b>Mourad Dhina</b> 	<b>Switzerland</b>	<b>Algeria</b>	<b>France</b>
	<ul style="list-style-type: none"> <li>• Algerian citizen, head of the Alkarama Foundation in Geneva.</li> <li>• Founder of Rachad, a charity advocating peaceful revolution in Algeria.</li> <li>• Arrested in France on an 'international arrest warrant' issued by Algeria, and detained for six months in <i>La Santé</i> detention centre.</li> <li>• Paris court refused his extradition in an 'utterly unfavourable' opinion.</li> <li>• Fair Trials applied in August 2012 for access to his file in order to clarify whether his arrest in Paris was based on an INTERPOL alert. No answer has yet been received, 14 months after the request was acknowledged.</li> </ul>		

\* indicates that a pseudonym has been used to protect the person's identity. The real names have been supplied to INTERPOL to enable it to study the relevant files.

## ANNEX 4

### SHORT PROFILES OF MEMBERS OF THE CURRENT CCF

- **Mr Billy Hawkes**

Mr Billy Hawkes has been the Data Protection Commissioner of Ireland since 2005; he was re-elected for a 5-year-term in 2010. Prior to this appointment he worked in the Irish civil service in numerous Government departments including the Foreign Service where he worked for 20 years. He also worked in the Finance Department and Enterprise, Trade and Employment Department.

- **Mrs Drudeisha Madhub**

Mrs Drudeisha Madhub is the Data Protection Commissioner of Mauritius. She joined the Prime Minister's Office in 2007, where she set up the Data Protection Office. Mrs Madhub completed her undergraduate legal studies at the University of Mauritius in 1998. Of the 7 applicants admitted to the bar in 1999, she was awarded the first prize. In 2001 she joined the Attorney-General's office in 2001, where she worked for more than 6 years. During this period she undertook an LLM in International Human Rights at Essex University. Her studies were funded by a Chevening scholarship. She recently published a journal article on the work of the Data Protection Commission of Mauritius.

- **Mr Jean Frayssinet**

Prof. Jean Frayssinet is a Professor emeritus at the Faculty of Law of the University of Aix-Marseille in France. As an academic at different French universities he focused on administrative, communications and data protection law and the impact of new technologies, publishing numerous articles and book chapters and also overseeing PhD theses on these topics.

- **Andrew Patrick**

Dr. Andrew Patrick is an Information Technology Research Analyst and works for the Office of the Privacy Commissioner of Canada. Additionally, he works as an adjunct Research Professor on Computer Science in Carleton University.

For the past 20 years Dr Patrick has worked in industrial, government and academic settings on areas including privacy and security. He works on numerous projects fundamentally researching people's behavior in order to enhance the design and development of new technologies. He frequently publishes and speaks on these and other IT-related issues. He acquired his PhD in Cognitive Psychology in 1987 at the University of Western Ontario.

- **Sharif Al-Omari**

Mr Sharif Al-Omari holds the military rank of a General (Colonel) in the Kingdom of Jordan, where he previously worked as Director of the Planning and Organization Department, in the Public Security Directorate, as Director of the Correction and Rehabilitation Centres in the Public Security Department and Director of the Criminal Information Department. He was also formerly the Director of Interpol Amman, the NCB of Jordan. He has previously worked as an Interim Senior Police Advisor in the United Nations Support Mission in Libya (UNSMIL), heading 9 UN Police specialist experts on technology. He was also part of the United Nations Mission in Kosovo (UNMIK).

# FAIR TRIALS INTERNATIONAL

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