



**Request concerning [...]**  
(Ref. CCF/R 303.17)

**DECISION OF THE COMMISSION**  
(102<sup>nd</sup> session, 24 to 27 October 2017)

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

Sanna PALO, acting as Chairperson  
Leandro DESPOUY,  
Petr GORODOV,  
Isaias TRINDADE,  
Members,

Having deliberated in camera during its 102<sup>nd</sup> session, on [...], delivered the following Decision.

**I. PROCEDURE**

1. On [...], Mr [...] (the Applicant) lodged a complaint addressed to the Commission. Following the submission of all the required documents in accordance with Rule 30 of the Operating Rules of the Commission, the request was found admissible, and the Commission informed him on [...].
2. In accordance with Article 34(1) of the Statute of the Commission (CCF Statute), the National Central Bureau of INTERPOL (NCB) of [...] and INTERPOL General Secretariat (IPSG) were consulted on the arguments set forth in the complaint.
3. The Commission informed the Applicant that he is wanted through INTERPOL's channels by [...], for the charges described in paragraphs 7 and 8 below.
4. Both the Applicant and the NCB source of the data challenged were informed of the fact that the Commission would study the case during its 102<sup>nd</sup> session.
5. During the study of the Applicant's case, in accordance with Article 34(1)/(2) of the CCF Statute, the NCB of [...] was consulted on arguments set forth in the complaint.

**II. FACTS**

6. The Applicant is a national of [...]. [...]
7. He is the subject of a red notice issued at the request of the NCB of [...] for [...], on the basis of a judicial decision issued on [...] by [...].
8. The summary of the facts, as recorded in the red notice, is the following: [...].

**III. THE APPLICANT'S REQUEST**

9. The Applicant requested access to the data processed in INTERPOL's files concerning him as well as its deletion.
10. He contends in essence that:
  - a) the prosecution lacks any evidentiary basis;
  - b) the case is of a predominantly political character;
  - c) his location is known to [...] authorities;
  - d) there are several procedural irregularities.

## IV. APPLICABLE LEGAL FRAMEWORK

### 11. General provisions:

- Article 2(1) of INTERPOL's Constitution states that the Organisation should "ensure and promote the widest possible mutual assistance between all criminal police authorities within the limits of the laws existing in the different countries and in the spirit of the Universal Declaration of Human Rights".
- Article 11(1) of the Rules on the Processing of Data (RPD) provides that "data processing in the INTERPOL Information System should be authorized with due regard for the law applicable to the NCB, national entity or international entity and should respect the basic rights of the persons who are the subject of the cooperation, in accordance with Article 2 of the Organization's Constitution and the Universal Declaration of Human Rights to which the said Article refers".

### 12. Field of competence of the Commission:

- Article 36 of INTERPOL's Constitution states that the Commission shall ensure that the processing of personal data by the Organization is in compliance with the regulations the Organization establishes in this matter".
- Article 3(1)(a) and Article 33(3) of the Statute of the Commission establish that the powers of the Commission are limited to controlling whether the processing of data in INTERPOL's files meets INTERPOL's applicable legal requirements.

### 13. Effective participation of an individual in the acts he/she is accused of:

- Article 83.2(b,i) of the RPD requires that "red notices may be published only when sufficient judicial data has been provided. Sufficient judicial data will be considered to include at least summary of facts of the case, which shall provide a succinct and clear description of the criminal activities of the wanted person, including the time and location of the alleged criminal activity."

### 14. Matters of a political character:

- Article 3 of INTERPOL's Constitution states that it is "strictly forbidden for the Organization to undertake any intervention or activities of a political (...) character."
- Article 34 of the RPD states the following:
  - 34(2): "(...) prior to any recording of data in a police database, the National Central Bureau, national entity or international entity shall ensure that the data are in compliance with Article 3 of the Organization's Constitution".
  - 34(3): "To determine whether data comply with Article 3 of the Constitution, all relevant elements shall be examined, such as:
    - (a) nature of the offence, namely the charges and underlying facts;
    - (b) status of the persons concerned;
    - (c) identity of the source of the data;
    - (d) the position expressed by another National Central Bureau or another international entity;
    - (e) obligations under international law;
    - (f) implications for the neutrality of the Organization;
    - (g) the general context of the case."
- Resolution ref. AGN/20/RES/11 (1951) requires applying the predominance test (even if in the requesting country the facts amount to an offence against the ordinary law). It states that "(...) no request for information, notice of persons wanted and, above all, no request for provisional arrest for offences of a predominantly political (...) character is ever sent to the International Bureau or the NCBs, even if - in the requesting country - the facts amount to an offence against the ordinary law."

- INTERPOL's Repository of practice on Article 3 provides guidance on the application of Article 3 of INTERPOL's Constitution in a variety of circumstances.

#### 15. Extradition issues:

- Article 31 of INTERPOL's Constitution states that a member country shall do all within its power which is compatible with the legislation of its country to participate diligently in INTERPOL's activities.
- Article 10 of the RPD states that data shall be processed in the INTERPOL Information System for a specific purpose.
- Article 34(1) of the RPD requires that processing of data is authorized "pursuant to applicable national laws and international conventions".
- Article 81 of the RPD states that "the General Secretariat shall cancel a notice if [...] the National Central Bureau or international entity that requested the notice obtains data allowing it to carry out the required action but has not taken any steps to this end and, after being consulted, has not provided reasonable grounds for its lack of action."
- Article 82 of the RPD states that "red notices are published (...) in order to seek the location of a wanted person and his/her detention, arrest or restriction of movement for the purpose of extradition, surrender, or similar lawful action."
- Article 84(b) of the RPD further states that the requesting National Central Bureau who has asked for the publication of a red notice "shall ensure (...) that extradition will be sought upon arrest of the person, in conformity with national laws and/or the applicable bilateral and multilateral treaties."
- Article 87(b) also states that "the requesting National Central Bureau shall act immediately once it has been informed that the person has been located in another country and, in particular, shall ensure the swift transmission - within the time limits defined for the case in question - of data and supporting documents requested by the country where the person was located or by the General Secretariat."

#### 16. Lawfulness of proceedings :

- Article 2(1) of INTERPOL's Constitution states that the Organisation should "ensure and promote the widest possible mutual assistance between all criminal police authorities within the limits of the laws existing in the different countries and in the spirit of the Universal Declaration of Human Rights".
- Article 11(1) of the RPD provides that "data processing in the INTERPOL Information System should be authorized with due regard for the law applicable to the NCB, national entity or international entity and should respect the basic rights of the persons who are the subject of the cooperation, in accordance with Article 2 of the Organization's Constitution and the Universal Declaration of Human Rights to which the said Article refers".
- Article 11(3) of the RPD states that "In conformity with Article 5 of the present Rules, prior to any recording of data in a police database, the National Central Bureau (...) shall ensure that (...) it is authorized to record (such) data pursuant to applicable national laws (...)."
- Article 34(1) of the RPD states that "the National Central Bureau, national entity or international entity shall ensure that the data are in compliance with Article 2 of the Organization's Constitution".
- Article 83.2(b,v) of the RPD states that "red notices may be published only when sufficient judicial data has been provided. Sufficient judicial data will be considered to include at least [...] reference to a valid arrest warrant or judicial decision having the same effect."

#### 17. Status of persons:

- Article 44(1) of the RPD provides that “when recording any data concerning a person who is the subject of international police cooperation, the National Central Bureau, national entity or international entity must specify the status of that person from the following list: (...) (b) Charged: a person against whom criminal proceedings have been initiated for allegedly committing an ordinary-law crime; (c) Suspect: a person who, as part of a criminal investigation, is considered to be a possible offender but against whom no charges have been filed.”

## V. FINDINGS

18. In reviewing the issues raised, the Commission based its findings on information provided by the Applicant, the NCBs concerned and INTERPOL’s General Secretariat.
19. The Commission treats the Applicant’s contentions in the order in which they are described in paragraph 10 above.

### A. Lack of evidentiary basis

#### *a) The Applicant*

20. The Applicant contended that the order of the investigator to add his name to the international wanted list was not made under reasonable suspicion, i.e. there are not enough elements of effective participation: the Applicant was not an official of the [...].
21. To support his claim, he stated that there is no evidence that he could be the head of the crime as there is no subjective element to prove that he organized the crime, managed and prepared it, established a criminal organization, managed such a criminal organisation, provided financing or organized concealment of criminal activities. The investigative authorities failed to specify in what way the Applicant influenced [...]. No official instructions of such officials on contracts were submitted.
22. He did not take, nor take part in, any decision-making process on the allocation of loans, and did not personally benefit from [...].[...] The investigation failed to establish the circumstances in which the Applicant would have received the funds that the bank would have previously loaned to [...] he has no links with the company either.
23. Concerning the purchase of land plots, the Applicant specified that he used his own funds, as provided in the appropriate tax declarations [...]. He did not take loans for [...]. Furthermore, the contract was notarized, the notary having the obligation under [...] law to verify the lawfulness of the transaction. It is his notary, to whom he had given a power of attorney, who sold some land to [...]. The sale price was determined in accordance with the law and business practices, and the Applicant duly declared it and payed the appropriate taxes. [...].
24. Finally, he had no personal interest in misappropriating funds, as his average annual income was [...].

#### *b) The NCB of [...] (NCB source of data)*

25. In response to the Applicant’s claims that there is no evidence linking him to the crimes, the NCB stated that the Applicant’s guilt was fully confirmed by subjective evidence and gave the following explanations. The NCB confirmed that as [...] the Applicant had no direct authority to issue the loans on behalf of this bank however, he had a significant share in [...]. Nevertheless, as such, he had the possibility to control bank managers and influence the decisions of the management [...], which in turn had the authority to issue the loans. Such loans were issued despite negative conclusions of experts, and in particular, to [...], in absence of mandatory documents required by [...] and knowing that it the company was insolvent.
26. [...]
27. To hide the fictitious nature of the loans, the Applicant used another criminal scheme. [...]. This price, which was [...] times higher than the purchase price, while both transactions were done within [...] days indicated, according to the investigation, a groundless overestimation of the value of the land. The forgery of the expert reports are currently under investigation under separate criminal proceedings.

28. [...].
29. Subsequently, the land plots were transferred in mortgage to the Bank as collateral loans [...].

***c) Findings of the Commission***

30. The processing of data in INTERPOL's files requires the provision of sufficient facts that link the wanted individual to the charges against him, and a clear description of the criminal activities he is accused of. The Commission is not empowered to conduct an investigation, to weigh evidence, or to make a determination on the merits of a case. That is the function of the competent national authorities.
31. Given its role of ensuring that INTERPOL's rules have been complied with, the Commission reviews whether the NCB provided sufficient information to indicate the possible effective and personal participation of the Applicant to the criminal acts of which he was accused.
32. Here, the offense as described is of a common law character in which NCB of [...] asserts it has collected ample evidence concerning the effective participation of the Applicant in a criminal scheme. The elements provided by the NCB of [...] established through documents and witness statements that 1) the Applicant had the possibility to influence the granting of fictitious loans, 2) he was the sole owner or held shares in companies which were granted those fictitious loans and 3) the land was resold 4 days after its purchase at [...] times higher price to a company, which created a doubt as to the lawfulness of the financial set up.
33. Nevertheless, it is not disputed that 1) the Applicant was not a majority shareholder of [...] owning the Bank as he owned [...] of the shares, 2) nor that, as [...], he had no direct authority to issue loans. Rather, it appears from the information provided by the parties that the granting of the fictitious loans were approved by the relevant entities of the banks and that the main person the Applicant is accused of having influenced, and conspired with, has not been interrogated.
34. In its review of whether the NCB provided sufficient information that link the wanted individual to the charges against him, and a clear description of the criminal activities he is accused of, it also appears to the Commission that the key element concerning the Applicants possible intent and influence to issue the fictitious grants was not provided in this case, and could amount to a private contractual dispute. Instead, the investigation seems conclusive in that the Applicant obtained and acquired the funds without showing a chain of events, based on assumptions.
35. The Commission concluded that the elements raised in relation to the nature of the dispute raised doubts as to the compliance of the data challenged. In view of the complexity of the case and the interdependence of arguments raised in relation to other legal issues, the Commission decided not to make a conclusive pronouncement on the compliance of the data challenged at this stage, and to study the Applicant's additional claims.

**B. Political character of the proceedings**

***a) The Applicant***

36. The Applicant inferred from the circumstances described above at paragraphs 20 to 29, that the proceedings against him are politically motivated and derived from a long lasting conflict involving business interests of [...] top officials, and therefore the offences cannot be considered as a ordinary law.
37. To support his complaint linked with the political background of his case, he also claimed that:
- 37.1. Other persons who, unlike him, had majority shareholding in [...] bank have not been questioned by [...] authorities because they are known in business and political circles. [...].
- 37.2. High ranking officials, who occupied and currently hold high ranking positions, seek to eliminate him, take possession of his assets in [...].

37.3. It was suggested to him on a few occasions, by highly influential individuals, that if he did not want to have any issues, he should no longer seek the repayment of the loans.

37.4. The active phase of the criminal investigation against him took place from [...], while the Prosecutor General of [...] was [...].

**b) The NCB of [...]**

38. Regarding the Applicant's claim that the proceedings are politically motivated the NCB replied that the pre-trial investigation in this criminal proceeding was not aimed at persecuting or punishing the Applicant based on his race, religion, nationality or political beliefs. It was established that he did not engage in political activities in [...], nor that he was employed as a civil servant during that time.

39. In its reply concerning the timing of the proceedings, the NCB of [...] provided elements that showed that the criminal proceedings were initiated [...]. Moreover, the Applicant's claims that senior officials currently holding high positions are striving to take ownership of the Applicant's assets and trying to hide their criminal activities [...] are groundless as the Applicant is accused of offences committed between [...].

**c) Findings of the Commission**

40. With respect to the assertion that the matter is of a political character, the Organization applies the predominance test, i.e., it evaluates all relevant information and pertinent elements, as provided for by the rules, to determine whether the offense is of a predominantly political character.

41. The rule reflected in RPD Article 34(3) requires analysis of all relevant factors, as to which the following appear to the Commission to be key in the present case:

- the nature of the offense, namely the charges and underlying facts;
- the status of the person concerned;
- the general context of the case.

42. In reviewing the applicable criteria under the predominance test, the Commission recalled that did it not come to a definitive conclusion regarding the common law character of the offense, as described in paragraph 35 above.

43. The Commission found that while the Applicant is not a politician or a former politician, it appears that, although factually disputed, there could be a political context in this case as many of the former clients of the Bank have now come to power in [...]. Indeed, the Commission considered that the Applicant had taken up his position as [...]. [...]

44. However, the Commission also highlighted that the mere assertion of an Applicant without any additional elements to supports his contention would require the Commission to evaluate the reliability of a statement in a manner that should be undertaken at trial or during an extradition hearing.

45. Accordingly, the information provided by the Applicant is not sufficient to establish that political elements are predominant over the possible ordinary criminal law elements of the case, and that the processing of the data concerning the Applicant is contrary to Article 3 of the Constitution. Therefore, the Commission decided not to make a conclusive pronouncement on the compliance of the data challenged at this stage, and rather to study the Applicant's additional claims.

**C. Lack of extradition request**

**a) The Applicant**

46. The Applicant explained that the red notice has no purpose as despite knowing of his location the authorities of [...] have not requested his extradition from [...]. Indeed, the [...] was provided with a formal notice about the Applicant's residence [...].

**b) The NCB of [...]**

47. In its reply, the NCB of [...] confirmed that [...] national authorities have knowledge that the Applicant received residence permit in [...] and subsequently sent the notification [...] to the address mentioned by the [...].
48. The NCB also advised the Commission that the General Prosecutor of [...] had sent a request to the competent authorities of [...] for the provisional arrest of the applicant. On [...], a request for his extradition was also sent to the competent authorities in [...].

**c) *The NCB of [...]***

49. In its reply, the NCB of [...] explained that the national authorities of [...] received the request for the arrest of the Applicant in view of his extradition to [...]. However, the request could not be satisfied because the Applicant had the status of “suspect” in the ongoing criminal investigation in [...].
50. The NCB also advised the Commission that the location of the Applicant was unknown to their competent authorities, and therefore, that it was not confirmed to [...] authorities.

**d) *Findings of the Commission***

51. The Commission considered the Applicant’s claim that [...] authorities knew his location. It recalled that the purpose of a red notice is not only to locate a person, but also to request his/her provisional arrest in view of extradition.
52. Therefore, the fact that [...] authorities know the Applicant’s location does not undermine as such the lawfulness of the red notice. However, INTERPOL’s rules require that the requesting NCB takes appropriate step to achieve the purpose for which the red notice was issued, i.e. to seek the arrest in view of extradition of the individual concerned, or provides reasonable grounds for the lack of action of its country.
53. In this regard, the information provided by the NCB of [...] highlight that the authorities have taken steps to respect their obligations under applicable law, and to request the extradition or surrender of the Applicant from [...], if possible.
54. The Commission also took note that [...] authorities could not satisfy the request to Ukrainian authorities for the arrest of the Applicant because he was only considered as a suspect in the ongoing criminal investigation in [...], which tends to confirm a lack of evidentiary basis.

**D. Procedural irregularities**

**a) *The Applicant***

55. The Applicant complained of several procedural irregularities, such as the fact that his defence rights were violated: he was not informed of the day and time of the hearing in his case, and his lawyers were informed a few minutes before the court hearing. The investigation against him started after a complaint lodged by [...]. However, he was never questioned during the investigation. Thus, [...] was based on a request from a person who received information from third parties without proper verification.
56. Furthermore, he cannot be a suspect as he was not properly notified with the notification [...]. This fact is established by decision of [...] Courts, which were not appealed by [...] and entered into force. In addition, he had deregistered from his [...] address on [...] when he left for [...]. The notification [...] was sent to his address in [...], without observing the requirements [...].
57. The Applicant also claimed that on [...], the order allowing pre-trial detention was illegally obtained because he had not been properly served with the notification, and the investigator had withheld this fact. This allowed pre-trial investigation authorities to communicate with the NCB of [...] and declare the existence of a valid arrest warrant. Instead of verifying the compliance of the data with INTERPOL’s rules, the NCB of [...] had recommended to the Applicant to apply to the Commission for the Control of INTERPOL’s Files. Finally, as pre-trial investigation bodies know his location, he cannot be considered as a person who evades pre-trial investigation.
58. In support of his request, the Applicant provided a copy of the following rulings:

[...]

59. The Applicant claimed that after a phone call from [...], the [...] reversed the decisions taken in first instance and decided to issue a decision permitting his remand in custody. However, the Applicant provides that this decision is not reasoned and guarantees of a fair trial were breached as he was not present in court and the appeal was not presented to his lawyers who only had one hour to prepare for the hearing.
60. The Applicant also complained that this investigation has been lasting for almost [...] years, contrary to reasonable time limits. He also stated that it was conducted in order to acquire his assets: in fact, his lands, vehicles and accounts were seized prior to his conviction.
61. The Applicant stated that in view of these procedural irregularities he lodged an application with the European Court of Human Rights.

***b) The NCB of [...]***

62. In its reply, the NCB of [...] explained that the notification [...] was issued on [...], and sent to the Applicant's last known address in [...], in accordance with the provisions of the [...]. As set out above, when [...] authorities learned that the Applicant received a residence permit in [...] the copy of the notification [...] was sent to the address mentioned by the [...].
63. On [...], he was placed on the [...] wanted list as his location was unknown. On [...] issued a permission to arrest the Applicant in order to escort him to participate in a hearing [...] in the form of detention. This order was valid for [...] months. On [...], investigative authorities received the information that the red notice was issued against the Applicant.
64. The current decision on which the red notice is based was issued by the [...]. During this hearing, the Applicant's lawyers were present. The decision also mentions that on [...] the investigating judge received the information from the [...] that a red notice against the Applicant had been published. The decision of [...] cancelled the decision of [...] and confirmed the order to arrest the Applicant.

***c) Findings of the Commission***

65. The Applicant claimed that the procedures followed in [...] violated international standards of due process of law. He stated that procedural irregularities raised significant concerns as to the observance of his rights to due process.
66. Therefore, the Commission reviewed the circumstances surrounding the issuance of the judicial decision forming the basis of the red notice and the procedure followed at national level to initiate and carry on legal proceedings.
67. In this specific case: On [...], a Decision of [...], was issued against the Applicant, to permit his detention [...] consideration of the motion [...] of detention in custody. This decision was valid for [...] months. On [...], a red notice was requested by the NCB of [...] and published by the INTERPOL General Secretariat for the Applicant's arrest in view of extradition.
68. On [...], a Decision of the Court of [...] to permit [...] which has no time limit, was issued against the Applicant, and forms the current base for the red notice. This decision provides that [...].
69. It appears from [...] Court decision that the Applicant's defence lawyer was present during the hearing and that he had the possibility of presenting his arguments. It can also be understood that the Applicant was duly notified in accordance with [...] laws and procedures, and therefore that the ruling [...] was rightfully overturned.
70. However, based on the information provided by the NCB, the Commission finds that the initial Decision issued in this case is not an arrest warrant in the sense of RPD Article 83.2(b,ii), and it does not give rise to charges as set forth in RPD Articles 44.1(b) and 83.2(b,ii). This is also in line with the decision of [...] authorities mentioned at paragraph 54 above. The Commission also noted that the fact that the first red notice published against applicant was used in issuing the current judicial decision, which created doubts on the lawfulness of the red notice.

71. In view of all these elements, and recalling the prior doubts identified the sufficiency of elements of effective participation, as well as the political elements surrounding the proceedings, and the decision of [...] authorities, the Commission concluded that on the balance, the data challenged are not compliant with INTERPOL's rules applicable to the processing of personal data.

**FOR THESE REASONS, THE COMMISSION**

Decides that the data challenged are not compliant with INTERPOL's rules applicable to the processing of personal data, and that they shall be deleted from INTERPOL's files.

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