



DECISION OF THE COMMISSION

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

Having deliberated in camera, delivered the following Decision

I. PROCEDURE

1. In ..., the Requesting Party (hereafter “the RP”) requested access to INTERPOL's files and lodged complaints.
2. In ..., INTERPOL General Secretariat studied the case and concluded that it was not demonstrated that the suits presented a predominant political character.
3. The RP's requests were also considered by the Commission during its ... sessions, in It was not able to conclude that the retention of the data concerning the RP would not be compliant with INTERPOL's rules, subject to the following recommendations, implemented by the General Secretariat:
 - additional information on denial by the COUNTRY A authorities of the COUNTRY B request for mutual legal assistance;
 - caveat on the fact that “issues have been raised about the alleged political character of persons associated ... and about the fairness of the procedural aspects of the suit”.
4. The RP has been informed of the conclusions of the Commission in
5. On ..., the RP lodged a new complaint addressed to the Commission. To support his request for re-examination of his case, the RP provided new elements, in particular findings from international and regional bodies, in the meaning of Article 19 of Operating Rules of the Commission.
6. Following submission of all the required documents in accordance with Article 10 of the Operating Rules, the Commission informed the RP of the admissibility of his request on ... and of the applicable procedure. The RP has provided further elements to support his claim, which were considered by the Commission.
7. After a preliminary review of the new elements provided by the RP, the Commission accepted to review the case.
8. On ..., access by INTERPOL's Members to the RP's file was blocked by the General Secretariat in compliance with the Recommendation of the Commission. On ..., the RP was informed thereof.
9. In accordance with article 5(e,4) of the Rules on the Control of Information and Access to INTERPOL's files, the National Central Bureau of INTERPOL (NCB) of COUNTRY B was consulted on the arguments set forth in the complaint.

II. FACTS

10. The RP is a national of COUNTRY C. He served in both the private and public sectors in country B. His positions included:...
11. He is subject to a Red Notice issued on ... at the request of the NCB of COUNTRY B. He is wanted for “...”.
12. On ..., the RP was sentenced to life imprisonment following two trials in absentia.

13. The summary of the facts, as recorded in the red notice issued in ..., was the following:

“...”

14. The summary of the facts, as updated in the addendum/corrigendum to the red notice, dated ..., is the following:

“...”

III. THE RP'S REQUEST

15. The RP requested the immediate deletion of the data concerning him registered in INTERPOL's files. He invited the CCF to receive the same treatment as other ... related individuals, whose data were deleted from INTERPOL's files.

16. The RP contended in essence that the data registered in INTERPOL's files are inaccurate, that there is a lack of evidentiary basis, that the suits are politically motivated and lack due process.

IV. APPLICABLE LEGAL FRAMEWORK

17. 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”.
- Article 34 of the RPD requires that “the National Central Bureau (...) shall ensure that the data are in compliance with Article 2 of the Organization's Constitution, and also that it is authorized to record such data pursuant to applicable national laws and international conventions and to the fundamental human rights enshrined in the Universal Declaration of Human Rights”.

18. Compliance with 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 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”.

19. 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 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.“

- 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 provides 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 Bureau or the NCBs, even if - in the requesting country - the facts amount to an offence against the ordinary law.”
- Resolution ref. AGN/53/RES/7 (1984) emphasizes that each request requires review on a case by case basis with due consideration of the specific context.

20. Effective participation of an individual to the acts he 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.”
- ...

21. Quality of the data:

- Article 12 of the RPD states that “Data processed [...] must be accurate, relevant, not excessive in relation to their purpose and up to date, to allow them to be used by authorised entities”.

V. FINDINGS

22. The findings of the Commission are based on the elements before it, as presented by the RP, the NCBs concerned and INTERPOL General Secretariat.

A. Inaccuracy of the data processed in INTERPOL’s files

23. The RP claimed that the information registered in INTERPOL’s files was not accurate. He stressed in particular that the allegations of ... were abandoned on ..., but that INTERPOL’s files were not properly updated as they continue to refer to the accusations of ...
24. On ..., INTERPOL published an addendum/corrigendum to the red notice. This addendum/corrigendum describes the facts the RP was accused of, but still refers to the fact that
25. Therefore, the Commission finds that indeed the data provided by the NCB and registered in the file of INTERPOL General Secretariat were not properly updated.

B. Political character of the case and lack of due process

26. The RP claimed that the suits against him are fundamentally grounded in politics and that his right to fair trial was violated.
27. On the question of due process of law, the RP stated that COUNTRY B has utilized various means to manipulate the proceedings in an effort to gather evidence against him and to fabricate a case from multiple layers of hearsay. He also claimed the existence of procedural errors during his trial in absentia. The court refused to summon any requested defence witness and to allow cross-examination of the prosecution evidence.
28. The NCB of COUNTRY B explained that the RP was represented during the proceedings by his defence lawyer, that he appealed the judgment of , but that the Supreme Court of the COUNTRY B stated on ... that this judgment shall be affirmed and remain unaltered. It specified that there is no possibility of retrial for the same case regarding the subject. However, the NCB did not provide its views on the RP’s

claim that during his trial in absentia, the court refused to summon any requested defence witness and to allow cross-examination of the prosecution evidence.

29. With respect to the RP's assertion that the matter is of a political character, the Commission recalled that INTERPOL's rules require applying a predominance test, which consists of an evaluation of various factors. In the present case, the status of the RP and the position expressed by other NCBs or other international entities are key factors reflected in Article 34(3) of RPD, which demonstrate the following.
30. The profile of the RP's case differs from the profile of ... in that he is also wanted for However, concerning the status of the RP, it is established that he was ... and a political opponent in COUNTRY B.
31. Concerning the positions expressed by other NCBs or other international institutions, the RP provided decisions from various countries from international entities and from judicial authorities criticizing the COUNTRY B authorities' conduct in the ... cases.
32. In this regard, among others, the following decisions are of particular interest.
 - On ..., the ... found violation of the right to a fair trial arising from the COUNTRY B Court's in cases of the RP's former partners.
 - On ... , the ... found that criminal proceedings directed against ... entailed breaches of the ECHR.
 - On ... , ... held that that COUNTRY B had subjected ... to politically-motivated attacks and had violated the rights of ..., including their rights to a fair trial.
 - On ... , the ... accorded ... enhanced supervision, as a result of COUNTRY B courts' failure to provide him with a fair re-trial, in derogation of the ... decision in his case.
 - On ..., a court of COUNTRY D agreed to an Order ... which includes various information relating to the political character of the RP's case.
33. The Commission underlined that these decisions highlight the impact of the political context of the ... related cases on the fairness of procedures. The issues of the political context of the case and of the fairness of procedures are inextricably linked.
34. In addition, the Commission recalled that, in recent complaints studied, it concluded, in view of the multiplicity of national and international court decisions and arbitral awards relating to the political character of the cases involving persons closely related ..., that the suits presented a predominant political character.
35. Accordingly, for purposes of this review, the Commission finds that, in view of the above mentioned, the political elements of the case are predominant over the common law crime elements. It also finds that these findings raise considerable doubts that the proceedings against the RP, which were predominantly politically motivated, were not based on the rule of law and that the above mentioned information provided by the RP is sufficient to hold that the suits lack due process.
36. Since the CCF can conclusively dispose of the matter in favor of the RP on the above bases, the Commission did not consider the other elements of the complaint.

FOR THESE REASONS, THE COMMISSION

1. Concludes that the data challenged are not compliant with INTERPOL's rules applicable to the processing of personal data;
2. Recommends that the data provided by the NCB of COUNTRY B concerning the RP are deleted from INTERPOL's files.

