



Commission de Contrôle des Fichiers de l'O.I.P.C. - INTERPOL
Commission for the Control of INTERPOL's Files
Comisión de Control de los Ficheros de la OIPC-INTERPOL

لجنة الرقابة على محفوظات المنظمة الدولية للشرطة الجنائية (الإنتربول)

INTERPOL's Independent Authority for the Control and Protection of Personal Data

DECISION OF THE COMMISSION

REQUESTS CHAMBER

Request concerning [...]

(Ref. CCF/109/[...])

109th session

1 to 5 July 2019

Lyon, FRANCE



Request concerning [...]

(Ref. CCF/[...])

DECISION OF THE COMMISSION

(109th session, 1 to 5 July 2019)

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 109th session, on [...], delivered the following Decision.

I. PROCEDURE

1. On [...], Mr [...] (the Applicant) first presented a request for access to information concerning him registered in INTERPOL's files. 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 Commission consulted the INTERPOL National Central Bureau (NCB) of [...] on the communication of information related to the request, further to Article 35 of the Statute of the Commission (the Statute).
3. After being authorized by the source of data, the Commission informed the Applicant on [...] that he is wanted through INTERPOL's channels by the NCB of [...] and provided the information described in paragraph 8 and 9 below.
4. On [...], the Applicant lodged a complaint addressed to the Commission requesting the deletion of the information concerning him registered in INTERPOL's files. 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 [...].
5. During the study of the Applicant's case, the Commission consulted the NCB of [...] and the INTERPOL General Secretariat (IPSG) in accordance with Article 34(1) of the Statute, on the arguments set forth in the complaint.
6. 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 [...] session and invited to provide any additional information they may find necessary for the study of the request.

II. FACTS

7. The Applicant is a national of [...] and former [...], a public-owned conglomerate [...].

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8. He is the subject of a Red Notice issued at the request of the NCB of [...] for the charges of [...] on the basis of an arrest warrant issued on [...] by the [...].
9. The summary of the facts, as recorded in the Red Notice, is the following: [...].

III. THE APPLICANT'S REQUEST

10. The Applicant requested the deletion of the data concerning him, contending, in essence that:
 - a) the case is of a predominantly political character ;
 - b) the proceedings in [...] do not respect the principle of due process of law ;
 - c) the case lacks criminal character and mostly derives from economic issues ;
 - d) the data registered concerning him is not accurate.

IV. APPLICABLE LEGAL FRAMEWORK

11. 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.
12. 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 INTERPOL's Rules on the Processing of Data (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/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*

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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.

13. Due process and respect for human rights :

- 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 (UDHR) to which the said Article refers*”.
- 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 9 of the UDHR states that “*no one shall be subjected to arbitrary arrest, detention or exile.*” Article 10 of the UDHR states that “*everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.*”

14. Criminal character of the case :

- 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.*”
- The diffusion addressed by INTERPOL General Secretariat to the NCBs on 5 April 2012 states that “*for red notice requests and diffusions seeking the arrest of a person, it is important to provide sufficient facts that link the wanted individual to the charges against him/her. Providing such facts is crucial for facilitating international police cooperation*”.
- Article 83.1(a,i) of INTERPOL’s Rules on the Processing of Data states that “*red notices may not be published for offences relating to private matters and for offences originating from a violation of laws or regulations of an administrative nature, unless the criminal activity is aimed at facilitating a serious crime or is suspected of being connected to organized crime.*”
- Article 35(2,b) of the RPD states that “*compliance with this condition for recording data shall be assessed in relation to [...] the international nature of the data and, in particular, the extent to which the data may be used by National Central Bureaus, national entities or international.*”

15. Quality of the data :

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- Article 12 of the RPD states that “*data processed in the INTERPOL Information System must be accurate, relevant, not excessive in relation to their purpose and up to date.*”

V. FINDINGS

16. For an appropriate study of the case, the Commission decided to study first together under point A the alleged political character of the case, and the related purported lack of due process, and then to study together under point B the related issues of the criminal nature of the acts allegedly committed and of the quality of the data registered, since they are interdependent and rely on the same factual allegations.

A. Alleged political character of the case and lack of due process

a) *The Applicant*

17. The Applicant claims that the Red Notice concerning him is not compliant with Article 3 of INTERPOL’s Constitution, as it originates in a case of a predominantly political character. He claims that the restructuration of the [...], a multi-company group with dominant state ownership, was the result of governmental decisions.
18. Following the [...], the [...] was seriously affected, and the [...] Committee launched investigations in [...] into allegations of financial mismanagement by the [...]. He claims that following an intense media campaign over an alleged [...], convicted of economic mismanagement offences [...].
19. He contends that in [...], the [...] had his original sentence for the charge of embezzlement increased to death penalty. He claims that [...] has been used politically to undermine [...] he is perceived as politically aligned to him.
20. He further claims that his right to be presumed innocent is violated by the issuance of the Red Notice while he has not been found guilty, and that his ability to travel and work is seriously impeded by the registration of data in INTERPOL’s files, for now more than [...] years, longer than the retention period set in INTERPOL’s rules. He contends that he will be exposed to a flagrant denial of a fair trial in case of return to [...], due to the politicization of the case and the alleged lack of independence of the judiciary.

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

21. The NCB of [...] contested the Applicant’s claims that the prosecution against him have political motivations, underlining the seriousness of the offences and their ordinary-law character, as well as the important consequences on public funds.
22. According to the NCB, on [...], the [...] issued a Decision to initiate criminal proceedings against the Applicant for [...] as prescribed in Article [...], on the basis of the following actions :
 - Committing a fraud [...] causing losses to the State of [...].
 - Committing a fraud while ratifying/approving the acceptance and making illegal payments [...], causing losses to the State of [...].
 - Committing a fraud while ratifying/approving the implementation and disbursement [...], causing losses to the State of [...].

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23. In addition, on [...], the [...] issued a Decision to initiate criminal proceedings against the Applicant for [...], on the basis of the following actions:

[...]

24. The NCB highlighted that the Applicant's arguments concerning an alleged politicization of the case are unfounded and only presented as an attempt to avoid being presented before justice. The NCB also [...] other [...] managers [...] have been tried and found guilty for their involvement in similar [...] operations.

c) Findings of the Commission

25. With respect to the assertion that the matter is of a political character, in contravention of Article 3 of INTERPOL's Constitution, 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.

26. 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;
- and the implications for the neutrality of the Organization.

27. In reviewing the applicable criteria under the predominance test, the Commission established that the offenses as described in the Red Notice and in the judicial documents transmitted by the NCB of [...], are *a priori* of a common law character. Furthermore, these charges appear coherent with the factual information provided by the NCB of [...], and the Commission considered that sufficient elements concerning the description of the criminal activities and the possible personal effective participation of the Applicant have been provided by the source of the data.

28. Then the Commission considered that the Applicant is not himself a politician or former politician in [...], but rather a high-level manager in a strategic state-controlled company. The Commission noted that the Applicant alleged links with former [...], who appointed him to his position within the [...]. Yet, on the basis of the limited information provided by the Applicant, the Commission was not able to identify clearly how this weak connection to the former administration, common to all holders of high-level government-appointed positions, would have made him a likely target for any alleged political retaliation.

29. The general context of the case, although disputed by the parties, reveals that the Applicant is wanted by [...] authorities for illegal actions and decisions adopted in the context of his former position within the [...], which would have both benefited him personally and accelerated the company's economic failure. The Commission noted that a large number of [...] managers [...].

30. The Commission examined the Applicant's arguments regarding these individuals' trial in [...], and held that it is not its role to assess a country's law enforcement or judicial system in general. It must make its determinations on the basis of specific information that sheds light on whether or not INTERPOL's legal framework has been complied with in a particular case. In order to respect the spirit of the Universal Declaration of Human Rights while at the same time respecting the limits of the Commission's functions, the simple assertion of possible procedural irregularities or general criticisms about the independence of the judicial system cannot rise to the level of Article 2 violations. In this case, the Commission finds that the information provided by the Applicant does

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not demonstrate the likelihood that a flagrant denial of his right to a fair trial could take place. Ultimately, the Applicant did not establish that the mere publication of the Red Notice (and the extension of its validity following Article 50 of the RPD), for his prosecution on the basis of a valid arrest warrant, would disproportionately affect his right to be presumed innocent until proven guilty.

31. Accordingly, even assuming that there may be some political elements around this case, the information provided is not sufficient to establish any predominance over the substantive ordinary criminal law dimension of the case and to conclude that the processing of the data concerning the Applicant would be contrary to Article 3 of INTERPOL's Constitution.

B. Alleged lack of criminal character and quality of the data

a) The Applicant

32. He claims that the Red Notice cannot achieve its purpose, in contravention with Article 82 of INTERPOL's Rules on the Processing of Data, since his extradition to [...] would not be permissible. He claims that the offence would not constitute an extraditable offence for most other countries, since there are no elements of fraudulent intent in this case, but merely a dispute on civil issues linked to improper direction of a company. According to the Applicant, the case lacks criminal character and the prosecution authorities have not adduced any evidence of deliberate fraudulent actions, or dishonest behavior, or illicit enrichment, but are merely trying to bring mismanagement charges against former executives to cover for the economic failure of the [...].
33. He further claims that the Red Notice is inaccurate and contravenes with the minimum conditions for publication set in Articles [...] Rules on the Processing of Data. He alleges that his identity particulars are recorded incorrectly, and that the summary of facts contain inaccurate statements, as it designates him as the "[...] from [...], a position he has never held.
34. He contends that he was Director of [...]. In [...] he became a Member of [...] was appointed as a parent company. He later became [...], and he claims that the corporation underwent major restructuring [...] making it complex to determine his alleged role in the criminal activity.

b) The NCB of [...]

35. The NCB of [...] confirmed the criminal character of the offence, contrarily to the Applicant's statements which only attempt at reducing his own responsibility in the mismanagement of his company and in causing serious damage to the national budget. The NCB explained that sufficient evidence has been adduced to establish that the Applicant resorted to corrupt practices and that he obtained personal benefit from the embezzlement of money belonging to the [...], thereby committing a criminal offence.
36. The NCB also indicated that the [...] of the Ministry of [...] is still working with the [...] to prepare a full request for extradition concerning the Applicant. It confirmed its intent to request his extradition from any country where he would be located and where this would be a legally available option.

c) Findings of the Commission

37. 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. With respect to the allegation that the conduct does not constitute a criminal offence, the Commission recalled that under Article 83.1(a.1) of the RPD "*Red notices may not be published for offences relating to private matters and for offences originating from a violation of laws or regulations of an administrative*

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nature or deriving from private disputes, unless the criminal activity is aimed at facilitating a serious crime or is suspected of being connected to organized crime”.

38. The Commission noted the Applicant’s statements according to which mismanagement charges have been brought against him and [...] executives while financial losses are allegedly only attributable to the economic crisis and to normal business fluctuations. The Commission underlined that it is not empowered to conduct an investigation, to weigh evidence, or to make a determination on the merits of a case, as these issues must be left to the competent national authorities to decide at trial or during extradition proceedings. On the basis of the information provided by the parties, and without making any pronouncement on the potential criminal responsibility of the Applicant, the Commission held that there is sufficient elements demonstrating the possible commission of criminal offenses, as described in the national criminal legislation of the country source of the data.
39. Finally, the Commission considered that further to Article 12 of the RPD, “*data processed in the INTERPOL Information System must be accurate, relevant, not excessive in relation to their purpose and up to date*”. The Commission held that the potential minor discrepancies relating to the exact evolution of functions held by the Applicant within the [...] over the period considered are insignificant for the general coherence of the summary of facts, which is necessarily and by nature an abridged and concise statement and which cannot reflect comprehensively the whole factual context of the case. Likewise, the Commission concluded that the slight inaccuracies highlighted by the Applicant concerning some identity particulars have no real consequences on the possibility to identify him or to give effect to the data in relation to the purpose for which it was registered.

FOR THESE REASONS, THE COMMISSION

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

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