



Request concerning [...] and [...]
(Ref. CCF/[...])

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

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

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

Having deliberated in camera during its 105th session, on [...], delivered the following Decision.

I. PROCEDURE

1. On [...], Mr [...] and Mr [...] (the Applicants) 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 the Applicant thereof on [...].
2. The complaints are being dealt with jointly given the identical nature of the data, from the same National Central Bureau (NCB), for their shared key roles in the alleged crime of fraud against the government on behalf of their company, and because the INTERPOL data registered reflects their legal proceedings conducted in parallel at the national level.
3. In accordance with Article 34(1) of the Statute of the Commission (CCF Statute), the National Central Bureau of INTERPOL (NCB) of [...] was consulted on the arguments set forth in the complaint.
4. The Commission informed the Applicants on [...] that they are wanted to obtain information and to establish their location by way of a blue notice through INTERPOL's channels following the request of the NCB of [...], and were provided the information described in paragraphs 8 and 10 below.
5. Both the Applicants and the NCB source of the data challenged were informed of the fact that the Commission would study the case during its 105th session and invited to share any other information or document with the Commission to update their file in light of the information.

II. FACTS

6. The Applicants are both nationals of [...]. They are the subjects of published blue notices for similar sets of facts, issued on [...] and [...] at the request of [...] for an offence of "[...], for the purpose of obtaining their location and information.
7. [...]. His responsibilities included the signature of agreements and supplementary agreements as he was the authorized signatory of the company.
8. The summary of the facts regarding him, as recorded in his blue notice, is the following: [...].
9. [...] in charge of the legal relations with the Ministry of [...].
10. The summary of the facts, as recorded in his blue notice, is the following: [...].

III. THE APPLICANT'S REQUEST

11. The Applicants request the deletion of the data concerning them.

12. They contend in essence that:

- 1) the case is of a commercial nature;
- 2) the proceedings are no longer valid;
- 3) there are some irregularities in the proceedings;
- 4) the purpose of the blue notices is already attained.

IV. APPLICABLE LEGAL FRAMEWORK

13. 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.*"

14. Field of competence of the Commission:

- Article 36 of INTERPOL's Constitution provides 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.

15. Lawfulness of the proceedings:

- Article 11(1) of the RPD states that "*data processing in the INTERPOL Information System should be authorized with due regard for the law applicable to the National Central Bureau, 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 (...).*"

16. Purposes of international police cooperation:

- Article 10.1 of the RPD states "*that the processing of data in the INTERPOL Information System may only be carried out for a given, explicit purpose which is in conformity with the Organization's aims and activities.*"

17. Provisions specific to Blue notices:

- Article 88(1) of the RPD provides that: "*blue notices are published in order to: (a) obtain information on a person of interest in a criminal investigation, and/or (b) locate a person of interest in a criminal investigation*"
- Article 88(2) of the RPD provides that: "*blue notices may only be published under the following conditions: (a) The subject of the notice has been convicted or charged, or is a suspect, a witness or a victim; (b) Additional information on the possible criminal history, location or identity of the person or any other information relevant to the criminal investigation is sought; (c)*

Sufficient data relating to the criminal investigation or the person are provided to allow the cooperation requested to be effective.”

18. Status of persons:

- Article 44(1) of the RPD requires 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:*
 - (a) Convicted: a person who, following a court ruling, has been found guilty of committing an ordinary-law crime;*
 - (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

19. In reviewing the issues raised, the Commission made its findings based on the information provided by the Applicant and the NCB concerned.

20. The Commission assesses the Applicant’s contentions in the order in which they are described in paragraph 12 above.

A. Lack of criminal character

a) The Applicants

21. The Applicants deny to have acted with any criminal intent and to have breached criminal law when they increased the agreed price of the initial contract between their company [...] regarding the sale of [...].

22. The Applicants state that by adjusting the contract they had signed with the state company to changed market prices, their actions fell within the realm of good and responsible commercial conduct. The price of the [...] outlined in the contract was indeed raised, but the whole within the rule of law [...] fluctuations possible due to market price changes, as explicitly planned for in the initial contract.

23. Moreover, the Applicants highlight that the position [...], is contradictory with another criminal case [...]. [...]

24. The Applicants submit that the criminal proceedings are a measure of intimidation of other [...] suppliers aiming at reducing competition, rather than tangible offences attributable to the Applicants. Therefore, they contend that the criminal proceedings aim to eliminate competition rather than to target a specific crime.

25. Additionally, they state that news articles have been emerging with regards to a possible criminal conspiracy at the ministerial level in the trade sector involving their company [...].

26. The Applicants argue that all they did was to negotiate a contract for the company’s success, and that the criminal procedure aims to make the company suffer financially and to challenge the competitive prices of the company.

27. The Applicants were invited to provide any additional documents they may wish on [...]. Nonetheless, the Commission duly considered the arguments and presented them as such to the NCB of [...].

b) The NCB of [...]

28. The NCB highlighted that according to the supply contract between [...], price adjustments could be made, to a maximum of 10 per-cent from the agreed price. [...], and therefore that allegations related to the elimination of competition are unfounded.

29. The NCB stated that the pre-trial investigation reflected that the Applicants would have signed supplementary agreements [...] to amend and receive additional payments in the contract with the Ministry of [...]. This scheme would have cost [...].
30. In support of the [...] position, the NCB of [...] provide a ruling for the detention [...] in which it is outlined that the fraud would have occurred because the amendments to increase [...], which would have illegally exceeded the statutory parameters, the whole to benefit third parties. [...]
31. Indeed, [...] was aware that there were no legal grounds to increase the unit price of the goods as agreed, yet entered into supplementary contracts [...] were illegally embezzled. [...] can be detained to be brought to a hearing to select his form of detention. No expiration date is mentioned in this ruling.
32. A similar ruling exists in the case of [...] reiterating an ongoing pre-trial investigation in file [...].

c) Findings of the Commission

33. With respect to the allegation that the conduct was not criminal in nature and constitutes a private dispute, Article 88(1) of the RPD provides that: “*blue notices are published in order to: (a) obtain information on a person of interest in a criminal investigation, and/or (b) locate a person of interest in a criminal investigation.*”
34. The rulings from [...], rendered shortly before the issuance of the blue notices at INTERPOL, authorize the detention [...] appears to now be expired). The existence of an ongoing criminal investigation appears so in the Applicants’ cases.
35. Despite the apparent expiration of the ruling regarding [...], the NCB of [...] stated in its response that the pre-trial investigation is advanced and has established the criminal scheme.
36. Of most interest for the Commission’s purpose is that these rulings report the findings of the detectives [...]. They found that there were problems in the bidding procedure in the supply of [...] and report that there would have been a conspiracy between [...] along with other officials [...].
37. These rulings echo [...]. The decider states, for instance, that the Applicant would have ignored the demands of the Minister [...] to monitor price increases after the contract was entered.
38. Following this, numerous administrative irregularities would have been committed by officials in service, some of which are in official proceedings before [...]. These irregularities would have happened as a result of the artificial creation of documents to serve as a basis for the execution of the supplementary agreements by the Applicants, creating a situation to force the Minister of [...] to sign the supplementary agreement, despite the absence of documentary evidence to show the fluctuations of the prices of the goods on the market.
39. At the same time, the Commission takes into account the arguments of the Applicants to the effect that part of the accused at the ministerial level would have been discharged (in their application, it states that they were all discharged). However, no Court decisions or other related documents have been provided to this effect. Furthermore, additional arguments from the NCB in the next section dispose of this last argument of the Applicants.
40. Though it is not the Commission’s role to assess whether a scheme indeed occurred that could imply [...].

B. Lack of lawfulness of the proceedings

41. The Commission decided to study together under this item the Applicant’s contentions of lack of validity of the proceedings and irregularities in these proceedings.

a) The Applicants

42. The Applicants point to several procedural violations in the criminal proceedings, including the fact that the pre-trial investigation [...] was completed [...] and that the suspects (excluding the Applicants) were discharged [...]. Separate proceeding were then opened for the Applicants [...].

43. Moreover, the detention orders issued against the Applicants [...] would now be expired. Therefore, [...], there would be no other relevant decisions to justify the international search of the Applicants.
44. Additionally, a Decision of [...] would have recently concluded that certificates of the [...]. No copy of this Decision was however provided to the Commission, nor a clear explanation as to how these certificates could legitimize the increased price [...] and the use of unmonitored supplementary agreements.
45. Finally, the Applicants indicated that several procedural violations would have occurred because they were not properly notified of the suspicion against them and because no public prosecutor (defender) was appointed to date in their case despite pressure from the representatives.

b) The NCB of [...]

46. In its reply, the NCB [...] that the pre-trial investigation was now completed and that the criminal proceedings were now open for the defense party's review. It confirmed that the Applicants' files had been assigned to a new file number [...], primarily due to the fact that the defense counsel of the Applicants had ignored the summons to appear in the court hearing.
47. The NCB denied that the officials [...] have lost suspect status and rather argued that preventive measures have been chosen for them. [...]
48. The NCB was asked for additional precisions with regards to the arguments set forth by the Applicants [...] and replied that regarding the Court decision in the administrative case [...] Administrative Court and is only relevant to the compliance [...].
49. As to the notification procedure, the NCB stated that the notifications by way of summons were repeatedly served to the Applicants through their defense counsels, and at their residential and business addresses. In the case of [...] were also served a written notice of suspicion and a communication was filed to the local housing maintenance staff of the family residence.
50. As to [...] refused to receive the notice, according to a video record. All in all, the NCB states that the authorities cannot notify the Applicants as they have both left [...] that they have not returned to [...] to date.
51. [...], these alternative individuals were appropriate recipients.

c) Findings of the Commission

52. Under Articles 3(1)(a) and 33(3) of the Statute of the Commission, the function of the Commission is to review whether the processing of data in INTERPOL's files meets INTERPOL's applicable legal requirements, in accordance with Article 36 of INTERPOL's Constitution.
53. Similarly, as a general practice, the Commission does not enter into an inquiry designed to take decisions on application of national procedural law. The Commission does not function in a manner akin to that in which a domestic appellate court re-examines the actions of a domestic court of first instance.
54. The Commission recalled that it is not its role to assess a country's law enforcement or judicial system *in abstracto* and that it must make its determinations based on specific information that sheds light on whether or not INTERPOL's legal framework has been complied with in a particular case.
55. Rather, in order to respect the spirit of the UDHR while at the same time respecting the limited fact finding role of the Commission, the Commission considers all relevant information to determine whether the Applicants have convincingly demonstrated that they are not suspects (as intended in the RPD, not in the national [...] law) of interest in an ongoing criminal investigation.
56. Indeed, the Applicants are subjected to a blue notice, which does not require the existence of a valid arrest warrant or the existence of valid criminal proceedings against the Applicants specifically.

57. Given the comments of the NCB of [...] on the advanced status of the pre-trial investigation and in light of all of the response it provided as a whole, the Commission takes the NCB's answer as an implicit rejection of the arguments of the Applicant to the effect that the pre-trial investigation against the Applicants is halted in any way.
58. The Commission verified the submissions of the Applicant regarding the absence of an ongoing pre-trial investigation, [...]. The Commission thereof contacted the NCB of [...] for further information.
59. The response of the NCB was satisfactory to the Commission, [...].
60. The Commission does not find the proceedings to be manifestly unlawful, given the absence of documentation to support the Applicants' claim. There is no evidence that [...]are no longer valid or that the criminal proceedings regarding the Applicants have stopped.
61. A blue notice requires that individuals concerned have, as a minimum, a suspect status in the sense of Article 44(1)c) of the RPD, not in the sense of the national legislation: *a person who, as part of a criminal investigation, is considered to be a possible offender but against whom no charges have been filed.*"
62. The Commission does not find that the Applicants have demonstrated that they are not suspects that are part of an ongoing criminal investigation.

C. Lack of purpose

a) The Applicants

63. The Applicants contest the validity of the blue notice because they consider that their location is known to the [...] authorities, and therefore, that its purpose has been achieved.

b) The NCB of [...]

64. The NCB, on the other hand, indicated that the location of the Applicants was still unknown, hence a blue notice was necessary to help them gather more information about the Applicants' whereabouts. The Applicants are also believed to be hiding from the authorities, possibly concealing evidence and exerting pressure on witnesses.

c) Findings of the Commission

65. In this specific case, the NCB requests information on the location of the Applicants, which is a valid ground to request a blue notice.
66. Though the Applicants claim that their location is known to the [...] authorities, the NCB [...]states the opposite, and notes the Applicant's departure of the country shortly before the issuance of the Court order [...].
67. [...]
68. The Commission finds that it has not been successfully established that the location of the Applicants is known to the [...] authorities.
69. As a result, the Commission finds that the blue notices still have a valid purpose, namely to locate suspects in an ongoing criminal investigation, and that the submissions as a whole do not suffice to demonstrate that the case is not compliant with INTERPOL's rules.

FOR THESE REASONS, THE COMMISSION

Decides that the data challenged are compliant with INTERPOL's rules applicable to the processing of personal data