



## **DECISION OF THE COMMISSION**

The Commission for the Control of INTERPOL's Files (the Commission) ...

Having deliberated in camera during its ... session, on ... delivered the following Decision.

### **I. PROCEDURE**

1. On ..., 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 country A and INTERPOL General Secretariat (IPSG) were consulted on the arguments set forth in the complaint. ....
3. The Commission informed the Applicant and the NCB of country A that it should study this case during its ... session.
4. In accordance with Article 34(1)/(2) of the CCF Statute, the NCB of country B was consulted on the arguments set forth in the complaint.

### **II. FACTS**

5. The Applicant is a national of country A and country C. From ... until ..., he was head of a company. In ..., he was elected ... at a local election in Country A for the opposition party of Mr Y, he remained as such until an unknown date. He is also a political ....
6. He is the subject of a diffusion to arrest sent by country A for "...", on the basis of an arrest warrant issued on ... by ... in country A.
7. The summary of the facts, as recorded in the Diffusion, is the following: "..."
8. On ..., the Applicant was arrested in country B based on the diffusion. On ..., he released on bail and had to fulfil weekly obligations. Country B's authorities received the request for extradition from country A through Diplomatic channels.

### **III. THE APPLICANT'S REQUEST**

9. The Applicant requested the deletion of the data concerning him.
10. He contends in essence that:
  - a) there are some irregularities in the proceedings;
  - b) the case is of a predominantly political character.

### **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. Matters of political character:

- Article 3 of INTERPOL's Constitution states that "[i]t 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."

#### 14. 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."

#### 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.”

- INTERPOL General Assembly Resolution AGN/53/RES/7 of 1984 states that “if certain countries refuse extradition, this is reported to the other NCBs in an addendum to the original notice”.

## V. FINDINGS

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

### A. Irregularities of the proceedings

#### *a) The Applicant*

18. The Applicant explains that the criminal investigation against him was opened in ... based on a fabricated charge and ..., the investigator obtained a permission of the court for his arrest. This judicial decision was issued on ... and was valid for ... months.
19. On ..., decision of the country A’s court dismissed the Prosecutor’s request of country A to issue a new permission to detain as the Prosecutor failed to demonstrate that the Applicant was hiding ..., especially in view of the fact that there was a statement from the Applicant where he indicated his place of residence and sought to be questioned via video conference.
20. The Applicant adds that despite the ... decision of the country A’s courts, the NCB of country A sent a diffusion for his arrest via INTERPOL’s channels based on the initial judicial decision allowing his arrest. In proof of this, he provided a copy of the diffusion sent on ... by the NCB of country A for his arrest in view of extradition, based on above-mentioned judicial decision.
21. Moreover, the Applicant argues that the judicial decision forming the basis for the diffusion was not an arrest warrant. Indeed, according to him that there are no valid decisions of country A’s courts to allow his arrest or detention. He supported his contention by citing a court decision .... He also provided the copy of a decision of country A’s courts ... which acknowledged that the Applicant is located and stated his address, to which the notification of suspicion should have been sent.
22. Finally, the Applicant claims that he informed country A’s authorities of his location and willingness to be interrogated in country B via video conference. However, country A’s authorities have refused to engage.

#### *b) The NCB of country A (NCB source of the data)*

23. In its reply, the NCB of country A first advised the Commission that the decision ... to issue a permission for the detention of the Applicant was based on a lack of reason given by the investigator to issue such an order. However, since then, in view of new elements provided, the investigative judge of the country A’s court satisfied the motion of the investigator to select a measure of restrain in form of custody against the Applicant. In addition, the court of appeal of country A left the decision unchanged.
24. In response to the Applicant’s claim concerning his request to be interviewed by country A’s authorities, the NCB of country A stated that according to the country A’s Criminal Procedure Code, the interrogation of persons during ... investigation may be conducted by video-conference where certain persons are unable to directly participate in pre-trial proceedings because of their state of health or for other valid reasons. The NCB explained that in this case, interviewing the Applicant in country B via video conference was not justified, as his interrogation during pre-trial investigation should be conducted at the place of criminal proceeding of the criminal case, with the possibility of making other investigation actions.

25. In addition, the Applicant's request to conduct an interview via video-conference was denied by the investigating judge, as evasion from the pre-trial investigation is not a valid reason, and the fact that the Applicant is evading pre-trial investigation was confirmed by trial court and court of appeal.

26. The NCB added that they had requested the extradition of the Applicant from Germany.

**c) The NCB of country B**

27. The NCB of country B located the Applicant in the capital of country B after having received the diffusion from the NCB of country A. He was arrested on ..., released on ... on bail, and had to fulfil weekly obligations.

28. ... in country B received the extradition documents and as of ..., a final decision had not been taken.

**d) Findings of the Commission**

29. 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.

30. 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.

31. Here, it is not contested that on ..., the Applicant was requested to appear on ... at the Prosecutor's office .... However, on ..., he confirmed having received the notice and informed the Prosecutor's Office that he would not appear on the requested date. On ..., the notification of suspicion dated ... was sent by email to the Applicant.

32. The Commission highlighted that the Applicant was added to the international wanted list in country A based on a letter of the Head police station, dated ..., and on a Certificate of the Center of ...

33. Then, the Commission established from the judicial decision of ..., which forms the basis of the diffusion, that the Applicant's defence lawyer was present during the hearing. The lawyer had the possibility of presenting his arguments, and in particular that the Applicant was not hiding from pre-trial investigation he has been residing in country B officially since ... and had offered to be interrogated via video conference. The procedure followed at national level by the country A's authorities in charge of the investigation were detailed in the said decision. Finally, the investigative judge approved the ... custody without a time limit, and without the pre-requirement of processing of data through INTERPOL's channels.

34. Furthermore, from the decision ... of the country A's court, provided by the Applicant, the Commission also noted that the Applicant's lawyer had been present during the hearing and had the possibility of presenting his arguments. In this decision, the investigative judge provided that the decision of... "*was legally valid and not subject to reversal*". The Decision the Courts of ... in respect of the Applicant, while acknowledging his place of residence also left the order of ... unchanged.

35. In order to respect the spirit of the UDHR while at the same time respecting the role of the Commission, the simple assertion of possible procedural irregularities cannot rise to the level of an Article 2 violation. In this case, the Commission finds that the elements provided by the NCB are sufficient to indicate the validity of the suits, and that it has no reason to refute that the prosecution is potentially valid. Thus, the Commission finds that the information provided by the Applicant does not demonstrate the likelihood that a flagrant denial of justice took place, and it concludes that the processing of the data concerning the Applicant is compliant with Article 2 of INTERPOL's Constitution.

36. The Commission also noted that the location of the Applicant is known to country A's authorities. It recalled that, here, the purpose of the diffusion is not only to locate the Applicant, but also to request his provisional arrest in view of extradition. Therefore, the fact that the Applicant's location is known to country A's authorities does not undermine as such the lawfulness of the diffusion.

37. However, INTERPOL's rules require that the requesting NCB takes appropriate step to achieve the purpose for which the diffusion was sent, 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.

38. In this regard, the information provided by the NCB of country A, which was confirmed by the NCB of country B, highlight that the authorities in country A have taken steps to respect their obligations under applicable law, and to request the extradition or surrender of the Applicant from country B, if possible.
39. In conclusion, the Commission recalled that INTERPOL General Assembly resolution AGN/53/RES/7 of 1984 states that “*if certain countries refuse extradition, this is reported to the other NCBs in an addendum to the original notice*”. It held that this Resolution applies to the present case, and that should country B’s authorities deny extradition of the Applicant to country A, it is reported in INTERPOL’s files.

## **B. Political character of the proceedings**

### ***a) The Applicant***

40. The Applicant claims that the proceedings initiated against him are politically motivated, as he was part of the opposition party of Mr. Y and elected as .... As such, he repeatedly reported on corruption of local officials. In ..., he received threats to his life and thus left the country for country B where he resides.
41. The Applicant claims that the charges against him were fabricated in order to stop his ... activities.

### ***b) The NCB of country A***

42. The judicial decision dated ..., sent by the NCB of country A, provides details on the acts the Applicant is accused of, while he was Head of a company.
43. These acts, which are detailed in the summary of facts of the diffusion, include abusing his official position by ...

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

44. 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.
45. 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; and
  - the general context of the case.
46. In reviewing the applicable criteria under the predominance test, the Commission established that here, the offense as described is of a common law character in which NCB of country A has set forth sufficient elements concerning the possible effective participation of the Applicant.
47. The Commission considered that the Applicant was elected as ... in .... He was a member of the opposition party of Mr Y and ....
48. However, the Commissions also highlighted that the acts the Applicant is accused of were not committed in his capacity of elected but in that of Head of the company “...”. In addition, the elements provided by the NCB of country A highlight the possible abuse of the Applicant’s position as Head of the company to obtain personal gain, as well as the existence of concrete elements characterizing the personal benefits for the Applicant of the facts concerned.
49. Accordingly, the information provided by the Applicant is not sufficient to establish that political elements are predominant over the 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.

## FOR THESE REASONS, THE COMMISSION

1. Decides that the data challenged are compliant with INTERPOL's rules applicable to the processing of personal data, subject to the following update of the Applicant's file:
2. Decides that should country B's authorities deny extradition of the Applicant to country A, it is reported in INTERPOL's files.

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