



Request concerning [...]

(Ref. CCF/[...])

DECISION OF THE COMMISSION

(104th session, 23 to 27 April 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 104th 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 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 [...] and INTERPOL General Secretariat (IPSG) were consulted on the arguments set forth in the complaint.
3. The Commission informed the Applicant on [...] that he is the subject of data processed through INTERPOL's channels by [...], as described in paragraphs 6 to 8 below.
4. Both the Applicant and the NCB source of the data challenged were informed on [...] of the fact that the Commission would study the case during its 104th session.

II. FACTS

5. The Applicant is a national of [...]. He was the [...], appointed by [...] Regional State Administration.
6. He is the subject of a blue notice request by [...] as a suspect for his location and to obtain information, on offences of [...].
7. The summary of the facts, as recorded in the blue notice request, is the following: [...].
8. The additional facts of the case are the following: [...].
9. On [...], a judicial decision was issued by the [...] for the Applicant's arrest.

III. THE APPLICANT'S REQUEST

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

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- a) there are some irregularities in the proceedings;
- b) the suits are politically motivated;
- c) the prosecution lacks any evidentiary basis.

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 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.

14. 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.*"

15. 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;*"

16. Matters of political character:

- Article 3 of INTERPOL's Constitution provides that: "*[i]t is strictly forbidden for the Organization to undertake any intervention or activities of a political (...) character.*"

- Article 34(3) of the RPD states that: “*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.”*

V. FINDINGS

17. In reviewing the issues raised, the Commission based its findings on information provided by the Applicant, the NCBs concerned and INTERPOL’s General Secretariat.
18. The Commission treats the Applicant’s contentions in the order in which they are described in paragraph 11 above. The Commission decided to study together under point B below the related issues of whether the proceedings are politically motivated and lack evidentiary basis.

A. Procedural irregularities

a) *The Applicant*

19. The Applicant first asserts that he cannot be declared as a suspect according to the criminal procedure of [...], nor can he be wanted as he was not served properly with the notification of suspicion.
20. The Applicant added that despite knowing his place of residence in [...] to another address. He states that there is no evidence that he is outside of [...].
21. The Applicant argues that the issuance of the decision [...] of detention in custody was only possible because data had been processed in INTERPOL’s files for the Applicant’s location.
22. This was confirmed by a letter sent on [...] by the NCB of [...] to the [...] Prosecutor’s Office with a print out of [...], whereas the blue notice had not been published by IPSP, and was still under review.
23. The decision was made without the Applicant’s presence or his designated lawyer’s participation. As evidence of this, he provided a copy of the letter of [...] addressed by the NCB of [...] to the [...] Prosecutor’s office including a printout of [...], where it is stated that the request for blue notice was being processed.
24. The Applicant also explained in his request that the same decision of [...] was not signed by a judge or stamped by the Court, thus rendering it inadmissible, and that contrary to what is written, it can be the subject of an appeal.
25. Finally, in a later submission the Applicant received [...] he informed the Commission that by decision dated [...], [...] cancelled the decision of [...] measure of detention to the Applicant. This measure is final and not subject to appeal. The main reasons for this cancellation were that:
 - the rights of the defence were violated, as the decision was taken by the investigative judge without the Applicant or his lawyer,
 - the Applicant was not notified within the delays required by law: [...],
 - there were significant violations of the requirements of the criminal procedural law.
26. These procedural irregularities are further confirmed in a communication received on [...] provided by the Applicant and following up on the [...] submissions, in which the [...] explains the most recent events. [...] confirmed that the case was initially in the hands of the Prosecutor of the [...] office.
27. [...] transferred yet again the proceedings [...] back to the General Prosecutor.

28. [...] no investigative actions have been taken, that the law enforcement agencies are delaying their responses and their investigation because the case is “unpromising and unprovable”. He states that inactivity of investigators violate his right to a fair trial.
29. Furthermore, [...] additional information was sent by the applicant’s representative, in which he exposes that his location is known by the [...] authorities.

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

30. In its reply of [...], the NCB of [...] explained that the Notification of Suspicion against the Applicant was drafted on [...] and sent by postal mail to the Applicant on [...] in accordance with the requirements of [...] of the [...] Criminal Code.
31. Indeed despite having been summoned, the Applicant did not come to the General Prosecutor’s office on [...], and failed to provide the reasons for his absence. The Applicant’s wife and his defence counsel also received similar notifications. The NCB also specified that the Applicants lawyers have participated in the criminal proceedings since [...].
32. To date, apart from a letter dated [...] providing additional details on the circumstances of the alleged criminal offenses, the NCB has not commented further on the specific question of the conduct of the proceedings in this case, despite several invitations to do so.
33. In response to the Applicant’s claim that his whereabouts are known to [...] authorities, the NCB stated that the [...] pre-trial investigation body took all possible measures to locate the Applicant, though the specifics of such measures have not been commented on to date.

34. According to the State Border control and the information from the Applicant’s mobile telephone operator, he has been abroad since [...]. The Applicant’s defence council has provided an address of residence in [...] for the Applicant, however as this information was not provided directly by the Applicant it could not be verified. The NCB added that in case of location, the pre-trial investigation bodies would apply to the relevant State for the Applicant’s provisional arrest in view of extradition.

c) Findings of the Commission

35. To address the Applicant’s contentions regarding the procedural irregularities in this case, the Commission assessed the circumstances surrounding the procedure followed at national level to institute and carry on legal proceedings.
36. For that purpose it recalled that 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, weigh evidence, or make a determination on the merits of a case. That is the function of the competent national authorities.
37. Rather, in carrying out an Article 2 analysis, the Commission considers all relevant information to determine whether the Applicant has convincingly demonstrated the likelihood that a flagrant violation of procedure took place. It also highlighted that a blue notice does not require the existence of a valid arrest warrant as its purpose is to locate, but does require that a criminal investigation be ongoing.
38. In that context, the Commission first noted that the NCB of [...] described the circumstances surrounding the notification of Applicant, and confirmed that the national procedures were followed in this case. However, in the decision of the [...], the Court decided that the investigators had not respected the requirements of the [...] should have been sent on the same day as its issuance, and not nearly 15 days after, as was the case here.
39. From the documents provided by the Parties, it appears that on [...], a decision of the [...], was issued against the Applicant, to permit his detention [...]. This decision was valid for [...] months. On [...], NCB of [...] requested the publication of a blue notice for the Applicant’s location and to obtain additional information. Although this blue notice was not published and placed under legal review by the INTERPOL General Secretariat, [...].

40. Despite the fact that the blue notice had not been published, and was under legal review by the INTERPOL General Secretariat, on [...], the NCB of [...] confirmed to the relevant [...] judicial authorities that data concerning the Applicant had been processed through INTERPOL's channels to identify his whereabouts and provided a copy of a printout of [...].
41. On [...], a Decision of [...] to permit the Applicant's apprehension with an aim of bringing to court, which has no time limit, was issued against the Applicant. This decision provides that [...]. It also appears from the Court decision that the Applicant's defence lawyer was not present during the hearing and therefore did not have the possibility of presenting his arguments. The Commission noted that the initial request for a blue notice against Applicant was used in issuing the judicial decision of [...].
42. The Appeals Court of [...] cancelled this decision on [...], in essence because the rights of the defence were not respected in this case. The Court cited the fact that the Applicant had submitted a request to the Commission for the Control of INTERPOL's Files and that the blue notice had not been published yet.
43. The Commission held that the indicia provided above are indicative of procedural irregularities and raise significant doubts as to the assurance of the Applicant's rights to due process or to a fair trial if returned to [...].
44. The Commission considered that a blue notice does not require the existence of a valid arrest warrant as its purpose is to locate, but that a criminal investigation be ongoing. Here, from the information provided it appears that the investigation is still ongoing. In this regard, the existence or absence of a valid arrest warrant is not relevant *per se* for the compliance of a blue notice. No measures of restraint or arrest is required by the receiving country. From the information provided by the NCB the location of the Applicant is unknown to their authorities, which seek him for interrogation and establishing the objective truth in this case. However, the NCB stated that the Applicant's location might also lead to a request from [...] authorities for his provisional arrest in view of extradition. This calls into question the purpose for which the blue notice was issued.
45. As a result, the Commission finds that the purpose for the publication of the blue notice could be called into question.
46. Indeed, in the [...] communication sent by the Applicant, he argues that the use of INTERPOL's blue notice is groundless because his location is known.
47. On this issue, the NCB [...] responded on the letter dated [...], by stating that they were aware that he had been in [...] since [...], and noted that the defence provided an address for the applicant in the [...] but stated that [...].
48. On [...], the Applicant further added that in this communication of [...], in which he disclosed the location to the [...] Prosecutor's Office of [...], he explained that he was willing to cooperate but held in [...] for health reasons. The Applicant attached the letter but did not provide a translation in one of the official languages of the Commission.
49. 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 continue to study the Applicant's additional claims.

B. Political character of the proceedings and lack of criminal element

a) The Applicant

50. The Applicant states that there is no objective evidence of any wrongdoing on his part except from the testimony of [...] which itself cannot be deemed trustworthy, and confirms a partial nature in the proceedings opened against the Applicant. Indeed, [...] by testifying against the Applicant, was exempted from serving a sentence. The Applicant claims that he should not have been interrogated as a witness in the same case where he was a convict as this is a violation of the principles of criminal proceedings. In addition, the Applicant could never have promised any career development as this

type of appointment can only be based on a [...]. Finally the document was signed by [...] after dismissal of the Applicant from his function [...].

51. He contends the proceedings are in fact politically motivated. He was appointed by [...] there is no direct evidence of his guilt, he is suspected only of incitement, he took no illegal or groundless decision and obtained no undue advantage. [...]

52. [...]

b) The NCB of [...]

53. The NCB of [...] provided additional information concerning the acts the Applicant is suspected of having committed in relation with a criminal offence of incitement in a communication received on [...], by persuasion and subornation, to abuse of authority or office, that is an intentional use of authority or official position contrary to the official interests by an official for the benefit of third persons, where it caused substantial damage to public interests.

54. The NCB specified that [...] as a punishable criminal act when an official used the authority or official position contrary to the official interests for obtaining the illegal profits for himself or other persons.

55. The Applicant is suspected of having incited [...] to commit an abuse of office, by bribing him and promising [...] to assist him in an appointment to the position of [...].

56. Following the Applicant's instructions, and hoping to be promoted, [...] transferred that ownership to individuals who were used as straw-persons. This act was illegal as there was no public necessity or social need to sell the land plots. The said land area of [...] were granted to certain number of individuals free of charge.

57. [...]

58. [...] illegal profits by receiving free ownership in land plots within the administrative limits [...].

59. Concerning the status of [...] and his testimony, the NCB explained that he is not convicted in the same criminal proceedings as the Applicant. In addition, in accordance [...] a convicted person cannot be a witness. [...] is an individual who knows or may know of circumstances that are subject to proof in the course of criminal proceedings.

60. Finally, the NCB provided that the criminal proceedings against the Applicant are not politically motivated.

c) Findings of the Commission

61. 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.

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

63. In reviewing the applicable criteria under the predominance test, the Commission established that the Applicant is not a politician or former politician.

64. Here, the offense is recorded as [...] for which the underlying facts provided in the case summary submitted by the NCB of [...] describe a common law offence. In the context of an Article 3 review, the Commission also requires the provision of sufficient facts that link the suspected individual to the offences held against him, and a clear description of the criminal activities he is suspected of.

65. In its review of whether the NCB provided sufficient information that link the Applicant to the offences he is suspected of, it appears to the Commission that there is no detailed explanation of how, under which circumstances, the Applicant has bribed [...] into committing an offence, or how the Applicant would have personally benefited from this bribery or would have provided an undue advantage to persons from his entourage. Yet, the responses of the NCB of [...] seemed conclusive in stating that the Applicant had committed an offence and that it had sufficient elements of proof to corroborate this accusation.
66. The Commission highlighted that the request at hand is that of a blue notice, where the [...] authorities would need to obtain additional information in this case. Nevertheless, it found that the information above raised doubts as to whether there were enough elements to confirm the Applicant's effective and personal participation in the acts he is accused of.
67. The general context of the case reveals that the Applicant's position as [...] was appointed upon [...] Decree. He held this position from [...], which brings a political dimension to the case.
68. In view of all these elements, and recalling the prior doubts identified concerning the procedural irregularities, the underlying purpose for the publication of the blue notice and use of INTERPOL's channels, the sufficiency of elements of possible effective participation of the Applicant, as well as the political elements surrounding the proceedings, the Commission concluded that weighing in all these elements, the data challenged is not compliant with INTERPOL's rules applicable to the processing of personal data.

FOR THESE REASONS, THE COMMISSION

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