

Conflicts of extradition law and refugee protection law: Mutual recognition of asylum and *non-refoulement* among EU Member states

POLICY RECOMMENDATIONS ¹

Refugees are persons under international protection. When a state is unable or unwilling to provide a person with protection, a person flees from that country and requests protection from another country. According to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, refugees are given protection if they have a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion.²

Refugees are not exempt from application of criminal or extradition law. The 1951 Convention is not applicable to persons for whom there are serious reasons for considering that they have committed serious non-political crimes outside the country of refuge, war crimes and crimes against humanity and peace, or are guilty of acts contrary to the purposes and principles of the United Nations.

The processes of globalization influence the movement of people, raising an issue not only with reference to refugees and persons wanted by INTERPOL on behalf of national states, but also shape the ways in which

¹ These recommendations were output of the Conference “Conflicts of extradition law and refugee protection law: Mutual recognition of asylum and *non-refoulement* among EU Member states” held in Zagreb, 11th and 12th of December 2014. The Centre for Peace Studies was active in several cases of extradition of persons under international protection. One of them was the Turkish human rights activist that was arrested in Croatia on INTERPOLs Red notice. The same events were behind the asylum status she was granted in Germany and the Red Notice that was issued on her. After spending 55 days in custody and prison hospital she was granted provisory release on the account of extremely bad health condition and re-traumatisation caused by her stay in custody. Finally her extradition was refused by the Minister of Justice, though the national courts found that there were no formal obstacles to her extradition. Despite the protection status she was granted in Germany there was serious harm by the prospect of her extradition and her arrest. Therefore, the aim of the conference was improvement of the international, national and regional institutional framework in order to further protect persons under international protection from *refoulement*. The principle of *non-refoulement* which was the main topic of the conference is interlinking asylum and criminal matters thereby experts and practitioners from both fields were invited. Hence, the draft recommendations begin with the basic terms that define this matter with the aim to deconstruct it to the basics and in order to build better solution on those grounds. You may find more information about the conference on the following link:

<http://www.cms.hr/azil-i-integracijske-politike/conference-conflicts-of-extradition-law-and-refugee-protection-law-mutual-recognition-of-asylum-and-non-refoulement-among-eu-member-states>

²Convention relating to the Status of Refugees, Geneva, July 28th 1951

national states cooperate either through international or regional mechanisms. **European Union** is a political and economic union aiming to “maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime”.³

The International Criminal Police Organization – INTERPOL is an international organization founded in 1929 working towards “prevention and suppression of ordinary law crimes” through insurance and promotion of “widest possible mutual assistance between all police authorities”. INTERPOL pursues its aims within the limits of national laws and in the “spirit of the ‘Universal Declaration of Human Rights’”, and does not undertake “any interventions or activities of political, military, religious or racial character”.⁴

Some of the most efficient tools INTERPOL has at its disposal are **Red notices** and **Diffusions**. Red notices are not international arrest warrants, but the issuance of Red Notice may lead to arrest, extradition or expulsion. **National Contact Bureau (NCB)** serves as a contact point between national institutions and Interpol’s **General Secretariat**. NCB’s in Red Notices have had an indisputable influence in fighting crime, but can and have been used in persecution of persons under international protection. Refugees were noted to have been arrested on the basis of Red Notice alerts issued by one state upon the grounds another country granted international protection.

Persons under international protection should be protected from persecution from their country of origin. However, when exercising their right to free movement, or simply put, travelling from one country to the other, they face the risk of not being protected from further persecution. If there is an Interpol Red Notice or Diffusion issued on them, they can be arrested, expelled or extradited. An international protection given by one country thus does not provide sufficient protection when persons under international protection travel.

As the processes take place in a globalized world, a coordinated action is required from all actors involved, in order to ensure that refugees are adequately protected from further persecution. This applies to actors both at national and international level regardless of their character. It encompasses and concerns supranational and intergovernmental organizations, governmental and nongovernmental organization, and judicial and administrative bodies equally.

³Treaty on European Union, Maastricht, February 7th 1992

⁴Interpol Constitution, Vienna, June 13th 1956

With the aim of securing that refugees remain protected from persecution, we propose the following recommendations:

1. INTERPOL should ensure that the removal of Red Notices and Diffusions is subject to due process and judicial protection. Establishment of an independent body with the authority to review Red Notices on regular basis and ensure that human rights principles are respected would be a minimal standard. In addition, INTERPOL should further increase the capacities of the Commission for Control of Interpol's files (CCF), make CCFs decisions binding and strengthen the capacities of CCF to combat abuse. The expertise of CCF in human rights violations in certain countries should be strengthened and civil society organizations should be included in their work.
INTERPOL's adherence to provisions of its Constitution prohibiting activities of political, military, religious or racial character is currently endangered by the practice of refugees being persecuted and prosecuted on the basis of Red Notices and Diffusions. List of indicators that will show possible violation should be created and applied. At the moment, there are no mechanism available to hinder or deter state parties from using Interpol instruments for achievement of goals outside of the spirit of the „Universal Declaration of Human Rights.“
2. INTERPOL should establish a transparent procedure which enables for removal of Red Notices and Diffusions filed against persons under international protection from INTERPOL database. This should be done in a manner which ensures data protection with regards to transfer of information to their country of origin. INTERPOL should comply with EU data protection legislation. Red Notices and Diffusions which are published selectively, as well as draft Red Notices should be under additional and stricter scrutiny in order to prevent human rights violations.
3. National police authorities and NCB's should have at least the possibility if not the obligation to report suspicion that a certain Red Notice or Diffusion would in its effects abuse the INTERPOL system and violate human rights of a person under international protection. National states should provide that the asylum seekers are protected against extradition during the procedure for determination of asylum.
4. National courts dealing with extradition should be properly introduced to asylum and additional efforts should be made in order to ensure due application of *non-refoulement*.
If a need for interpretation of EU law regarding asylum issue arises national courts should instigate a reference for preliminary ruling to the Court of Justice of the European Union (CJEU). CJEU should be addressed regarding the application of EU data protection legislation to INTERPOL Red notices.
5. Further formalization of the principle of *non-refoulement* should be considered. Member States of EU, should take into consideration joining the signature and ratification of the Council of Europe's European Agreement on Transfer of Responsibility for Refugees.