

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

DECISION OF THE COMMISSION
(102nd session, 24 to 27 October 2017)

[...], withdrawing based on Article 2.1(d) of the Operating rules of the Commission,

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

[...]
Members,

Having deliberated in camera during its 102nd 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 Article 10 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. He is the subject of a green notice issued on [...] at the request of [...] to warn in relation with the offence of CRIMINAL ORGANIZATION/ASSOCIATION/GROUP.
6. The summary of the facts, as recorded in the green notice, is the following: [...].

III. THE APPLICANT'S REQUEST

7. The Applicant requested the deletion of the data concerning him.
8. He contends in essence that:
 - a) the case is of a predominantly religious character;
 - b) there is a lack of any evidentiary basis.

IV. APPLICABLE LEGAL FRAMEWORK

9. 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 34 of the RDP 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”.

10. 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.

11. Green Notices

- Article 89 of the RPD states that:
“Green notices are published to warn about a person’s criminal activities.
Green notices may only be published under the following conditions:
(a) The person is considered to be a possible threat to public safety;
(b) This conclusion has been drawn from an assessment by a national law-enforcement authority or an international entity;
(c) This assessment is based on the person’s previous criminal conviction(s) or other reasonable grounds;
(d) Sufficient data concerning the threat are provided for the warning to be relevant.
A green notice may only be published if it provides sufficient identifiers. (...)
The National Central Bureaus and national entities that receive green notices shall take the appropriate measures, in conformity with their national laws.”

12. Matters of religious 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 (...) religious (...) 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 states that “(...) no request for information, notice of persons wanted and, above all, no request for provisional arrest for offences of a predominantly (...) religious (...) 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.”
- The INTERPOL Repository of practice on Article 3 provides guidance on the application of Article 3 of INTERPOL’s Constitution in a variety of circumstances.

V. FINDINGS

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

14. The Commission treats the Applicant's contentions in the order in which they are described in paragraph 8 above.
15. In addition, the Commission decided to study together the related issues of religiously motivated charges and a lack of evidentiary basis.

Religiously motivated charges and Lack of evidentiary basis

a) The Applicant

16. The Applicant asserts that the data registered against him is related to his religion, therefore religiously motivated. After he converted to Islam, the Applicant explains that joined many organizations and projects with friends for helping [...] Muslims. He was subject to cruelty and threatened many times while living in [...] due to his religion, therefore he moved from [...] to live a peaceful life.
17. [...] Ethnic Muslims are deprived of Islamic schools, places of worship, and other religious sources as they are closed and blocked. Anti-Muslim TV and other media sources make it difficult for Muslims to take a place in the society. Furthermore, local Islamic Centres and mosques are exposed to police raids and Friday prayers become impossible as several places of worship are closed as a result which blocks the ability for Muslims to pray and perform other activities.
18. Printed publications and Islamic videos produced by Muslims are prohibited. People are arrested by police when they exit from the mosque, and [...] media shows that [...] Muslims are terrorists. Therefore [...] Muslims are arrested unlawfully, exposed to torture, and are tried quickly.
19. Furthermore, he argues that there is a lack of evidentiary basis as he did not join any illegal activities and did not get mixed in anything else. He was informed of the green notice issued against him and has faced difficulty because of its existence.

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

20. In its reply, the NCB of [...] explained that the Applicant is still an active follower of radical Islam and continues to spread the ideas of radical Islam with a view of overthrowing the [...] order. Thus, he remains a threat to public safety. These conclusions, as well as the information in the summary of facts of the green notice, was made by the competent police authorities of [...] and confirmed by the main department for combating terrorism [...].
21. The green notice was initiated as soon as the [...] enforcement authorities received information that the Applicant decided to travel abroad where he may have made contact and involved himself and his friend in the activities of terrorist organizations.
22. The application for the publication of the green notice by the [...] law enforcement authorities' means that the Applicant is subject to ongoing police checks where there are reasonable grounds to suspect his involvement in criminal activities, which corresponds to Article 89 of INTERPOL's RPD and fixed in [...] internal rules.
23. Finally, the disclosure of the information from the green notice to the Applicant endangers the efforts of the [...] police authorities. Therefore, the legal owner of the information related to the green notice refuses INTERPOL the right to disclose any data related to the green notice to the Applicant.

c) Findings of the Commission

24. With respect to the assertion that the matter is of a religious 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 religious character.
25. 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 position expressed by another National Central Bureau or another international entity;
 - the obligations under international law; and
 - the implications for the neutrality of the Organization.
26. Here, the offense as described is of a common law character in which NCB of [...] has provided sufficient elements concerning the possible effective participation of the Applicant.
27. The Commission considered that the Applicant does not appear to be a religious leader, no NCB or international organization has taken the position that Article 3 had been violated with relation to the Applicant, and the offense does not appear to undermine the neutrality of the Organization in the context of this case.
28. The INTERPOL Repository of Practice on Article 3 states that: “the existence of religious and racial elements, however, does not entail the immediate application of Article 3. Indeed, restrictions prescribed by law on the freedom of religion deemed “necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others” do not contravene an individual’s right to religion and will not be considered as pure religious offences.”
29. In this case, the Applicant is subject to a green notice issued at the request of [...]. According to Article 89 of the RPD, as seen in paragraph 11 above, green notices may be published to warn about a person’s criminal activities and may be published if the person is considered to be a possible threat to public safety. This conclusion must have been drawn from an assessment by a national law enforcement authority or an international entity and based on the person’s previous criminal conviction(s) or other reasonable grounds. Furthermore, sufficient data concerning the threat should be provided for the warning to be relevant.
30. The Commission considered that the NCB of [...] provided it with the abovementioned qualifications and sufficient information on the fact that the Applicant remains a threat to public safety.
31. 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.
32. Accordingly, even assuming that there may be a religious dimension to this case, the Commission finds that the information provided is not sufficient to establish that these religious elements were 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

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