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Compensation Fund, next step in limiting abuses of the INTERPOL system

In his report Mr. Bernd Fabritious, Special Rapporteur of the Parliamentary Assembly of the Council of Europe (PACE), entitled to investigate practices of abuses of the INTERPOL system, proposed creation of the compensation Fund for its victims. His idea was based on the fact, that *at the national level, persons who were innocently imprisoned are entitled to financial compensation. Such compensation is in principle also available to persons who were held in detention following an abusive or erroneous Red Notice, according to the laws of the arresting country.*

(...)

In accordance with the principle of causal responsibility (“polluter pays”), this fund should be fed by contributions from States proportionately to the number of unjustified notices requested by their National Central Bureaus (NCBs)¹.

As the Open Dialog Foundation supports this proposal in principle, the question should be raised whether this is enough. Obviously being in prison or detention center on unjust basis has severe consequences not only on economic, but also personal and social wellbeing of a person – causes secondary victimization – and the guilt is split between the requesting state and the state which enforces imprisonment without sufficient grounds and in a doubtful manner.

At the 26 April 2017 seminar at the Committee on Legal Affairs and Human Rights of the PACE, Strasbourg, Mr Tomás Navarro Blakemore, representative of Destination Justice, stressed: “victims should not only be granted direct compensation, but also social, economic, legal and humanitarian assistance”². They simply should be made feeling that the state and the society is on their side.

Technicalities of the implementation of the idea for the compensation fund must be explored and more specific proposals developed. The fundamental question is how much should states pay.

On the Open Dialog Foundation’s recommendation list, included in the report “Reform of the INTERPOL: Don’t Let It Be Stopped Halfway” (Warsaw/Brussels 09.07.2017), we propose to establish a fixed amount of compensation: a certain amount for each month of the period when the person’s name was in the wanted list.

Also, it is equally important to make the National Central Bureau a part in the compensation-seeking procedures, apart from the “polluting” states. A person should be able to file a claim against the NCB with the relevant national court.

¹ B. Fabritius, *Abusive use of the INTERPOL system: the need for more stringent legal safeguards*, Committee on Legal Affairs and Human Rights, Council of Europe, Strasbourg 2017

² P. Gaffurini, *The ODF discussed abusive use of INTERPOL’s Red Notices at the Parliamentary Assembly of the Council of Europe*, 30.04.2017, <http://en.odfoundation.eu/a/8186,the-odf-discussed-abusive-use-of-interpol-s-red-notices-at-the-parliamentary-assembly-of-the-council-of-europe1>

Also, to provide a healthy boost for the *Commission for Controls of the INTERPOL Files* to actually deal with appeals on time, if the Commission has not responded to the appeal within the prescribed time limits, the applicant should be entitled to a fixed monetary compensation (a certain amount of money for each day of delay).

Reflection on the reforms of the INTERPOL, which aim at limiting space for abuses must include further work on legal basis and technical characteristics of the compensation fund. Open Dialog Foundation hopes its proposals can serve as a starting point for such discussion.

THE REFORM OF INTERPOL:

DON'T LET IT BE STOPPED HALFWAY



Non-democratic states carry out political persecution through the Interpol system. Both human rights NGOs and intergovernmental organisations have been working on this problem for several years. Finally, the reform of Interpol got underway. This report analyses amendments to the legislation of Interpol and suggests a specific mechanism for further effective implementation of the reform.



OPEN DIALOG

The report was published on 9 June, 2017

The Open Dialog Foundation was established in Poland, in 2009, on the initiative of Lyudmyla Kozlovska (who is currently the President of the Management Board). The statutory objectives of the Foundation include the protection of human rights, democracy and rule of law in the post-Soviet area. The Foundation focuses particular attention in countries, such as Kazakhstan, Russia, Moldova and Ukraine.

The Foundation pursues its goals through the organisation of observation missions, including election observation and monitoring of the human rights situation in the post-Soviet area. Based on these activities, the Foundation produces reports and distributes them among the institutions of the EU, the OSCE and other international organisations, foreign ministries and parliaments of EU countries, analytical centres and the media.

In addition to observational and analytical activities, the Foundation is actively engaged in cooperation with members of parliaments involved in foreign affairs, human rights and relationships with the post-Soviet countries in order to support the process of democratisation and liberalisation of internal policies in the post-Soviet area. Significant areas of the Foundation's activities also include support programmes for political prisoners and refugees.

The Foundation has permanent representative offices in Warsaw, Kyiv and Brussels.

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1. INTRODUCTION. WHY INTERPOL NEEDS REFORMS AND WHAT HAS ALREADY BEEN DONE IN THIS REGARD

Non-democratic States use the Interpol system in order to prosecute refugees and political opponents. It was from the discussion on this issue that the reform of Interpol has began.

Interpol is an extremely important tool in cooperation of the police authorities in the pursuit and detention of dangerous criminals. Article 3 of the Interpol Constitution prohibits the Organisation from interfering in matters of political nature. However, in 2013, human rights organisations recorded that non-democratic States have repeatedly violated this rule.

It became clear to representatives of the civil society that this problem can only be solved by changing the principles of Interpol's operation. One of the initiators of the Interpol reform was the Open Dialog Foundation. Over the past four years, the Foundation has held events in the European Parliament, national parliaments of the EU member states, at the PACE and OSCE PA sessions, and also provided expertise for the Interpol bodies.

In the period between 2013-2014, we have heard skeptical comments about a 'lack of possibility' of bringing about changes in the operation of one of the largest international organisations. And in 2013, Interpol itself opposed systemic reforms. However, representatives of the European Parliament, PACE and OSCE PA supported the reform of Interpol and included the issue in their work agenda. The world media began to talk about the problem.

The efforts of the international community gave the first significant results. In November 2016, Interpol introduced a number of changes in its legislation.

Interpol began to remove from the wanted list, persons who have been granted refugee status with regard to the state which declared them wanted. However, this policy is not enshrined in the legislation and is applied inconsistently. There are numerous refugees and other persons on Interpol's wanted lists, whose persecution has been recognised by the EU States and human rights activists as politically motivated.

Those who have obtained a residence permit and even citizenship in the EU and the USA, remain to be a target of attacks by non-democratic states. The extradition of these individuals has been denied; however, they are still on Interpol's wanted lists. As a consequence, they are subjected to lengthy detention, and those who remain at large, cannot freely travel, find a job or open a bank account. Refugees may not be aware of the fact that they are wanted, as most of Interpol's notices are non-public.

There is no mechanism to protect victims of political persecution who were detained on the territory of unsafe states. These states have not signed basic human rights treaties or have not implemented them; they ignore UNHCR's decisions to grant refugee status and Interpol's decisions recognising the political nature of the case. Refugees are trapped there and they can be extradited, despite the threat of torture and death.

Requests for the removal of their names from the wanted list are considered by the Commission for the Control of Interpol's Files. The Commission has the exclusive right to issue decisions on complaints, and it is the only body which can review its own decisions. There is no mechanism that would allow to file an appeal against the actions of Interpol with an independent judicial body outside the structure of Interpol.

The Commission began to present detailed justifications of its decisions and even publish some excerpts from them. However, there are no clear criteria regarding the decision-making process. It happens that in two identical cases, the Commission issues opposite decisions. Frequently, refugees have to await the Commission's decision for a year or more (before the reform, the time limits were even longer).

The legislation of Interpol indicates that members of the Commission are independent and should not represent the interests of any State. At the same time, it is only States that have the right to nominate candidates for members of the Commission (which is somewhat paradoxical). As a rule, members of the Commission are representatives of law enforcement agencies of various countries. The Requests Chamber of the Commission consists of five members, and, currently only one of the members can be considered a representative of the civil society.

Under the new legislation, the National Central Bureaus and the General Secretariat appoint data protection officers to monitor violations of the Interpol rules. The extent to which the officers can be independent, is not yet clear. One should bear in mind that they, in fact, verify those people who had appointed them to their posts. In addition, the officers do not have the competence to issue binding decisions for the National Central Bureaus or the General Secretariat.¹

According to the law, Interpol can impose sanctions against violating States, but does not do so. Interpol pays equal attention to requests for an international alert from democratic and non-democratic States (which constitute the majority in the Organisation).

In cooperation with the international community, Interpol has taken important steps, but it is crucial that it doesn't stop halfway. It is important that the reform is implemented not only by expanding the bureaucratic structure. The new bodies should receive real powers and independence. Further harmonisation of the Interpol legislation is important. Some innovations are not described in detail in the legislation, and, for this reason, they are in a 'suspended state'.

In April 2017, PACE approved the report and resolution on the Interpol reform.² This is a result of a three-year work of the PACE Committee on Legal Affairs and Human Rights and Rapporteur Bernd Fabritius. We would like to express our gratitude to the PACE for the report, which has become an important stimulus, triggering further changes in Interpol. Currently, the next step is timely development of a new report, aimed at monitoring the implementation of the reform.

This report, produced by the Open Dialog Foundation, is a continuation of the painstaking work on improving the Interpol system. We have analysed the positive changes and shortcomings of the refugee protection policy, the policy of publicity of requests for an international alert, as well as the work of the Commission for the Control of Interpol's Files and data protection officers. The issue of the prospects of reforms in connection with the appointment of the new leadership of Interpol has also been raised. We suggested additional expertise and recommendations, as well as a concrete mechanism for effective implementation of the reforms both at the level of legislation and the structure of Interpol.

The report examines 25 cases which serve as examples of misuse of Interpol for political purposes. The misuse in the cases was committed by countries, such as: Russia, Kazakhstan, Uzbekistan, Kyrgyzstan, China, Azerbaijan, Turkey and Moldova.

The Open Dialog Foundation hereby expresses its gratitude to the human rights organisation 'Destination Justice' for its cooperation in promoting the reform of Interpol. We also carry out communication and exchange of expert opinions with representatives of 'Fair Trial'. We highly appreciate the fact that Interpol began to heed representatives of the civil society, and we look forward to a further constructive dialogue with the Organisation.

¹ According to documents, published on Interpol's website.

² <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=23524&lang=EN> ; <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=23714&lang=EN>

2. THE REFORM OF INTERPOL: THE FIRST STEPS AND FIRST ACHIEVEMENTS

Human rights and intergovernmental organisations have repeatedly pointed to the incidents of misuse of the Interpol system in order to prosecute refugees and political opponents. In 2013, a broad discussion of this problem began.

The Open Dialog Foundation was one of those non-governmental organisations that launched an international campaign to support the reform of Interpol. In particular, in 2013, the Foundation organised events on this topic in the London and Italian parliaments. Also, in 2013-2014, meetings were held within the framework of the OSCE PA in Istanbul³ and Baku.⁴ The Foundation welcomed the inclusion of paragraphs regarding the need for the reform of Interpol in the OSCE PA declaration.

The Open Dialog Foundation organised international conferences in Rome (December 2013) and Madrid (October 2014), where human rights defenders, experts, parliamentarians and journalists discussed the abuse of the Interpol system.⁵ In the years 2015-2016, the Foundation held events in the European Parliament, the national parliaments of Germany and Austria⁶, as well as within the framework of the OSCE Meeting (HDIM) and the meeting of the PACE Committee on Legal Affairs and Human Rights.⁷

Members of the OSCE PA, PACE and European Parliament paid heed to the position of human rights organisations and expressed their support for the reform of Interpol.⁸

However, it wasn't immediately that Interpol demonstrated its readiness for changes. On 28 May, 2013, the then General Secretary of Interpol Ronald Noble stated that the knowledge of critics is *'incomplete or just plain wrong'*, while Interpol itself *'needs no major reforms'*.⁹ In 2014, when Jürgen Stock became the new General Secretary, Interpol recognised the need for the fight against violations of Art. 3 of the Constitution. The organisation has become more open to the civil society.

In November 2014, Interpol commissioned a review of the Organisation's oversight mechanisms to the Working Group on the Processing of Information. In the period between 1 July, 2015 and 3 July, 2015, the meeting of the Working Group was held; it also included consultations with non-governmental organisations. The Open Dialog Foundation provided its recommendations to the Working Group.¹⁰

On 9 November, 2016, the General Assembly of Interpol adopted a decision to implement a number of reforms. Interpol rules were amended and the Statute of the Commission for the Control of Interpol's Files was adopted. New bodies, designed to monitor the violations of the Organisation's rules, have been established within the structure of Interpol.

Representatives of Interpol announced a change in the policy regarding persons with refugee status. The policy has already begun to be implemented; consequently, the names of several victims of political persecution have already been removed from the wanted list. In particular, Interpol canceled the pursuit of several individuals for whom the Open Dialog Foundation had carried out an international defence campaign (Nikolai Koblyakov, Russian opposition activist,¹¹ Tatiana Paraskevich and Artur Trofimov, defendants in the case of the Kazakh oppositionist Mukhtar Ablyazov; and Pavel Zabelin, a defendant in the YUKOS case¹²).

³ <https://www.oscepa.org/meetings/annual-sessions/2013-istanbul-annual-session>

⁴ <https://www.oscepa.org/meetings/annual-sessions/2014-baku-annual-session>

⁵ <https://confilegal.com/20141009-alexandr-pavlov-le-guardo-rencor-juez-trato-extraditarme-09102014-1410/>

⁶ <http://odfoundation.eu/a/6582,parlament-austrii-o-nieszczelnym-mechanizmie-interpolu-i-przesladowaniu-artura-trofimova>

⁷ <http://en.odfoundation.eu/a/7910,interpol-s-reform-and-rights-of-victims-of-politically-motivated-extradition-requests-steps-forward-and-emergence-of-new-threats>

⁸ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2016-0121+0+DOC+XML+V0//EN&language=EN> ;

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2016-0121+0+DOC+XML+V0//EN>

⁹ <https://www.interpol.int/News-and-media/News/2013/N20130528>

¹⁰ <http://en.odfoundation.eu/a/6690,odf-drafted-recommendations-on-the-reform-of-interpol>

¹¹ <http://en.odfoundation.eu/a/5286,french-activist-nikolay-koblyakov-is-returning-home>

¹² <http://en.odfoundation.eu/a/6642,interpol-used-by-russia-in-the-case-of-yukos-and-khodorkovsky-the-oppression-of-pavel-zabelin>

At the moment, the policy of protecting refugees is not included as a norm in the legislation of Interpol. Names of numerous political refugees remain on the lists of Interpol.

Another positive step, taken by Interpol, was a change in the work of the Commission for the Control of Interpol's Files. The Commission began to respond to requests within the specified time limits and substantiate its decisions in detail. The number of meetings, held by the Commission, has increased. Information on the procedure for submitting requests to the Commission was placed on the website of Interpol.¹³ In March 2017, the Commission began to publish excerpts from some of its decisions.¹⁴ This can help lawyers to follow the logic of the Commission's responses and formulate their arguments.

In June 2014, PACE decided to prepare a report on the problem of abuse of the Interpol system.¹⁵ Within the framework of the preparation of the PACE report, in May 2015, in May 2016 and in December 2016, representatives of the Open Dialog Foundation provided their expertise at a meeting of the PACE Committee on Legal Affairs and Human Rights.

On 26 April, 2017, PACE approved the report and resolution on the topic of 'Abusive use of the Interpol system: the need for more stringent legal safeguards'.¹⁶ The report, whose author was a representative of the European People's Party Bernd Fabritius, stated that: '*Interpol Red Notice procedures have been abused by certain member States, and Interpol has been unable to prevent many such abuses or provide relief in good time*'. The PACE report refers to the data of the European Commission, which managed to interview the authorities of 22 EU countries. Half of the replies indicated that the EU states have faced unlawful Interpol requests for an international alert.

On 26 April, 2017, in Strasbourg, along with the PACE Rapporteur Bernd Fabritius, the Open Dialog Foundation organised an event to discuss implementation of the PACE recommendations on the Interpol reform.¹⁷ It should be noted that representatives of Kazakhstan exerted pressure on the PACE rapporteur and other PACE members. The Kazakhstani authorities sought denial of the resolution or exclusion of points regarding the political overtones of the case of Mukhtar Ablyazov, a Kazakhstani opposition politician.

A representative of Interpol, Yaron Gottlieb, refused to participate in the event. In a telephone conversation, he explained his refusal by the fact that Mukhtar Ablyazov, whose case is still being considered by Interpol, was included in the list of speakers. In this regard, the Open Dialog Foundation expressed its regret over the fact and pointed out that the French State Council, more than 60 members of the European Parliament and human rights organisations had already acknowledged the political context of the Ablyazov case. In response, the Interpol press service assured the Foundation that Interpol did not set conditions regarding the list of speakers and remained open to a constructive dialogue. There is reason to believe that the Kazakhstani authorities could have influenced Interpol's decision to refuse to participate in the event. Despite the actions of Kazakhstani lobbyists, PACE delegates approved the report on the reform of Interpol.

3. THE PERSECUTION OF PERSONS WITH REFUGEE STATUS

Authoritarian states put refugees and political opponents on Interpol's wanted list. Consequently, they are arrested and subsequently held behind bars for months or years, while lengthy procedures

¹³ <https://www.interpol.int/About-INTERPOL/Commission-for-the-Control-of-Files-CCF/Your-rights/How-to-submit-an-individual-request>

¹⁴ <https://www.interpol.int/About-INTERPOL/Commission-for-the-Control-of-Files-CCF/Legal-texts-and-studies/Publications-of-the-Commission>

¹⁵ <http://en.odfoundation.eu/a/3985,pace-to-work-on-political-misuse-of-interpol>

¹⁶ <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=23524&lang=EN> ; <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=23714&lang=EN>

¹⁷ <http://en.odfoundation.eu/a/8186,the-odf-discussed-abusive-use-of-interpol-s-red-notice-at-the-parliamentary-assembly-of-the-council-of-europe1>

pertaining to the consideration of extradition requests and challenging of Interpol notices are underway. They remain on Interpol's lists even after courts have refused to extradite them.

On 19 May, 2015, at a meeting of the PACE Committee, an Interpol representative Yaron Gottlieb announced a change in the policy regarding refugees. According to him, if a person is put on the wanted list by a state, in respect of which he or she has been granted refugee status, an Interpol notice against this person is withdrawn. Mr. Gottlieb stressed that, in order to do this, Interpol must obtain official confirmation of refugee status, which often takes a long time.

Disadvantages of the existing Interpol mechanisms:

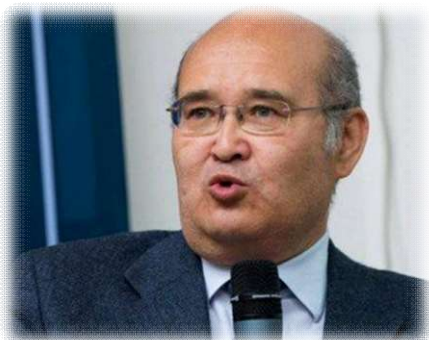
- **At the moment, the new policy in relation to persons with refugee status is not enshrined in the legislation of Interpol.** There are no statements on this matter on Interpol's website.

The list of Interpol includes persons who have refugee status and decisions, denying their extradition. Below are some examples of how **Kazakhstan, by abusing Interpol, persecutes its political opponents.** By misusing the Interpol system, the Kazakhstani authorities are seeking the extradition of opposition politician Mukhtar Ablyazov, as well as his associates and relatives (in order to obtain accusatory testimonies against him from them). Ablyazov's 12 colleagues and relatives have been granted asylum in the EU and the United States. The EU states denied their extradition to Kazakhstan, Russia and Ukraine.



Mukhtar Ablyazov – a Kazakhstani opposition politician, businessman, former head of Kazakhstan's non-state BTA Bank. The case of BTA Bank was the result of a long-standing conflict between opposition leader Ablyazov and President Nazarbayev. In 2009, Kazakhstan brought charges of financial crimes against Ablyazov and his colleagues. The case of BTA Bank is based on 'confessions' obtained through blackmail, threats and kidnapping.¹⁸ In 2011, Ablyazov was granted refugee status in Great Britain.

Kazakhstan has no extradition treaties in place with most of the EU countries. Therefore, the Kazakhstani authorities addressed the Ukrainian and Russian law enforcement agencies for assistance; as a result, the agencies also put Ablyazov and his colleagues on Interpol's wanted list. The published correspondence confirmed that representatives of the Kazakhstani authorities had given the Ukrainian and Russian investigative bodies, direct instructions on the case.¹⁹ On 9 December, 2016, the French State Council refused to extradite Ablyazov to Russia, recognised his case as politically motivated, and also stressed that Kazakhstan had exerted pressure on the Ukrainian and Russian authorities, demanding that they submit extradition requests.²⁰



Muratbek Ketebayev – a Kazakhstani opposition politician, Mukhtar Ablyazov's ally. Kazakhstan put Mr. Ketebayev on Interpol's wanted list on charges of 'embezzlement' (the case of BTA Bank) and 'incitement of social discord' (the case of the strike in Zhanaozen). On 9 December, 2013, Poland granted refugee status to Ketebayev. Subsequently, he was detained in Spain on the basis of a 'Red Notice'. In 2015, Spain established the political underpinnings of the persecution of Ketebayev, and denied his extradition.



Alexandr Pavlov – Mukhtar Ablyazov’s former security chief. Kazakhstan put Mr. Pavlov on Interpol’s wanted list on charges of ‘embezzlement’ (the case of BTA Bank) and ‘orchestrating terrorist acts’. On 17 February, 2015, the Supreme Court of Spain granted asylum to Pavlov. Kazakhstan was denied his extradition. Currently, the pursuit of Pavlov is suspended for the time of consideration of his case by the Commission for the Control of Interpol’s Files.



Roman Solodchenko – Mukhtar Ablyazov’s former colleague. On 10 January, 2012, Great Britain granted him refugee status. In 2016, Great Britain refused to extradite him to Ukraine and Russia. Interpol removed Kazakhstan’s and Ukraine’s request for an international alert for Mr. Solodchenko, but left in force Russia’s request.



Leila Khrapunova, Victor Khrapunov

Victor Khrapunov - the former Minister of Energy of Kazakhstan, former Mayor of Almaty), **Leila Khrapunova** – a businesswoman and former head of the state-owned Television Corporation), **Ilyas Khrapunov** (their son, businessman, Mukhtar Ablyazov’s son-in-law). Through the Interpol system, Kazakhstani authorities are persecuting the Khrapunov family due to their opposition views and family ties with Mukhtar Ablyazov.

Victor and Leila Khrapunov have had a long-standing conflict with Dariga Nazarbayeva, the daughter of the President of Kazakhstan. According to the Khrapunovs, Dariga Nazarbayeva demanded the appointment of people, convenient to her, to the posts accountable to Victor Khrapunov, and she brought about Leila Khrapunova’s resignation. Over the years, Leila Khrapunova has publicly criticised Dariga Nazarbayeva for her striving for a full control over the Kazakhstani media.²¹ Victor Khrapunov is the author of the book ‘On the dictatorship of Nursultan Nazarbayev’.



Ilyas Khrapunov

Since 2007, the family of Khrapunovs has officially resided in Switzerland. The Khrapunovs report that in the years 2007-2011, Nazarbayev’s representatives suggested that they ‘repent’, sever ties with oppositionist Mukhtar Ablyazov, and

testify against him. They refused to adhere to the conditions of Nazarbayev, and then became victims of criminal prosecutions.

Since 2011, in Kazakhstan, more than 20 criminal cases have been initiated against the Khrapunov family (seven persons in total) on charges of money laundering and the establishment of a criminal group. According to the Kazakhstani authorities, Ilyas Khrapunov ‘headed a criminal group in Kazakhstan’ as early as in 1997, when he was 14 years old and was attending a Swiss school. The Kazakhstani investigative bodies believe that Daniel Khrapunov, the son of the

Khrapunovs, was a 'member of a criminal group' in 2000, when he was 4 years old. At the moment, it is known that, at the request of Kazakhstan, Interpol put Victor, Leila and Ilyas Khrapunov, as well as **Aiyar Ilyassov**, the husband of Leila's sister, on the wanted list.



Aiyar Ilyassov

In the European media, information about Kazakhstani authorities' attempts to bribe some Swiss parliamentarians and former officials in order to persuade them to lobby for the Khrapunovs' extradition, received wide reverberation.²² Switzerland refused to extradite Victor Khrapunov to Kazakhstan twice (in 2011 and in 2014).

In November 2010, it became known that Ukraine had sent a request to Switzerland for the extradition of Ilyas Khrapunov. Ukraine accused him of 'hacking activities against Ukrainian lawyers of Kazakhstan's BTA Bank', referring to the publicised correspondence of the law firm 'Ilyashev and Partners'. The correspondence received publicity in the media and confirmed

the fact of Kazakhstan's illegal influence on the Ukrainian and Russian investigative bodies in the case of Ablyazov. Charges, brought by Ukraine, seem dubious, as Kazakhstan is still pursuing unidentified hackers, having initiated lawsuits in the USA and New Zealand. In the US court, Kazakhstan demanded that all publications with an analysis of the published correspondence be removed from the website of the Kazakhstani media outlet 'Respublika'; they also demanded an access to personal data of journalists. The US court rejected the demands of Kazakhstan.²³



Alma Shalabayeva – the wife of Mukhtar Ablyazov, who in May 2013, along with her 6-year-old daughter, was kidnapped from Italy to Kazakhstan. The detention of Alma Shalabayeva was carried out on the basis of a request, submitted by the NCB in Astana to the Italian authorities. Illegal deportation of the family turned into an international scandal and provoked a government crisis in Italy. In Kazakhstan, Mrs. Shalabayeva was accused of forging a passport. Due to the intervention of human rights

organisations, the UN and the European Parliament, on 24 December, 2013, the Kazakhstani authorities allowed Shalabayeva and her daughter to leave Kazakhstan. Subsequently, Italy granted them refugee status.²⁴

Interpol has already removed the names of several colleagues and relatives of Mr. Ablyazov from the wanted list (namely, Tatiana Paraskevich, Artur Trofimov and Kuanysh Nurgazin).

Below are a few examples of how Russia continues to pursue its political opponents through Interpol.



Akhmed Zakaev – a Chechen civil society activist. Russia accuses him of terrorism and murders. Based on a 'Red Notice', he has been arrested in Denmark, Great Britain and Poland. All these States refused to extradite him to Russia. In 2003, Great Britain granted Mr. Zakaev, refugee status.²⁵



Andrey Nekrasov – a Russian journalist and activist. Russia declared him wanted by Interpol on charges of extortion. Based on this, in August 2015, Mr. Nekrasov was detained on the territory of Cyprus. Russia was denied his extradition. In September 2015, Lithuania granted Mr. Nekrasov, refugee status.



Alexey Torubarov – a Russian businessman who spoke out against corruption in Russian law enforcement agencies. Russia accused him of fraud. Based on the Russian 'Red Notice', he spent four months in detention in Austria and, subsequently, 14 months in the Czech Republic. Austria denied his extradition. In May 2013, the Minister of Justice of the Czech Republic authorised the extradition of Torubarov to Russia, despite the fact that, at that time, the consideration of Torubarov's request for asylum was still underway.²⁶ A year later, the Constitutional Court of the Czech Republic recognised the decision on his extradition as illegal.²⁷ According to Torubarov, in Russia, he was subjected to cruel treatment. In July 2013, he was released from detention and placed under house arrest; then, he fled to Hungary, where, currently, he participates in litigation in connection with the obtainment of asylum.



Yan Andreev – the former head of the Tutaev district of the Yaroslavl region (Russia). He was elected to the post twice - in 2004 and 2008. Among the heads of all 19 districts of the Yaroslavl region, Andreev was the only one who did not belong to the ruling party 'United Russia'.²⁸ Andreev noted that this circumstance served as a basis for the beginning of his persecution. In April 2009, the governor of the Yaroslavl region demanded that he resign. Andreev refused to do so, stressing that he was elected in the election. After that, four criminal cases were initiated against Andreev on charges of corruption crimes, which he had allegedly committed as the head of the district. In July 2009, at the request of the investigative bodies, Andreev was removed from office.

Four criminal cases were merged into one. In September 2011, the court acquitted Andreev on all counts and reinstated him in office. After that, the region's leadership began to threaten him again, demanding that he resign (the media paid attention to this fact²⁹). Andreev addressed the law enforcement agencies, but there was no reaction on their part. Fearing persecution, he fled to Israel. In December 2011, the Russian authorities initiated another criminal case against him (the fifth one). According to Andreev, he became aware of this fact during his stay in Israel. On 30 January, 2012, Russia issued an Interpol alert for him. At the moment, Andreev has a residence permit in Israel. He stressed that he has been denied citizenship in connection with the fact that his name is on the Interpol's wanted list.

- **There is no mechanism of defence of the victims of political persecution who are or were detained in unsafe states.** These states are not parties to basic human rights treaties or openly ignore their obligations under these agreements. Therefore, individuals cannot count on asylum, a denial of their extradition or protection of their rights and independent investigation. In unsafe states, refugees are also threatened with kidnapping.



Anatoliy Pogorelov – a former top manager who is wanted by Interpol at the request of Kazakhstan as a defendant in the case of BTA Bank. He was a victim of the politically motivated criminal case against Mukhtar Ablyazov. The competent authorities of the EU states and the USA have concluded that the prosecution of persons who are included in the same case as Pogorelov, is political in nature. There is a threat that, in the case of Pogorelov's extradition or abduction, Kazakhstan's authorities will use torture in order to coerce him to testify against Ablyazov. The case of Anatoliy Pogorelov is mentioned

in a written declaration on human rights violations in Kazakhstan, the first one of this kind issued by PACE and signed by 25 MPs from 18 countries.³⁰

Currently, Mr. Pogorelov resides in the United Arab Emirates (UAE), which are not a party to the Universal Declaration of Human Rights. On 17 May, 2012, Ignacio Sanchez Amor and Ivana Dobesova (the chairman and vice-chairman of the OSCE Parliamentary Committee for Democracy, Human Rights and Humanitarian Affairs, respectively) noted in their letter that in the case of Mr. Pogorelov, Kazakhstan has violated Art. 3 of the Interpol Constitution. Members of the OSCE PA stressed that Mr. Pogorelov has been subjected to political persecution due to his former ties with Mukhtar Ablyazov. Ignacio Sanchez Amor and Ivana Dobesova urged the UAE authorities to return the seized passport to Pogorelov and allow him to leave the country. Also, OSCE PA members appealed to the UN High Commissioner for Human Rights with a call to facilitate the transfer of Mr. Pogorelov to a third safe state.

Human rights organisations, as well as the European Parliament³¹ flagged up political persecution and the lack of rule of law, as well as incidents of enforced disappearance of people in the UAE.³² There is a serious risk that in the UAE, the Kazakhstani authorities can resort to the kidnapping of Anatoliy Pogorelov, as was the case with Zhaksylyk Zharimbetov.



Zhaksylyk Zharimbetov – a former top manager of BTA Bank (a former colleague of Mukhtar Ablyazov and Anatoliy Pogorelov). On 17 January, 2017, Mr. Zharimbetov was detained at the Istanbul airport. On 21 January, 2017, Kazakhstani special services transferred him to Kazakhstan on a chartered plane. The Turkish authorities did not respond to the inquiry regarding the circumstances and the procedure used for the transfer of Mr. Zharimbetov. The facts indicate that the incident can be perceived as kidnapping carried out by Kazakhstani special services in cooperation with Turkish

special services. Since July 2016, Turkey has been subjected to a nationwide state of emergency and the validity of the European Convention on Human Rights has been suspended there.

In 2012, Zharimbetov was granted refugee status in Great Britain. Therefore, Turkey and Kazakhstan violated one of the basic norms of international law - the principle of non-refoulement, forbidding a country from returning a refugee to the country of origin. Having spent ten days in a Kazakhstani prison, Zharimbetov agreed to 'collaborate with the investigative

bodies' and began to testify against Mr. Ablyazov. On 30 January, 2017, at a press conference, Zharimbetov stated he found himself in Kazakhstan, because 'it was written in the stars': *'If I had not been detained in Turkey, maybe I would be walking somewhere else now. I would be afraid. (...) They say, it takes three days to get used to hell. That is, one can get used to anything'*.³³

In April 2017, in an open letter to the OSCE representatives, Mr. Zharimbetov reiterated that he had not been 'kidnapped by anyone': *'I came to Kazakhstan based on my own decision (...) I could have used the status of a political refugee (...) but I did not do so on purpose'*. Zharimbetov urged the OSCE 'to refute' the 'slandorous statements' of the Open Dialog Foundation about the kidnapping. Mr. Zharimbetov believes that President of the Foundation, Lyudmyla Kozlovska, 'persuaded' his wife to write a statement reporting the kidnapping.³⁴ In fact, on 21 January, 2017, Akmaral Zharimbetova, the wife of Mr. Zharimbetov, sent a letter to the Open Dialog Foundation in which she requested that the Foundation save her husband, *"who can be kidnapped from Istanbul within the next few hours by the Kazakhstani authorities"*.

While Mr. Zharimbetov is in the hands of the Kazakhstani authorities, his statements cannot be considered independent. It is obvious that the Kazakhstani authorities, using Zharimbetov as a hostage, can obtain all statements from him. Zharimbetov's testimony became the basis for carrying out a trial *in absentia* against Mr. Ablyazov in Kazakhstan. On 7 June, 2017, a Kazakhstani court sentenced Mr. Ablyazov in absentia to 20 years' imprisonment 'with the sentence to be served in a maximum security institution'. Mr. Zharimbetov, who 'actively contributed to Ablyazov's incrimination', received a suspended sentence of five years' imprisonment.³⁵ Should Interpol remove Mr. Ablyazov's name from the wanted list, then, based on the verdict of the Kazakhstani court, Astana may make attempts to put his name on the international wanted list again.



Ferid Yusub – a citizen of Azerbaijan. In 2008, he fell into disfavor with Emin Shekinskiy, one of the leaders of the Ministry of Internal Affairs of Azerbaijan (and, according to some sources, a friend of the President of the country). Mr. Shekinskiy is a former husband of Mr. Yusub's sister. She suffered from domestic violence, after which she and her children left Azerbaijan. Mr. Shekinskiy demanded that Mr. Yusub inform him about the whereabouts of his sister, threatening him with criminal prosecution. Mr. Yusub was

subjected to ill treatment in the police station. He changed his name and left Azerbaijan in 2009. On 6 January, 2013, the UNHCR in Egypt granted Mr. Yusub, refugee status. The Azerbaijani authorities have initiated criminal proceedings against Mr. Yusub and his sister. In particular, Mr. Yusub was accused of 'theft', 'illegal crossing of the border' and 'forgery of documents'.³⁶ On 13 May, 2015, Mr. Yusub was detained in Russia, as he was wanted by Interpol at the request of Azerbaijan. In May 2016, he was released from custody and placed under house arrest.

The General Prosecutor's Office of Russia granted the request of Azerbaijan to extradite Mr. Yusub. On 19 September, 2016, the Russian court upheld the decision. The court stated that UNHCR's arguments 'do not apply to Mr. Yusub', as he 'did not engage in human rights or journalistic activities'. UNHCR stressed that, in accordance with the agreements ratified by Russia, Mr. Yusub's extradition is inadmissible. Mr. Yusub also filed an application for refugee status in Russia, but the authorities refused to grant him the status. On 23 January, 2017, Interpol removed Mr. Yusub's name from the wanted list. He is still facing extradition. The case of Mr. Yusub is being considered by the Russian Supreme Court.

In December 2015, the Russian authorities abolished the priority of international law over

domestic law in their country, refusing to comply with the decisions of the ECHR and other international courts which 'contravene the Constitution of the Russian Federation'.³⁷ In March 2016, Russian authorities closed the Moscow office of the United Nations High Commissioner for Human Rights.

4. THE COMMISSION FOR THE CONTROL OF INTERPOL'S FILES: FORMATION OF THE COMMISSION'S COMPOSITION AND ENSURING ITS INDEPENDENCE

Requests of individuals for the removal of their names from the Interpol's wanted list are considered by the Commission for the Control of Interpol's Files (*hereinafter referred to as the 'Commission'*). The Commission is divided into two chambers:

- The Supervisory and Advisory Chamber which monitors compliance with Interpol rules when processing data. It consists of two members.
- The Requests Chamber which works with individual cases and issues decisions regarding modification of the data. It consists of five members.

It is only Interpol member states that have the right to nominate candidates for members of the Commission. After that, the Executive Committee votes on the final list of candidates. The list is sent to the General Assembly, which determines, by secret ballot, who will join the Commission.

Currently, the Requests Chamber consists of representatives of Angola, Argentina, Moldova, Russia and Finland.³⁸ The term of office of the Commission members is five years (with the possibility of extension of the term for another three years). Decisions in the Commission are made by majority vote. In the case of an equal number of votes, the final decision is made by the Chairperson of the Commission.

Disadvantages of the existing Interpol mechanisms:

- The rules do not say how many people should be put in the final list of candidates for the Commission. There are no clear criteria for candidates (it is only indicated that they should 'possess the required qualification' and be 'persons of high moral character'). Candidates aren't selected through a contest, but by voting.
- According to the requirements, the Requests Chamber should include lawyers with expertise in data protection, police cooperation, criminal law, human rights, and, mandatorily one representative with judicial or prosecutorial experience. The composition of the Commission shows that, **in most cases, States nominate law enforcement officers or other civil servants to the Commission.**

In the current Chamber, it is only an Argentinean, Leandro Despouy who can be considered a representative of the civil society. Representatives of Russia, Angola and Finland had held high posts in national law enforcement agencies before being elected to the Requests Chamber.

Chairperson of the Commission, **Vitalie Pirlog**, held the post of the Minister of Justice of Moldova during the period between 2006-2009 (during the governance of the communist government). On 7 April, 2009, anti-government protests took place in Chisinau, after which protesters were subjected to mass arrests. The media reported that Justice Minister Pirlog supported the prosecution of protesters.³⁹ According to the Moldovan human rights activist Ana Ursachi, several judges testified that they had received phonecalls from the Ministry of Justice with instructions to issue decisions to arrest the protesters.

As noted in the Moldovan media, Mr. Pirlog's candidacy for the Commission was supported by the Ministry of Internal Affairs, General Prosecutor's Office and Ministry of Justice of Moldova.⁴⁰ The aforementioned bodies are controlled by the most powerful Moldovan oligarch Vladimir Plahotniuc, as has been confirmed by research carried out by authoritative analytical centres (the Centre for Eastern Studies, Chatham House, Carnegie Europe).⁴¹ According to the journal 'Der Spiegel', Plahotniuc is implicated in several corruption scandals.⁴² Plahotniuc himself confirmed that in 2007, he 'was monitored' by the Roman bureau of Interpol.⁴³ Radio Liberty noted that in 2013, it became known that 'several pages from Interpol documents relating to Plahotniuc disappeared' from the Moldovan Ministry of Internal Affairs.⁴⁴

Human rights activist Ms Ursachi emphasised that Mr. Pirlog is by no means independent in decision-making, as he is under the influence of the oligarch Plahotniuc.

- According to the rules, 'as far as possible, members of the Requests Chamber should represent the principal legal systems of the world'. However, the mechanism for compliance with this rule is not known, in particular:

A) how it is determined which representative of the state will enter the final list of candidates;

B) if there are any quotas for individual states or regions;

C) how many representatives of states from one region can be included in the Commission;

D) if representatives of one state can be members of the Commission for more than one consecutive term?

E) if there can be a situation when the Commission will only be made up from representatives of non-democratic states, and how this situation can be avoided.

At the moment, of all the States representatives of which are members of the Requests Chamber, only Argentina and Finland are democratic.⁴⁵

- The rules indicate that members of the Commission declare their independence and should not represent the interests of the State or the National Central Bureau of their country. In connection with this, another rule seems contradictory, namely, that only the States can nominate candidates for members of the Commission.
- The operational rules of the Commission provide for a possible conflict of interest, for example, when a member of the Commission is a national of the country which has sent a request for an international alert. In this case, '*a member of the Commission may not take part in any way in the consideration of a case*'. The rules provide that this member 'withdraws'. Interpol believes that this provision contributes to impartiality of the members of the Commission (which was reported on 22 May, 2017, in a letter to human rights activist Ana Ursachi). However, it should be noted that it remains unclear whether this 'withdrawal' is a right or obligation of a member of the Commission.
- Interpol rules do not specify the criteria by which the Commission issues decisions on each case. Interpol rules only determine the methodology for verification whether requests have political overtones. In particular, the Commission should analyse the general context of the case, the status of the person, and also conduct a 'predominance test' in order to determine whether the political nature prevails in the case. **However, specific evaluation criteria are not prescribed, which opens an opportunity for selective interpretation of certain facts.**

For example, the Commission considered applications from two defendants who are included in the same criminal case against Mukhtar Ablyazov (the case of BTA Bank). **As a result, in two identical cases, the same composition of the Commission issued two opposite decisions.** The decisions were issued one month apart. We cannot indicate the names of the defendants due to

the confidential nature of the correspondence with Interpol. However, we had an opportunity to review the case file and determine the **contradictions in the decisions, issued by the Commission.**

Both persons are former colleagues of Mukhtar Ablyazov. They have been granted refugee status (in one case) and subsidiary protection (in the other case). In both cases, requests for an international alert were submitted by Ukraine and Russia (which was a consequence of the illegal influence of Kazakhstan). The European States where the defendants reside, denied their extradition to Ukraine and Russia.

In the first case, the Commission took into account the decision of the French State Council, which recognised the case of Ablyazov as politically motivated. The decision of the State Council indicates that Kazakhstan is exerting pressure on Ukraine and Russia in order to persuade them to send requests for the extradition of Ablyazov. This, according to the Commission, also confirms the political nature of the prosecution of Ablyazov's colleague.

However, in the second case, Interpol only mentions the decision of the State Council of France, but does not take it into account at all. In this case, Interpol dismissed Ukraine's request (as the Ukrainian authorities did not provide appropriate documents), but left in force the Russian request for an international alert. The Commission referred to the assurances of the Russian authorities about the 'legality of the prosecution' of this person. Thus, the Commission demonstrated that it trusts Russia's formal guarantees more than the decision of the French State Council. The Commission concluded that 'there are political elements surrounding the case', but they 'are not predominant'.

5. FILING APPEALS AGAINST DECISIONS OF THE COMMISSION FOR THE CONTROL OF INTERPOL'S FILES

In 2014, the Commission held sessions for six days, and in 2015 - 12 days. There is no official information as to for how many days the Commission worked in 2016.

New rules have set the time limits for issuing decisions by the Requests Chambers: a response to the inquiry whether the person is included in the wanted list, should be given within four months; a response to the request for removal of a person's name from the wanted list, should be issued within nine months. These periods begin to run after the Commission has issued a decision about the admissibility of requests. The Commission may extend these terms provided that justification of this step is issued in advance.

'The decisions of the Requests Chamber shall be final and binding on the Organisation and the applicant' – the rules read. It is possible to file an application with the Commission for the revision of its decisions (provided that new circumstances have appeared in the case).

Representatives of Interpol have repeatedly emphasised that Interpol as an international organisation enjoys judicial immunity. That is, Interpol's actions cannot be appealed in any national court. This is enshrined in Art. 5 of the Headquarters agreement between Interpol and France. Interpol stressed that the Commission has sole jurisdiction over complaints against actions of the Organisation.⁴⁶

Disadvantages of the existing Interpol mechanisms:

- A small number of sessions does not allow the Commission to respond in a timely manner to a large number of requests. Applicants may await the Commission's decision for more than a year, or even a few years. During this time, the persons who have been granted refugee status or obtained a court

decision banning their extradition, continue to experience serious restrictions and may be subjected to unlawful arrest even several times.

- In order to preserve immunity from the interference of national courts, Interpol must ensure effective remedies.⁴⁷ Within the Interpol structure, the only access to justice is through the Commission. It issues decisions and reviews its own decisions. The PACE Rapporteur believes that it had been difficult to label the Commission ‘an effective remedy’ before November 2016, when reforms were introduced.

Decisions of the Commission have serious consequences, such as lengthy detention, restrictions in travelling, opening bank accounts, finding a job etc. In the event of violation of human rights by Interpol, there is an acute lack of a mechanism which would allow filing a complaint with an independent judiciary outside the structure of Interpol. Article 24 of the Headquarters agreement provides for the possibility of resolving the dispute between Interpol and an individual in the Permanent Court of Arbitration in The Hague. However, there is no information as to whether this mechanism has ever been applied.

- There is no mechanism that would allow refugees to act ahead of time and avoid their undue inclusion in Interpol’s wanted list (**in particular, to alert the Interpol authorities of high probability of being placed on the wanted list under politically motivated charges**). Below are a few cases where, according to available facts, States are preparing to place their political opponents on the wanted list in violation of Art. 3 of Interpol’s Constitution.



Leyla Yunus, Arif Yunus - human rights activists from Azerbaijan, a married couple. Their persecution began in 2014. In January 2014, during his visit to Brussels, President Ilham Aliyev announced the absence of political prisoners in Azerbaijan. In response, Leyla Yunus submitted with ECHR, a list of 134 contemporary political prisoners in Azerbaijan.

In the summer of 2014, Leyla and Arif Yunus were taken into custody. First, the Azerbaijani authorities accused them of

high treason. Subsequently, they faced additional charges of fraud and other economic crimes. Leyla Yunus stated that the staff of the detention facility beat her three times. The health condition of both human rights defenders deteriorated during their stay in custody. On 13 August, 2015, the court sentenced Leyla and Arif to eight years and six months, and seven years of imprisonment, respectively.

The international community sharply condemned the persecution of the Yunus couple. PACE⁴⁸, Council of Europe, EU⁴⁹, the US Department of State⁵⁰, Human Rights Watch⁵¹, Freedom House⁵² and the Observatory for the Protection of Human Rights Defenders issued statements in defence of the human rights defenders.

The Appellate Court released Arif Yunus from custody on 12 November, 2015, and Leyla Yunus - on 9 December, 2015, changing the penalty to a suspended sentence. In April 2016, they were allowed to travel to the EU for medical treatment, after which they did not return to Azerbaijan. On 3 May, 2016, Arif and Leyla Yunus were granted refugee status in the Netherlands.

The Yunus family filed a cassation appeal demanding their full acquittal. The Azerbaijani court insisted on the personal presence of the Yunus couple during the consideration of the complaint and issued a warrant for their compulsory appearance in court. Leyla and Arif argue that, probably, the next step of the authorities would be their placement on Interpol’s wanted list.⁵³

Ana Ursachi – a Moldovan lawyer, human rights activist, civil society activist. For several years, Ms Ursachi has been engaged in high-profile cases. She defended the interests of opponents of

the Moldovan oligarch Vladimir Plahotniuc.



The Moldovan authorities accused Ana Ursachi of involvement in the murder committed 20 years earlier. Before that, in September-October 2016, Plahotniuc's media had launched a campaign to discredit Ms Ursachi (with allegations of her involvement in the 1997 assassination). In the criminal case, the 15-year statute of limitations expired in 2012.

The court is yet to consider the request for the arrest of Ms Ursachi, which was sent by the prosecutor's office. On 22 May, 2017, in Chisinau, late at night (at 10:30 pm) law enforcement officers tried to break the window and get into Ms Ursachi's apartment in order to hand her a summons for questioning. Ms Ursachi's father who was in the flat, refused to receive the summons.⁵⁴

Human rights organisations and 12 members of the European Parliament stated that the persecution of Ms. Ursachi is related to her professional activities. At the moment, Ms Ursachi resides in the EU and cannot return to Moldova due to the threat of arrest. There is high probability that the Moldovan authorities will try to put her name on Interpol's wanted list.



Alexandru Machedon – an owner of the group of companies 'StarNet', one of the largest in the telecommunications market of Moldova. Mr. Machedon financed Moldovan non-state media and the opposition party 'The Dignity and Truth Platform'. In October 2016, Mr. Machedon became aware of the fact that a criminal case had been initiated against him in Ukraine on charges of 'raping a minor'. He emphasised that he was not on the territory of Ukraine on the day when, according to investigators, the crime was committed. Mr. Machedon claims that his opponent, the oligarch Vladimir

Plahotniuc, uses his own connections in Ukraine and, through grave accusations, makes attempts to discredit him and stop him from political activities.

23 members of PACE and seven members of the European Parliament labelled the case of Mr. Machedon 'one of the examples of politically motivated prosecution by the Moldovan authorities'. According to Ana Ursachi, a criminal case is being prepared in Moldova against Mr. Machedon on charges of economic crimes. The state authorities may put Mr. Machedon on Interpol's wanted list in order to prevent him from disseminating information on human rights violations in Moldova on the territory of the EU.

6. THE ACTIVITY OF DATA PROTECTION OFFICERS

According to the new rules, data protection officers work with National Central Bureau (hereinafter referred to as NCB). They are appointed to the posts by the decision of the NCB and ensure that the procedures in the NCB comply with Interpol rules.

In addition, a post of Data Protection Officer was established with **the General Secretariat** (Data Protection Officer is appointed for five years); also, the Interpol **Data Protection Office** was set up. The General Secretariat receives advice from them as to how to improve the processing of information so as

to observe human rights. The Data Protection Office coordinates the work of Data Protection Officers in the NCBs (Interpol rules do not disclose the details of their collaboration).

At the same time, it is not specified who exactly is part of the Data Protection Office (possibly, it is only the Data Protection Officer working with the General Secretariat). Various documents of Interpol mention only the word 'Office', or only the word 'Officer'.

Disadvantages of the existing Interpol mechanisms:

- An officer at the General Secretariat and officers in the NCB carry out inspections of those who appointed them to their posts. Therefore, their ability to be independent and to provide effective control is questionable.
- The powers of data protection officers in the NCB and the powers of the officer with the General Secretariat are not stipulated in detail. According to the documents published on the website, they cannot issue any binding decisions for the NCB or the General Secretariat.

7. TYPES OF REQUESTS FOR AN INTERNATIONAL ALERT AND THE QUESTION OF THEIR PUBLICITY

There are two most common types of requests for an international alert:

- a 'Red Notice': issued by the General Secretariat at the request of the State, which issued an alert for the person and intends to seek his or her extradition.
- A 'diffusion': national law enforcement bodies automatically add the person's name to Interpol's database through the I-Link network. The diffusion is selectively sent out to certain States.

The State itself decides what kind of request should be used for the pursuit of the person. In 2016, 12,878 'Red Notices' and 26,645 'diffusions' were issued.⁵⁵

All diffusions are non-public. As regards 'Red Notices', it depends on the will of the State whether the 'Red Notice' is going to be public or not. The Interpol website displays only those 'Red Notices' which are allowed to be published by the States. **Most of the 'red notices' are non-public.**

Disadvantages of the existing Interpol mechanisms:

- The non-publicity of most 'Red Notices' cannot be justified by the need to ensure an effective pursuit. If the real criminal is hiding, he or she already knows about the high probability of their pursuit. In turn, persons with refugee status may not be aware of the fact that a non-public request for an international alert has been issued for them. Hence, they risk being detained when crossing the border.



Sometimes people persecuted for political reasons aren't even aware of the fact that a criminal case has been initiated against them or a sentence has already been handed down. An illustrative example is the case of Uzbek human rights defender **Nadezhda Atayeva**. In 2002, she travelled to France, where she first received asylum, and then citizenship. In 2013, the Uzbek court handed down a guilty verdict against Atayeva *in absentia* on dubious charges. The human rights activist stated that the Uzbek authorities had not informed her about the verdict.⁵⁶

- Authoritarian states can use ‘diffusions’ to issue politically motivated requests, hoping that Interpol will not have time to react in time. ‘Diffusions’ are distributed automatically, quickly and in large numbers. Therefore, the supervisory bodies of Interpol do not always have time to check them promptly. Lately, **Russia has used ‘diffusions’ several times in order to persecute political opponents and refugees.**



Nikita Kulachenkov – a Russian opposition activist. Russia accused him of stealing a street poster worth one and a half dollars. In December 2015, Lithuania granted him refugee status. Based on the Russian diffusion, in January 2016, Mr. Kulachenkov was detained on the territory of Cyprus, but was soon released. According to the media reports, at the moment, he is not included in Interpol's wanted list.



Mikhail Khodorkovsky – a Russian opposition leader, former head of the oil company YUKOS. Russia accused him of contract murder and on 11 February, 2016, sent a diffusion for him. The next day, Interpol rejected Russia's request, recognising it as politically motivated.⁵⁷

8. INTERPOL IS HEADED BY REPRESENTATIVES OF STATES WHICH VIOLATE ART. 3 OF THE CONSTITUTION

The rules of Interpol stipulate that NCBs are responsible for the quality and lawfulness of the data which they provide in support of their requests. However, NCBs are part of the structure of law enforcement agencies. Therefore, in practice, NCBs perform a technical intermediary function, redirecting documents from national authorities to the Interpol bodies. Thus, in non-democratic states, NCBs do not fulfill the requirement to verify data for compliance with Art. 3 of the Interpol Constitution.

Interpol is guided by the principle of equality, according to which, equal attention is paid to requests from both democratic and non-democratic States. However, some States repeatedly violate Art. 3 of the Constitution, thereby showing disrespect to the Organisation. It is obvious that, in cooperation with such States, the statistics of violations on their part should be taken into account.

Moreover, the rules of Interpol provide for restrictions on the use of databases for those members of Interpol who do not fulfill their obligations within the Organisation. However, these norms haven't been applied, and there is no mechanism of their application in place.

Non-democratic States use Interpol not only in order to persecute refugees, but also **to persecute political opponents who are citizens of democratic states.** Below are some examples of such cases:



Erik Kross – an Estonian diplomat, politician. The Russian authorities accused Mr. Kross of ‘piracy’ and stated that in 2009, he was allegedly ‘involved in hijacking’ the ship ‘Arctic Sea’. According to some reports, the ship may have participated in secret transportation of arms from Russia to Iran.⁵⁸ In October 2013, the information on the pursuit of Mr. Kross was published on the Interpol website. This happened two days before the election of the Mayor of the city of Talin, where Mr. Kross was one of the candidates. The Estonian authorities stated that in this way, Russia is striving to influence the elections.⁵⁹ Interpol recognised Russia's request as politically motivated and a few months later, Mr. Kross's name was removed from the wanted list.



Dolkun Isa – an activist who fights for the rights of the Uighur people in East Turkestan (the province of China). China declared him wanted by Interpol on charges of terrorism. Mr. Isa was granted refugee status in Germany and later became a citizen of Germany.



Aysen Furhoff and Halis Aydogan – former Turkish citizens, persecuted by Turkish law enforcement agencies on charges of ‘separatism’ (Furhoff) and ‘an attempt to change the constitutional order’ (Aydogan). After their flight from Turkey, Furhoff and Aydogan received citizenship of Sweden and France, respectively. These states recognised the political

nature of their persecution and the inadmissibility of their extradition. Based on the ‘Red Notice’, in 2015, Furhoff and Aydogan were detained separately in Georgia. For several months, they were held in detention, while the issue of extradition was being considered. Finally, they were able to return to Europe.⁶⁰



Leonard Homenyuk is a citizen of the United States and Canada, who headed the gold mining company in Kyrgyzstan. In June 2014, after the change of power in Kyrgyzstan, local law enforcement agencies declared Homenyuk wanted by Interpol on charges of corruption. In October 2015, Bulgaria refused to extradite him. He claims that Kyrgyzstan has brought charges under which the statute of limitations has already expired and that he has become a victim of elimination of the old power by the new state authorities.

In addition, even if a person was excluded from Interpol's wanted list on the basis of Art. 3 of the Constitution, the violating state may attempt to **re-declare this person wanted**.



William Browder is a British citizen, leader of the campaign for justice in the Magnitsky case. Russia accused him of economic crimes. In 2013, Interpol twice rejected Russia's politically motivated request to place Mr. Browder's name on the wanted list. In February 2017, Russia sent a repeated request for an international alert for him.



Tatiana Paraskevich is a former colleague of the Kazakhstani oppositionist Mukhtar Ablyazov, a Russian citizen. She is accused in the criminal case of BTA Bank. The Czech Republic granted her, additional protection. In 2014, the Czech Republic refused to extradite Ms Paraskevich to Ukraine and Russia. However, Russia and Ukraine expressed their discontent with the decision, and in 2016, almost simultaneously, they sent repeated similar requests for the extradition of Ms Paraskevich. In March 2017, the Commission decided to dismiss the Russian and Ukrainian requests for the pursuit of Ms Paraskevich. The Commission considered this case for three years.

Currently, the violating States abuse the Interpol system without any consequences for themselves. Moreover, representatives of such States were appointed to leading positions in Interpol.

In November 2016, the representative of Russia Alexander Prokopchuk became Vice-President of the Executive Committee, and the representative of China, Meng Hongwei, became President of Interpol. These persons held high posts in law enforcement bodies in Russia and China for many years.⁶¹

Amnesty International stated that the appointment of a representative of China to the post of President of Interpol may contravene the Organisation's obligations to act in the spirit of the Universal Declaration of Human Rights.⁶² Russia and China have repeatedly misused Interpol in order to pursue their political opponents.

It should be noted that among non-democratic States, the largest contributions to the budget of Interpol in 2015 was made by China (€ 1,510,649) and Russia (€ 709,404).

Vitalie Pirlog, the new head of the Commission for the Control of Interpol's Files, represents Moldova. The Moldovan authorities use a corrupt justice system in order to prosecute political opponents.⁶³ Also, **cases of violation of Art. 3 of the Interpol Constitution are well-known**, in particular:



Victor Topa, Viorel Topa

Victor Topa, Viorel Topa, Vladimir Morari – Moldovan businessmen (Victor Topa also held the post of the Minister of Transport). In 2010, they reported that the powerful oligarch Vladimir Plahotniuc had committed a raider seizure of their business. They stressed that they couldn't count on justice, as law enforcement bodies were controlled by Mr. Plahotniuc.⁶⁴ After that, the authorities accused Victor Topa and Vladimir Morari of 'blackmailing', and Viorel Topa - of 'embezzlement' and 'forgery of documents'. The businessmen left the territory of Moldova. In October 2011, the Moldovan court sentenced Victor Topa *in absentia* to ten years'

imprisonment. In January 2012 and September 2016, Viorel Topa was also sentenced *in absentia* (to eight and nine years' imprisonment, respectively).⁶⁵

In 2013, Interpol removed the names of Viorel Topa, Victor Topa and Vladimir Morari from the wanted list, recognising their persecution as politically motivated. The Moldovan authorities sent new requests for the pursuit of the three men to Interpol, but in December 2015, Interpol rejected the requests again.

Germany refused to extradite Victor Topa (the decision was issued on 20 October, 2015) and Viorel Topa (the decision was issued on 17 November, 2015) to Moldova. In January 2017, Minister of Justice of Moldova announced his intention to send to Germany, additional extradition documents on this case.⁶⁶

9. RECOMMENDATIONS FOR FURTHER IMPROVEMENT OF THE INTERPOL REFORM

The new leadership of Interpol has not yet commented on the reforms in the Organisation. We do not evaluate the actions of the new leadership. It is worth noting that Meng Hongwei (President of Interpol) and Alexander Prokopchuk (Vice-President of the Executive Committee of Interpol) are heads of the NCBs in China and Russia. This raises concerns about the possibility of exerting political influence on Interpol's decisions by them. In addition, representatives of the community express doubts about the independence and transparency of the actions carried out by the representative of Moldova, Vitalie Pirlog - the new head of the Commission for the Control of Interpol's Files.

We hope that the fear will prove to be unjustified. However, based on the experience in the area of human rights protection in Russia, Kazakhstan, Moldova and Ukraine, we consider it necessary to warn the public against possible threats, and stress the importance of further implementation of systemic reforms in Interpol.

The largest contributions to the budget of Interpol are made by democratic states (USA, Japan, Germany, Great Britain, France). We hereby call upon the governments of these and other democratic States to promote the reform of the Organisation in their communication with the supervisors of Interpol. We also appeal to the representatives of the European Parliament, the OSCE PA and PACE with a call not to stop at what has been achieved thus far and monitor the effectiveness of the changes in the work of Interpol.

We hereby welcome the reforms that were adopted in November 2016. Our recommendations are a natural part of this work, aimed at improving the mechanisms of Interpol. We would like to suggest a mechanism of full implementation of the adopted changes and improvement of their effectiveness. This will ensure consistent nature of the reform, the sustainability of the organisation and its compliance with human rights standards.

The Open Dialog Foundation hereby expresses its gratitude to Interpol for its constructive cooperation, and hopes that Interpol will consider the following recommendations.

Regarding the policy of the protection of refugees:

1. The legislation of Interpol should include a norm on the protection of persons with refugee status. Interpol must immediately remove the request for an international alert, issued by the State, if the wanted person has refugee status with regard to this very State.

2. A person must be removed from the wanted list after the court has issued a decision banning the extradition of the person due to political underpinnings of the case, a lack of guarantees of a fair trial or a threat of torture.
3. If a person has been removed from Interpol's wanted list due to the granting of refugee status or handing down a court decision banning his or her extradition, the State should not be able to file the second request for an international alert.
4. If rules on the protection of refugees are included in the rules of Interpol, a mechanism for preventive notification of the General Secretariat about possible prosecution of a refugee (or a person whose persecution has been confirmed as politically motivated by human rights and intergovernmental organisations) should be developed. If a refugee or a victim of political persecution is faced with criminal prosecution and may be wanted, this person should be able to notify Interpol of his or her status and provide supporting documents. A special database for such persons should be created.
5. Based on the fact that Interpol is working on joint projects with various UN bodies, it is recommended to initiate a more detailed project with the Office of the United Nations High Commissioner for Refugees. The aim of the project could be to protect the rights of persons who have been granted refugee status, but continue to be in Interpol's wanted lists.
6. A mechanism should be developed to allow the removal from the international wanted list, persons who cannot be granted refugee status due to their stay in a non-democratic country which is not a party to basic human rights treaties or which openly ignores these agreements. For example, a request for an international alert may be rejected if persons pursued in connection with the same criminal case have been granted refugee status in various countries or their prosecution has been declared politically motivated.
7. Establish a procedure of actions in the event that a person is detained or in an unsafe State, while the Commission for the Control of Interpol's Files has recognised the request for an international alert for the person, as politically motivated. In such cases, the Commission, having received an appropriate application from the person, must inform the State in which the person is residing that the request for an alert violates Art. 3 of the Interpol Constitution. On this basis, the Commission may recommend that the State grant that person, freedom of movement.
8. We also appeal to the United Nations High Commissioner for Human Rights (UNHCHR), as well as to the United Nations High Commissioner for Refugees (UNHCR), to make every effort within their powers to protect victims of the misuse of Interpol who are detained or reside in unsafe States, and facilitate their transfer to a third safe country.

Regarding the independence of the Commission for the Control of Interpol's Files:

9. The wording of Article 3 of the Interpol Constitution should be more precise as to avoid its selective or arbitrary interpretation. Specific criteria for the assessment of cases, aimed at verifying their compliance with Art. 3 of the Constitution, should be developed in cooperation with UNHCR, OHCHR, PACE and the OSCE PA.
10. The States that systematically violate the rules of Interpol (in particular, Article 3 of the Constitution) should be deprived of the right to nominate their candidates for members of the Commission until the number of violations significantly decreases. Interpol should keep and publish statistics on such violations.
11. A mechanism for compliance with the norm regarding the representation of principal legal systems of the world by members of the Commission should be developed. The possibility of

electing to the Commission, candidates from countries which are in the same geographical region and represent a similar legal system, should be excluded.

12. A rule should be introduced stating that a representative of one State cannot be elected to the Commission for two or more consecutive terms of office.
13. Half of the members of the Commission should not be candidates from States. They should be independent experts on international law or the protection of human rights. At the same time, it is advisable to increase the number of members of the Commission in order to ensure equal distribution of seats between candidates from the States and candidates from the civil society.
14. Voting for candidates to the Commission should be held in two stages. First, based on open contest (according to precise and public criteria), the group of key candidates should be determined. After that, a secret ballot should be held.
15. At the Executive Committee, a public advisory council should be established. It would participate in the selection of candidates for members of the Commission at the stage of open contest.
16. An independent advisory body at the Commission should be established. It would be formed from representatives of intergovernmental organisations of PACE, OSCE, the European Parliament, the United Nations, and human rights organisations. The body should have the authority to provide the Commission with expert opinions on various cases.
17. It should be clearly stated that a member of the Commission must not participate in the examination of the request for an international alert, sent by the State from which he was appointed.

Regarding the appeals against decisions of the Commission for the Control of Interpol's Files:

18. The Commission should meet more regularly (at least once a month in accordance with the published schedule). In order to do so, appropriate funds should be allocated in the budget. It would be expedient to make the time limits for issuing a decision even shorter.
19. In order to strengthen the adversary nature of the procedure, a provision should be introduced, allowing the applicant to speak in front of the Commission and answer questions of interest to the Commission.
20. Alternative ways of access to justice that would allow to appeal Interpol's decisions in independent judicial bodies, should be provided for in a more precise way. In particular, the rule on the possibility of filing an action with the Permanent Court of Arbitration should be included in the Interpol Constitution or the Statute of the Commission.

Regarding the activities of data protection officers:

21. The independence of the Officer in the General Secretariat and the officers in the NCB should be ensured. They should be elected through open contest with the participation of representatives of the civil society.
22. The Public Control Council, formed from representatives of the civil society, should be established with the position of an officer in the NCB. The Council should participate in the selection of candidates for the position of an officer. The Council should be granted the right to withdraw an officer if there is reason to believe that he is performing his duties unprofessionally.
23. Officers in the NCB should have the right to attach to the NCB's request for an international alert, their own observations (a resolution) in the event that they have reason to believe that the

request violates the rules of Interpol. Such comments should be taken into account by the supervisory authorities when considering the request.

Regarding the publicity of requests for an international alert:

24. 'Diffusions' should be subject to systematic operational inspection by Interpol authorities in order to verify whether they violate Art. 3 of the Constitution.
25. All 'Red Notices' and 'diffusions' must be published on the Interpol website. This would not create serious risks for the pursuit of real criminals; still, it would allow persons with refugee status to more likely escape detention based on a politically motivated request. Each person could quickly check their own data. International organisations would be able to monitor cases of misuse of Interpol more effectively and record which States commit these violations.

Regarding the compensation mechanism for those who suffered from the misuse of Interpol:

26. The PACE rapporteur suggested that a fund should be established in Interpol in order to pay compensations to victims of unlawful requests for an international alert. The fund must be filled with financial means from the violating states. One of the mechanisms for implementing this proposal may be to establish a fixed amount of compensation (a certain amount for each month of the period when the person's name was in the wanted list).
27. A mechanism which would allow victims to receive compensation at the national level from the NCB, should be developed. A person should be able to file a claim against the NCB with the relevant national court. As evidence, the Commission's decision recognising the request for an international alert as such which violates Art. 3 of the Constitution, would be provided. In this way, a person can, through national courts (and, in case of exhaustion of national remedies, through international courts and the UN bodies) seek individual calculation of compensation for material and moral damage.
28. If the Commission has not responded to the appeal within the prescribed time limits and has not notified the applicant of the extension of the time limits, the applicant should be entitled to a fixed monetary compensation (a certain amount of money for each day of delay).

Previous reports, produced by the Open Dialog Foundation on the topic:

- Report: Kazakhstan pursues former top managers of BTA Bank in order to obtain their testimonies against Mukhtar Ablyazov (10 February 2017) - <http://en.odfoundation.eu/a/8092,report-kazakhstan-pursues-former-top-managers-of-bta-bank-in-order-to-obtain-their-testimonies-against-mukhtar-ablyazov>
- Ukraine assists post-Soviet states with the persecution of political opponents and refugees (12 December 2016) - <http://en.odfoundation.eu/a/7978,ukraine-assists-post-soviet-states-with-the-persecution-of-political-opponents-and-refugees>
- Report: The facts which confirm the fabrication of the case of Mukhtar Ablyazov in Russia: Tatiana Paraskevich and Artur Trofimov prosecution (7 March 2016) - <http://en.odfoundation.eu/a/7319,report-the-facts-which-confirm-the-fabrication-of-the-case-of-mukhtar-ablyazov-in-russia-tatiana-paraskevich-and-artur-trofimov-prosecution>
- ODF drafted recommendations on the reform of Interpol (14 July 2015) - <http://en.odfoundation.eu/a/6690,odf-drafted-recommendations-on-the-reform-of-interpol>
- Interpol used by Russia in the case of Yukos and Khodorkovsky. The oppression of Pavel Zabelin (21 July 2015) - <http://en.odfoundation.eu/a/6642,interpol-used-by-russia-in-the-case-of-yukos-and-khodorkovsky-the-oppression-of-pavel-zabelin>
- Legal analysis of the directions of recommended Interpol reform aimed at preventing the abuse of Red Notice mechanisms (26 May 2015) - <http://en.odfoundation.eu/a/6157,legal-analysis-of-the-directions-of-recommended-interpol-reform-aimed-at-preventing-the-abuse-of-red-notice-mechanisms>
- Open Dialog Foundation presentation for the PACE Legal Affairs and Human Rights Committee meeting in Yerevan, 19 May 2015 – hearing on politically motivated misuse of INTERPOL (19 May 2015) - <http://en.odfoundation.eu/i/fmfiles/pdf/19-05-2015-odf-ak-presentation-pace-legalc-interpol-yerevan-19-05-2015.pdf>
- The report: The Interpol system is in need of reform (23 February 2015) - <http://en.odfoundation.eu/a/5947,the-report-the-interpol-system-is-in-need-of-reform>
- Report on misuse of the Interpol system (27 September 2013) - <http://en.odfoundation.eu/a/1255,report-on-misuse-of-the-interpol-system>