



Commission de Contrôle des Fichiers de l'O.I.P.C. - INTERPOL
Commission for the Control of INTERPOL's Files
Comisión de Control de los Ficheros de la OIPC-INTERPOL
لجنة الرقابة على محفوظات المنظمة الدولية للشرطة الجنائية (الإنتربول)

24 July 2018

Our ref: CCF/106/R.808.16-18/c.3858.18

Subject: Request concerning Mr. Rodrigo TACLA DURAN

Dear Sir,

As provided for in our letter dated 31 May 2018, we inform you that the Commission studied your request during its 105th session, which took place from 3 to 5 July 2018.

After a thorough examination of the elements before it, the Commission found that the data challenged raised questions as to compliance with applicable rules. As a result, it considered that the retention of these data in the INTERPOL Information System was not compliant with INTERPOL's rules and decided that they should be deleted.

This decision was forwarded to the INTERPOL General Secretariat, which deleted the data challenged from INTERPOL's files, on 13 July 2018.

Additionally please be advised that the INTERPOL General Secretariat has informed all INTERPOL National Central Bureaus (NCB) that:

- in application of the decision made by the Commission for the Control of INTERPOL's Files, the General Secretariat has deleted the data relating to your client ;
- all international police cooperation via INTERPOL's channels in this case would not be in conformity with INTERPOL's Constitution and Rules.

The INTERPOL General Secretariat also urged all NCBs to update their national databases accordingly, as well as to verify that the same is done by all national entities that have access to INTERPOL information.

You will find enclosed the Decision of the Commission concerning your client and an official letter from the INTERPOL General Secretariat, certifying that he is not subject to an INTERPOL Red Notice or diffusion.

To undertake any measure you deem appropriate for the follow up of your client's case at national level, we invite you to contact the relevant national authorities.

Yours faithfully,

A handwritten signature in black ink, consisting of a stylized 'A' followed by a flourish.

Secretariat to the Commission
for the Control of INTERPOL's Files

Señor Sebastian Suarez
Equinord - International Law Counsellors
Lille 18-6
10614, Tallinn - Estonia



TO WHOM IT MAY CONCERN

The General Secretariat of the International Criminal Police Organization-INTERPOL hereby certifies that, as of today, Mr TACLA DURAN Rodrigo born on 13 September 1975, is not subject to an INTERPOL Notice or diffusion.

Done in Lyon, on 20 July 2018.



Office of Legal Affairs
General Secretariat
ICPO-INTERPOL

Request concerning Rodrigo TACLA DURAN
(Ref. CCF/R 808.16-18)

DECISION OF THE COMMISSION
(105th session, 3 - 5 July 2018)

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

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

Having deliberated in camera during its 105th session, on 5 July 2018, delivered the following Decision.

I. PROCEDURE

1. On 14 December 2016, Mr Rodrigo TACLA DURAN (the Applicant) lodged a complaint addressed to the Commission. Following the submission of all the required documents in accordance with Article 10 of the Operating Rules of the Commission, the request was found admissible, and the Commission informed the Applicant thereof on 4 January 2017.
2. In accordance with article 5(e,4) of the Rules on the Control of Information and Access to INTERPOL's files (RCI), the National Central Bureau of INTERPOL (NCB) of Brazil was consulted on the arguments set forth in the complaint.
3. During its 99th session (March 2017), the Commission concluded that the data challenged were compliant with INTERPOL's rules applicable to the processing of personal data. The NCB of Brazil and the Applicant were informed of this outcome.
4. On 24 April 2018, the Applicant lodged an application for revision addressed to the Commission. Further communications were sent to the Commission regarding his application on 2 and 10 May 2018.
5. On 31 May 2018, both the Applicant and the NCB source of the data challenged were informed of the fact that the Commission would study the case during its 105th session.

II. FACTS

6. The Applicant is a national of Brazil and Spain.
7. He is subject to a red notice issued on 14 September 2016 at the request of the NCB of Brazil, for charges of fraud, bribery/corruption and currency control violation.
8. The summary of the facts, as recorded in the Red Notice, is the following: *"BRAZIL: From 01 January 2009 to 01 January 2015: RODRIGO TACLA DURAN is an expert in money laundering. He's involved in many criminal events. He received in the bank accounts of his companies or in secrets accounts abroad large amounts of money from three contractors (Mendes Júnior, UTC and Odebrecht) involved in the investigation called "Operação Lavajato". Some investigated subjects confessed that these money transfers were illegal and that its purpose was create money "in cash" to bribe government agents. A company director acknowledged having made use of illicit services of RODRIGO to create cash via "slush fund" and stated: "the service offered by RODRIGO DURAN was raising money through fictitious contracts". Jan/2009 to Jan/2015, RODRIGO, through fake contracts with many companies, raised around R\$35 Million. To make possible the money laundering, it was celebrated many fake*

contracts and was issued invoices of more than R\$56 million. It was found millionaires money deposits in accounts of companies controlled by him”.

9. On 18 November 2016, the Applicant was arrested in Spain based on the Red Notice. On 24 January 2017, Brazilian authorities sent the request for extradition from Spain through Diplomatic channels. On 3 February 2017, he was released subject to surrender of passport and periodic presentation in court.

III. THE APPLICANT’S REQUEST

10. The Applicant requested the deletion of the data concerning him. He contends in essence that:
 - a) the criminal procedures forming the basis of the red notice have been transferred from Brazil to Spain;
 - b) his right to due process and guarantees of a fair trial would not be respected in Brazil;
 - c) Spain denied his extradition requested by Brazilian authorities.

IV. APPLICABLE LEGAL FRAMEWORK

11. General provisions:
 - Article 2(1) of INTERPOL’s Constitution states that the Organisation should “ensure and promote the widest possible mutual assistance between all criminal police authorities within the limits of the laws existing in the different countries and in the spirit of the Universal Declaration of Human Rights”.
12. Field of competence of the Commission:
 - Article 36 of INTERPOL’s Constitution states that the Commission shall ensure that the processing of personal data by the Organization is in compliance with the regulations the Organization establishes in this matter”.
 - Article 3(1)(a) and Article 33(3) of the Statute of the Commission establish that the powers of the Commission are limited to controlling whether the processing of data in INTERPOL’s files meets INTERPOL’s applicable legal requirements.
13. Application for revision:
 - Article 42 of the CCF Statute provides that: “(1) *Applications for the revision of decisions of the Requests Chamber may be made only when they are based on the discovery of facts which could have led the Requests Chamber to a different conclusion if that fact had been known at the time at which the request was being processed. (2) Applications for revision must be made within six months after the discovery of the fact.*”
14. Extradition issues:
 - INTERPOL General Assembly Resolution AGN/53/RES/7 of 1984 states that “if certain countries refuse extradition, this is reported to the other NCBs in an addendum to the original notice”.

V. FINDINGS

15. In reviewing the issues raised, the Commission based its findings on information provided by the Applicant, the NCBs concerned and INTERPOL’s General Secretariat.

A. Application for revision

a) *The Applicant*

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16. The Applicant claims that on 11 April 2018 a decision issued by the judge presiding over the criminal proceedings against him in Brazil transferred part of the judicial proceedings to the Spanish jurisdiction, which had previously expressed its readiness to process the case before its tribunals. The Applicant also states that the part of the proceedings that was not transferred to Spain had already been archived back in Brazil, on 24 April 2018.
17. The Applicant argues that his rights to due process and fair trial would be violated if he were to be returned to Brazil to face charges. He states that the judge presiding over his case has repeatedly demonstrated bias against him in not allowing him to appear as a witness in other cases, having stated in judicial decisions that the Applicant's word could not be trusted as he is a person accused of crimes and an international fugitive, and having spoken to the press about accusations made by the Applicant concerning corruption regarding persons close to the judge.
18. The Applicant contends that his extradition to Brazil was denied by the Spanish authorities on 25 July 2017, and that such decision is final and not subject to appeal. Furthermore, the Applicant states that in the aforementioned decision the Spanish authorities expressed their willingness to conduct the criminal proceedings against him, should the Brazilian authorities request it.

b) Findings of the Commission

19. The Commission recalled that under Article 42 of the CCF Statute "(1) *Applications for the revision of decisions of the Requests Chamber may be made only when they are based on the discovery of facts which could have led the Requests Chamber to a different conclusion if that fact had been known at the time at which the request was being processed.* (2) *Applications for revision must be made within six months after the discovery of the fact.*"
20. The Commission evaluated the Applicant's claims in view of Article 42 of its Statute. Under that Article, the party seeking revision of one of the Commission's decisions shall provide a fact which: is newly discovered, could have led the Commission to a different conclusion if it had been known at the time at which the request was initially processed, and shall present it to the Commission within six months of its discovery.
21. Here, information provided by the Applicant and confirmed by the NCB demonstrates that, on 11 April 2018, hence after the Commission's Decision of 2 March 2017, part of the judicial proceedings against the Applicant were transferred from the Brazilian to the Spanish jurisdiction.
22. The Commission also took into account news reports submitted by the Applicant concerning the conduct of the judge responsible for his case in Brazil, the information provided by the NCB, as well as open source research on the matter.
23. The Commission established that these elements were newly discovered facts which could have led it to a different conclusion had they been known at the time at which the request was initially processed, and confirmed that they were presented by the Applicant within the requested six months framework.
24. Based on the above, the Commission finds that the criteria for the revision of the case are met, and decides to study the Applicant's claims in view of the newly discovered facts.
25. The Commission also studied a third argument of the Applicant concerning the denial of extradition by Spanish authorities on 25 July 2017. It observed that this information was not presented by the Applicant within the requested six months framework; the Commission did not, therefore, take such argument into account when making its decision.

B. Transfer of the proceedings: *Ne bis in idem*

a) The Applicant

26. The Applicant argues that in the decision by the *Sala del Penal de la Audiencia Nacional* denied his extradition, on 25 July 2017, the tribunal stated that, should the Brazilian authorities request it, he could be processed before the Spanish jurisdiction.

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27. On 4 September 2017, before the *Sección Segunda de la Sala de lo Penal de la Audiencia Nacional*, a new criminal proceeding (*querrela*) was initiated against the Applicant, in application of the Spanish criminal legislation. Alleging that the existence of two separate criminal proceedings before different jurisdictions based on the same facts would be a violation of the principle of *ne bis in idem*, the Applicant requested the Brazilian Superior Court of Justice (*Superior Tribunal de Justiça*) adjudicate the decision on the *querrela*, so that only the Spanish proceedings would continue.
28. The Applicant claims that on 11 April 2018, the judge presiding over the proceedings in Brazil issued a decision to transfer part of the judicial proceedings to the Spanish jurisdiction. The Applicant also states that the part of the proceedings that was not transferred to Spain had already been archived in Brazil, on 24 April 2018.
29. As the Spanish authorities, who are now responsible for the criminal proceedings against him, have not requested that the Red Notice be maintained and as the status of the remaining proceedings in Brazil are not clear, the Applicant seeks the Red Notice be deleted.

b) The NCB of Brazil

30. The NCB of Brazil states that the Red Notice was issued at the beginning of the investigations into the Applicant's criminal activities, especially relating to money laundering. Since then, the Applicant has been charged in Brazil in three different criminal proceedings, on multiple counts of money laundering and participation in a criminal organization.
31. The first of these proceedings refers to fifty counts of money laundering and remains fully under Brazilian jurisdiction. The Brazilian authorities have requested cooperation from the Spanish authorities to notify the Applicant and are currently waiting for their response.
32. In the second proceedings the Applicant is charged with counts relating to money laundering and to participation in a criminal organization. The Brazilian authorities have yet to submit a request for international cooperation for the Applicant to be notified of the charges.
33. It was only a small part of the third proceedings, relating to money laundering and participation to a criminal organization, that was transferred to the Spanish jurisdiction. Nevertheless, the rest of the case, regarding 95 counts of money laundering and participation to a criminal organization, remains fully and actively under Brazilian jurisdiction.
34. Moreover, according to the NCB, the order for preventive detention concerning the Applicant, which is the base for the issuance of the Red Notice, remains in effect.

c) The NCB of Spain

35. The NCB of Spain was consulted on 12 June 2018 concerning any further steps that the NCB of Brazil might have taken to ensure further cooperation regarding the Applicant's case.
36. The NCB confirmed that no other measures have been requested by the NCB of Brazil after the Spanish judicial authorities denied the Applicant's extradition, on 25 July 2017.

d) Findings of the Commission

37. As many times stated before, under Articles 3(1)(a) and 33(3) of the Statute of the Commission, the function of the Commission is to review whether the processing of data in INTERPOL's files meets INTERPOL's applicable legal requirements in accordance with Article 36 of INTERPOL's Constitution. The Commission is not empowered to conduct an investigation, to weigh evidence, or to make a determination on the merits of a case. That is the function of the competent national authorities. The mere submission of evidence that what would supports a contrary account, would require the Commission to evaluate the reliability of the evidence in a manner that should be undertaken at trial or an extradition hearing.
38. The Applicant submitted a decision issued by the 13th Federal Federal Court of the Judicial Branch of Curitiba/PR, Brazil, on 11 April 2018, to transfer part of the proceedings opened by Brazilian authorities concerning money laundering against the Applicant. The Applicant also states that the

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remaining part of the proceedings, which were not transferred to Spain, had already been archived in Brazil.

39. The Commission noted that the decision of the Brazilian judicial authorities is limited to one out of the three criminal proceedings that are currently pending in Brazil against the Applicant for several counts of money laundering and participation in a criminal organization. Moreover, the Commission took note that the latter is not mentioned in the Red Notice.
40. The Commission finds that, in view of the limited nature of the transfer of proceedings to Spain, it cannot consider that there would have been a transfer of the proceedings which form the basis of the red notice, and therefore a violation of the principle of *ne bis in idem* in this case.

C. Article 2 of INTERPOL's Constitution

a) The Applicant

41. The Applicant claims that his right to due process would be violated and that there are no guarantees that he would be subject to a fair trial were he to be returned to Brazil to face criminal charges. According to him, the cases that stem from the *Lava Jato* operation are of great importance and cause controversy in Brazil because they involve several high-level political figures and important companies.
42. He states that following his testimony before a legislative commission of investigation (*Comissão Parlamentar de Inquérito*), during which he exposed procedural irregularities carried out by the Brazilian Judiciary, especially relating to the *Lava Jato* operation, three congressmen presented a request for three prosecutors in charge of the case and a lawyer to be investigated in relation to crimes of procedural fraud, evidence tampering and violation of attorney prerogatives, among others. According to the Applicant, because he exposed such a "web of trafficking of influence and corruption" in the Brazilian justice system, including in the *Lava Jato* operation and surrounding the judge in charge of it, he would not be afforded a fair treatment by the Brazilian justice system and states he would even fear for his life were he to return to the country.
43. Moreover, the Applicant argues that the judge presiding over the case against him has disrespected the principle of impartiality, which is enshrined in the Brazilian legislation concerning judicial functions (*Lei Orgânica da Magistratura*). Although the Applicant does not ask that the Commission declare the judge is in violation of the aforementioned legislation, he requests that it establishes that sufficient doubt has been cast on the fact that he would be afforded a fair and impartial trial in Brazil.
44. In support of this allegation, the Applicant states that the defence attorneys for former President Lula da Silva have tried, on several occasions, to summon him as a witness in one of the cases against Mr. da Silva. The presiding judge has repeatedly denied such requests, stating that the Applicant's word could not be relied upon, as he is a person accused of crimes and is an international fugitive. Moreover, the judge has spoken to the media about him, stating that he is a liar, thus anticipating his judgement of the Applicant.
45. Furthermore, the Applicant states that in attempting to notify him of the charges against him pending before it, the Brazilian jurisdiction has deliberately sent documents to a different address than that indicated in both the Spanish and Brazilian writs. According to the Applicant, this would point to a hidden motivation by the judge presiding over the case.

b) The NCB of Brazil

46. In its reply, the NCB of Brazil stated that the Applicant's arguments are untrue and unfounded and are simply an attempt to escape facing the legal consequences back in Brazil for his criminal actions.
47. It further stated that the right to a fair trial is guaranteed by Brazilian laws and by the Federal Constitution. The rights to access to justice, of equal treatment before the law, of being judged by an impartial court based on lawfully obtained evidence and of the right to defense and contradictory, among others, are enshrined in the Brazilian legal system and are observed in all four jurisdictional levels where the criminal case against the Applicant will be submitted. The Judiciary in Brazil is

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impartial, ensuring to all those who are brought to judgment full observance of their rights and judicial appreciation according to the facts and evidence reported in the proceedings.

48. Moreover, the arguments currently presented by the Applicant have been discussed before the different jurisdictional levels in Brazil and have all been dismissed.
49. The NCB stated that the proceedings against the Applicant are still valid and ongoing. The arrest warrant remains valid and forms the basis of the INTERPOL's Red Notice, and there has been no reason for it to be revoked.

c) Findings of the Commission

50. Under Article 34(1) of the RPD, data must be processed in INTERPOL's files in compliance with Article 2 of the Organization's Constitution, i.e., notably with the spirit of the Universal Declaration of Human Rights. In order to respect the spirit of the UDHR while at the same time respecting the limited fact finding role of the Commission, the Commission considers all relevant information to determine whether the Applicant has convincingly demonstrated the likelihood that a flagrant denial of a fair trial took place.
51. First, the Commission noted that the guarantees of access to justice, as well as the principles of equal treatment before the law, impartiality of the Judiciary and fundamental rights, such as full defense and contradictory are indeed enshrined in the Brazilian Federal Constitution and in the country's legal system.
52. The Commission recalled that it is not its role to assess a country's law enforcement or judicial system *in abstracto* and that it must make its determinations based on specific information that sheds light on whether or not INTERPOL's legal framework has been complied with in a particular case.
53. The Commission then considered the allegations presented by the Applicant that, due to the conduct of the judge responsible for presiding over his case in Brazil, enough doubt has been cast over the fact that a violation of Article 2 of INTERPOL's Constitution could have existed.
54. In that context, the Applicant submitted evidence, which was easily verifiable through open source research, to support his contention that the judge has publically spoken about him during an interview and has, in denying motions for him to testify as a witness in other cases, issued an opinion regarding the truthfulness of any information that he could present.
55. The Commission finds that the elements presented by the NCB are not sufficient to rebut such contention.
56. The Commission also took into account that no formal investigation seems to be in place concerning the accusations raised by the Applicant during his testimony before the Brazilian Congress, despite the fact that months have passed since a formal representation based on his allegations was presented by congressmen to the parquet.
57. The Commission also finds that the information presented by the NCB was not sufficient to clarify the situation.

FOR THESE REASONS, THE COMMISSION

58. Decides that the conditions for revision established under Article 42 of the CCF Statute are met.
59. Decides that the data concerning the Applicant are not compliant with INTERPOL's rules applicable to the processing of personal data, and that they shall be deleted from INTERPOL's files.

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