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Committee on Legal Affairs and Human Rights

Declassified Minutes of the hearing on “Abusive use of the Interpol system: the need for more stringent legal safeguards”

**held in Yerevan, Armenia
on 19 May 2015**

Abusive use of the Interpol system: the need for more stringent legal safeguards

Rapporteur: Mr Bernd Fabritius, Germany, EPP/CD

[AS/Jur (2015) 08]

Hearing with the participation of:

Mr Yaron Gottlieb, Assistant-Director, Office of Legal Affairs, ICPO-INTERPOL

Mr Alex Tinsley, Law Reform Officer, Fair Trials, Belgium

Ms Anna Koj, Head of the EU Office, Open Dialog Foundation, Belgium

The **rapporteur** welcomed the experts. He stressed that the possible abuse of Interpol's procedures could raise issues of accountability of States making abusive requests and of Interpol to the extent that its responsibility was engaged for providing assistance to States violating human rights.

Mr Gottlieb underlined the importance for Interpol of transparency and engaging with civil society. He stressed that it had been founded under international law and that Article 3 of its Constitution strictly forbade for the Organisation to undertake any political intervention. States co-operation within the Interpol system is very useful as it allowed States to arrest serious criminals every year, such as genociders or paedophiles. There had been significant improvements in the functioning of Interpol in the last few years. Only in a small minority of cases Interpol's mandate had been used inappropriately. Interpol was issuing “international notices”, i.e. notifications indicating that an arrest warrant had been issued. Any notice request incompatible with the national legislation or Interpol's Constitution is refused. Notices could be challenged under the procedure before the Commission for the Control of Interpol's Files (CCF). It is an independent commission, which examines individual requests. It used to meet 3 times a year for two days each time; starting this year, it would hold 4 meetings lasting 3 days each.

Following the issuance of a Notice, each recipient country decides whether to act on it or not. States are also expected to inform the General Secretariat of any doubts they have on the compliance of a certain request with Interpol's rules; however, States are sometimes not sufficiently proactive in this context. Recently, Interpol introduced a new policy with respect to refugees; as a general rule, red notices would be cancelled if the wanted person had been granted refugee status, if this information is confirmed by the granting country. Mr Gottlieb pointed out that some countries failed to share information with Interpol on the refugee status granted to individuals.

Some additional changes included: In 2011, a new set of rules on processing of data were adopted and, in 2013, a new unit - dedicated to review notices before publication – had been set up. In 2014 September,

Interpol adopted a new policy according to which the information contained in notice requests subject to review will not be visible to member countries pending the review. A Working Group (GTI) had been recently established to review Interpol's control mechanisms in the field of data processing, with the active participation of civil society. To conclude, Mr Gottlieb reiterated Interpol's invitation for the rapporteur to visit Interpol's Secretariat in Lyon.

Mr Kinsley stressed that he represented a NGO working for the protection of the right to a fair trial, including on cases of abusive use of the Interpol system. In his view, red notices were quite useful to track down perpetrators of serious crimes and to ensure that information was circulating. Although they did not create obligations on States, people concerned by such notices were restricted in moving, getting employment, visas, etc. One could challenge them before the national authority addressing Interpol, but so far there had not been many successful examples. In a minority of cases, there had been abuses, including in cases where the ECtHR had found violations of Article 6. Mr Kinsley welcomed certain new policies adopted by Interpol, especially that on persons having refugee status. However, these steps were not sufficient, and in particular not sufficiently transparent. Mr Kinsley referred to several cases in which alerts were apparently used in an abusive way (the cases of Bahar Kimyongür, a Turkish-Belgian activist accused of "terrorism" by Turkey; his red notice had been deleted following Fair Trials' intervention; of Azer Samadov, an Azerbaijani activist, who had refugee status in the Netherlands, and Djamel Ktiti, an Algerian citizen, whose extradition had been refused following a decision of the UN Committee Against Torture decision). According to Mr Kinsley, Interpol could do more to review requests for cooperation with countries and Article 3 of its Constitution should be clarified in respect of cases in which extradition had been refused by courts. More equality of arms was needed. Mr Kinsley welcomed the appointment of Ms Nina Vajić, former judge at the ECtHR, as Chairperson of the CCF. He stressed that the rapporteur could address the questions of delays in deleting alerts from the Interpol system and could refer to a recent survey conducted by the European Commission (the full text of his speech is in file with the Secretariat).

Ms Koj stressed that her organisation had been actively advocating for an in-depth analysis of the problem of political misuse of the Interpol system by non-democratic States. Non-democratic States often freely concocted accusations and evidence against political opponents and succeeded far too easily in placing such people on Interpol's wanted list. The provisions of Interpol's Constitution and its Rules and Regulations did not envisage any serious sanctions against States abusing of its system. Ms Koj addressed a number of recommendations to Interpol in order to avoid abuses in the future: facilitating the flow of information between Interpol's General Secretariat and its National Central Bureaus, ensuring greater transparency of the work of the CCF, not re-including in the Interpol's list persons who had been granted refugee status or whose extradition had been refused by a court, etc. (the full text of her speech is on file with the Secretariat).

A discussion ensued with the participation of **Messrs de Vries** (who stated that the CCF had a narrow mandate and stressed that member States were represented in Interpol by national police officers; he called for stronger accountability mechanisms for Interpol, which could not be allowed to function as a police body without democratic oversight), **Cilevičs** (who pointed out the similarity with the issue of UN blacklists examined by the Committee a few years ago; the Interpol's alert system was based on an implicit presumption that there was no politically motivated prosecution, which was not always justified; he wondered whether the system could be reinforced by introducing more legal criteria, in particular to take into account relevant ECtHR judgments), **Sasi** (who stressed that it was almost impossible to study carefully every red notice and wondered what special procedures and compensation mechanisms could be introduced in cases of repeated misuse of the Interpol system), **Ms Taktakishvili** (who stated that the Georgian government was abusively using red notices against some leaders of the opposition and that the former minister of Justice had been removed from the alert system through the appeals procedure; she wondered whether an international legal instrument was needed to ensure compliance), **Ms Beselia** (who asked whether granting refugee status to a person concerned by an international warrant implied its cancellation and whether the prosecuting country was informed of that) and the **rapporteur** (who stressed that it was first and foremost up to States to decide whether to remove the red notice and wondered how the Interpol system could best be linked with extradition procedures).

Mr Gottlieb replied that Interpol was taking into account the ECtHR judgments when cancelling red notices to the extent they were aware. Following every cancellation, Interpol's database was updated and all recipient countries are informed of the cancellation so they can update their national databases. After cancellation and upon request, a certificate is sent to the individual confirming that he/she is no longer included in the database. The individual's name was then put on a "watch list" and blocked if other requests were made. The GTI was currently discussing possible changes to the Rules and their implementation. Regarding Mr de Vries's question, he stressed that Interpol was an international organisation, the GTI was also inviting representatives of the Ministries of Justice to its meetings. To Mr Sasi, he indicated that in the

context of the GTI work, Interpol was going to also discuss the issue of compensation for people who had been subject of unjustified red notices and that it had prepared a “checklist” of countries whose notices may require enhanced scrutiny (for example, following a coup d’état in the country). To Ms Beselia’s question, he replied that Interpol had a good cooperation with the Georgian government and, regarding persons having refugee status, his organisation was sending messages to the concerned countries and sharing relevant information.