



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

DECISION OF THE COMMISSION

(102nd session, 24 to 27 October 2017)

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

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

Having deliberated in camera during its 102nd 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 the applicant thereof on [...].
2. 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.
3. 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 102nd session.

II. FACTS

4. The Applicant is a national of [...].
5. She is the subject of a red notice issued at the request of the NCB of [...] for [...] on the basis of an arrest warrant issued on [...] and a European arrest warrant issued on [...] by the [...].
6. The summary of the facts, as recorded in the red notice, is the following: [...]
7. An extract of the red notice was published on INTERPOL's website.
8. On [...], the NCB of [...] cancelled the Red Notice to replace it by a new one based on a new arrest warrant issued on [...] and a new European Arrest Warrant issued on [...] by the [...].
9. On [...], the Extract of the Red Notice was removed from the INTERPOL public website when the NCB of [...] cancelled the Red Notice to replace it by a new one.

III. THE APPLICANT'S REQUEST

10. The Applicant requested the deletion of the data concerning her.
11. She contends in essence that:

- a) the prosecution lacks any evidentiary basis
- b) the proceedings are not lawful and do not respect her human rights.

IV. APPLICABLE LEGAL FRAMEWORK

12. 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".

13. 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.

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."
- [...]

V. FINDINGS

15. In reviewing the issues raised, the Commission based its findings on information provided by the Applicant, the NCBs concerned and INTERPOL's General Secretariat.

16. The Commission treats the Applicant's contentions in the order in which they are described in paragraph 11 above.

A. Lack of evidentiary basis

a) The Applicant

17. The Applicant argues that the criminal proceedings against her were initiated by the [...] as reprisals for an article she collaborated to, questioning the methods of the [...] and its involvement in money laundering activities.

18. She specifies that the claim made by [...] for defamation against the publisher of the article was dismissed by the [...] Court of [...].

19. She adds that she could not have stolen money from the company since she never had access to monetary funds.

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

20. As requested by the Commission, the NCB of [...] provided further elements concerning the facts of the case.
21. [...]
22. The NCB provided a copy of the European Arrest Warrant issued against the Applicant which also contains information on the facts of the case in its part (e):
23. [...]
24. The European Arrest Warrant issued against the Applicant contains the law covering the offences, and in particular refers to [...] which provides: [...]
25. As for the Applicant's allegation that the claim made by [...] for defamation against the publisher of the article was dismissed by the [...] Court [...], the NCB specified that the investigator of the case contacted the Director of the company who stated that she was not aware if any decision has been issued.

c) Findings of the Commission

26. The processing of data in INTERPOL's files requires the provision of sufficient facts that link the wanted individual to the charges against him/her, and a clear description of the criminal activities he/she is accused of.
27. 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. 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.
28. Instead, the Commission reviews whether the NCB concerned provided sufficient information that link the wanted individual to the charges against him/her, and a clear description of the criminal activities he/she is accused of to indicate the possible effective and personal participation of the Applicant to the criminal acts of which she is concerned.
29. The Commission finds that this has been provided in the present case, and that the NCB of [...] has put forth a reasonable explanation that the case materials collected refuted the Applicants contentions of lack of evidentiary basis, as the elements provided by the NCB are sufficient to indicate the possible effective and personal participation of the Applicant to the criminal acts of which she is accused.

B. Lawfulness and compliance with human rights

a) The Applicant

30. The Applicant claims that the red notice and related information in INTERPOL's databases and systems violate her right to freedom of expression under the Universal Declaration on Human Rights, and her right to a fair trial under the Universal Declaration of Human Rights, since she was never informed of any criminal case opened against her. She also questions the impartiality and independence of the tribunal that would judge her, given the importance of the company [...].

b) The NCB of [...]

31. In its reply, the NCB of [...] explained that the Applicant could not be informed about the criminal case against her by its authorities due to the fact that she could not be located. According to the immigration records, the subject departed from [...].
32. The NCB of [...] stated that it objected to the disclosure to the applicant of information other than the one publicly available, in order to protect the confidentiality of the investigation and prosecution.

33. The NCB explained that a person suspected of an offence has no right to receive any documents, including the warrant of arrest against him/her, which relate to the criminal case against him/her. Only a suspect arrested and held in custody has this right to receive these documents under [...] Criminal Law.
34. An applicant may apply to the [...], in its capacity as the national Prosecution Authority. However, in light of [...], this is only possible once the suspect becomes an accused person i.e. upon the filing of an indictment. Given that in the present case, the applicant is still a suspect she is not yet entitled to such information.
35. The NCB further confirmed that if the Applicant is arrested, its authorities are in a position and ready to request her extradition, and that she is considered as “a person against whom criminal proceedings have been initiated for allegedly committing an ordinary-law crime”, in the meaning of Article 44 (1)(b) of the RPD.
36. [...]
37. The NCB of [...] added that the offense of money laundering can be justified since the amount of money that the Applicant has misappropriated was proceeds of theft and considering that theft is a predicate offense.

c) Findings of the Commission

38. The Commission recalled that it is not its role to assess a country’s law enforcement or judicial system *in abstracto* and that it does not rely on general statements concerning the situation in a country. It examines the compliance of data with INTERPOL’s rules on the basis of specific information related to the person who is the subject of the request.
39. In order to respect the spirit of the Universal Declaration of Human Rights while at the same time respecting the role of the Commission, the simple assertion of possible procedural irregularities or the contention that he Applicant would be subjected to pre-trial detention cannot rise to the level of an Article 2 violation.
40. In light of the explanations and clarifications provided by the NCB of [...], the Commission finds that there is a valid legal basis to the Red Notice issued against the Applicant and that the information provided by the Applicant was not substantiated enough to demonstrate the likelihood of a flagrant denial of her fundamental rights.

FOR THESE REASONS, THE COMMISSION

Decides that the data challenged are compliant with INTERPOL’s rules applicable to the processing of personal data subject to updating the Applicant’s file with [...].