



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

DECISION OF THE COMMISSION
(105th session, 3 - 5 July 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 105th session, on [...], delivered the following Decision.

I. PROCEDURE

1. On [...], Mr [...] (the Applicant) lodged a complaint before 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. As no data concerning the Applicant was registered in INTERPOL's files at the time, the Commission coordinated with INTERPOL's General Secretariat in order to address the preemptive nature of the complaint. The Commission informed the Applicant that his request was given full attention so that all the information provided could be taken into consideration in the context of INTERPOL's rules.
3. On [...], the National Central Bureau of INTERPOL (NCB) of [...] sent a Red Notice request concerning the Applicant, for his arrest in view of extradition. The data concerning the Applicants was not un-blocked by INTERPOL's General Secretariat upon receipt.
4. On [...], INTERPOL's General Secretariat informed the Commission of the NCB's request to register data in INTERPOL's files concerning the Applicant, and referred the matter for the Commission's attention, while providing its preliminary legal assessment of the case.
5. The NCB of [...] was consulted on several occasions on the disclosure of the Red Notice request to the Applicant, in accordance with Article 5(e,4) of the Rules on the Control of Information and Access to INTERPOL's files (RCI).
6. As of [...], the Commission continued the study of the Applicant's request under the Statute of the Commission (Statute) which abrogated and replaced the RCI on that date.
7. In the absence of authorization to disclose the Red Notice request to the Applicant, and of answers to the questions raised within the set deadlines, the Commission concluded on [...] that the data concerning the Applicant shall be deleted from INTERPOL's files and that the requested Red Notice shall not be published.
8. The General Secretariat was informed of this decision and deleted the data concerning the Applicant on [...], and the NCB of [...] was informed accordingly.
9. On [...], the NCB of [...] sent a new Red Notice request concerning the Applicant, for his arrest in view of extradition. The data concerning the Applicants was not un-blocked by INTERPOL's General Secretariat upon receipt.
10. On [...], INTERPOL's General Secretariat informed the Commission of the NCB's new request to register data in INTERPOL's files concerning the Applicant, and referred the matter for the Commission's attention.

11. After being authorized by the source of the data, the Commission informed the Applicant on [...] that he was subject to a Red Notice request submitted by the NCB of [...]. The Commission communicated the information described in paragraphs 15 and 16 below to the Applicant, and invited him to provide submissions.
12. In accordance with Article 34(1) and (2) of the Statute, the NCB of [...] and INTERPOL's General Secretariat were consulted on specific issues raised in relation to the Red Notice request.
13. 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 105th session.

II. FACTS

14. The Applicant is a national of [...].
15. He is the subject of a Red Notice request submitted by the NCB of [...].
16. The summary of the facts, as recorded in the Red Notice request, is the following: [...].

III. THE APPLICANT'S REQUEST

17. The Applicant seeks the deletion of the data concerning him.
18. He contends in essence that:
 - a) the case is of a predominantly political character and the related data are not compliant with Article 3 of INTERPOL's Constitution ;
 - b) the proceedings do not respect his fundamental human rights, and the related data are not compliant with Article 2 of INTERPOL's Constitution ;
 - c) the prosecution lacks any evidentiary basis, and the criminal accusations were forged ;

IV. APPLICABLE LEGAL FRAMEWORK

19. 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.
20. Political character :
 - Article 3 of INTERPOL's Constitution states that it is "strictly forbidden for the Organization to undertake any intervention or activities of a political (...) character."
 - Article 34 of INTERPOL's Rules on the Processing of Data (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;

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- (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 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.”
- **IPSG standards for the application of the RPD confirming that** “for red notice requests and diffusions seeking the arrest of a person, it is important to provide sufficient facts that link the wanted individual to the charges against him/her. Providing such facts is crucial for facilitating international police cooperation”.

21. Due process and 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 11(1) of the 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 11(3) of the RPD states that “In conformity with Article 5 of the present Rules, prior to any recording of data in a police database, the National Central Bureau (...) shall ensure that (...) it is authorized to record (such) data pursuant to applicable national laws (...)”.
- 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”.

V. FINDINGS

22. In reviewing the issues raised, the Commission based its findings on information provided by the Applicant, the NCBs concerned and INTERPOL’s General Secretariat.
23. The Commission treats the Applicant’s contentions in the order in which they are described in paragraph 18 above.

A. Political character of the case:

a) *The Applicant*

24. The Applicant claims that the criminal proceedings against him are politically motivated, and are used by the [...] authorities as a retaliation against him, so that the related data is not compliant with Article 3 of INTERPOL’s Constitution.
25. He claims that his [...] well-known political activist involved in the [...] and a vocal opponent [...] regularly raided his family house, due to the real or perceived political opinions of his relatives.

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

26. The NCB of [...] explained contested any political motivations with regard to the criminal proceedings and insisted on the serious nature of the alleged crimes. The NCB indicated that the Applicant

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travelled from [...]. According to the investigation, [...] Applicant murdered [...]. He then concealed their bodies [...].

27. [...]

28. Once his location [...] was confirmed, extradition documents and an international letter of request were transmitted through diplomatic channels and through INTERPOL's channels [...].

29. In order to impede the Applicant from travelling abroad to escape from justice, [...] requested the publication of a Red Notice [...]. The NCB [...] insisted on the hideous nature of the crime, hurting the general public's feeling, and on the need to allow international police cooperation on this case.

30. The NCB of [...] provided copies of the arrest warrant, [...], and of pictures from the crime scene.

c) Findings of the Commission

31. 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.

32. The rule reflected in Article 34(3) of the RPD 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 general context of the case;
- the implications for the neutrality of the Organization.

33. In reviewing the applicable criteria under the predominance test, the Commission established first that the offence [...] is a serious ordinary-law offence [...].

34. The Commission resolved that although its function is not to evaluate the reliability or the quality of evidence in a manner that should be undertaken at trial or during extradition hearings, its role is nonetheless to review whether the NCB provided sufficient information linking the wanted individual to the charges against him. In this case, the Commission determined that it has received sufficient elements from the NCB source highlighting the possible participation of the Applicant to the alleged criminal acts.

35. Regarding the status of the Applicant, the Commission established that he is not himself a politician or a former politician. However, he alleges that his [...].

36. The general context of the case reveals that the Applicant, who has been residing [...]. He formally contests the veracity of the accusations, [...].

37. Finally, the Commission determined on the basis of the information available, that the offense does not appear to undermine the neutrality of the Organization in the context of this case. On the balance, the Commission held that there may well be a political dimension to this case, but that the information provided is not sufficient to establish that these political elements could be predominant over the ordinary-law elements of the case, or that the processing of the data concerning the Applicant would be contrary to Article 3 of INTERPOL's Constitution.

B. Respect for human rights:

a) The Applicant

38. The Applicant claims that the proceedings against him in [...] have not followed due process of law, and that if extradited to [...] he would be facing an unfair trial, notably in relation to the political motivation of the case. He also claims that he would be exposed to a high risk of torture in prison in order to obtain coerced confessions, and that he would likely be sentenced to death penalty as he is accused of murder.

39. He further argues that [...] judiciary would not uphold his defence rights, as it is subject to regular interferences from the executive power. [...].
40. He indicates that he has applied for asylum [...] on these grounds, [...] considered that he was barred from international protection as he was suspected of committing a serious criminal offence prior to his arrival in this country, [...].
41. He asserts that he has exhausted all available legal remedies [...] presented a complaint before the United Nations Human Rights Committee (UNHRC) and requested assistance by the United Nations High Commissioner for Refugees and other international organizations.
42. On 17 December 2017, the UNHRC [...] would violate its obligations under Article 6 (right to life) and Article 7 (prohibition of torture) of the International Covenant on Civil and Political Rights in case of extradition or expulsion of the Applicant to [...]. Moreover, the UNHRC concluded that [...] is under an obligation to review the Applicant's international protection claims.

b) The NCB of [...]

43. The NCB of [...] did not provide additional information in relation to these claims, and simply insisted on the fact that the Applicant would be prosecuted and judged in accordance with [...] law in case of return.

c) Findings of the Commission

44. The Commission carefully studied the Applicant's assertions with regard to the lack of independence of [...] judiciary, to the risks of torture he would face in detention, as well as to the possibility that he would be sentenced to death penalty in case of return to [...]. The Commission recalled that its role is not 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.
45. In this connection, the Commission paid particular attention to [...] the UNHRC [...]. The Commission noted that although the UNHRC analysed the respect of international obligations by [...] in relation to the possible extradition of the Applicant, [...] possible human right violations the Applicant would be exposed to [...].
46. Indeed, after a thorough examination of the Applicant's background and profile, and on the basis of various recent reports by United Nations bodies [...].
47. Likewise, based on the information available to it, and taking into account the political context alleged by the Applicant, the UNHRC established that the extradition of the Applicant to [...] would constitute a breach of Article 7 (prohibition of torture) of the International Covenant on Civil and Political Rights: [...].
48. [...] indicative of the risks of violation of the Applicant's right to life and his right not to be submitted to torture in case of return to [...], which are also enshrined in the Universal Declaration of Human Rights (Articles 3 and 5) to which Article 2 of INTERPOL's Constitution refers.
49. The Commission concluded that in view of these findings, the extradition of the Applicant to [...] would breach the customary principle of non-refoulement of an individual to a country where he would be exposed to torture and serious violations of fundamental human rights. In addition, the Commission recalled the political context identified around this case and analysed above as a supplementary risk factor for the Applicant.
50. The Commission decided that the publication of the Red Notice requested by the NCB of [...] as well as any processing of data in INTERPOL's files with a view to the extradition of the Applicant to [...], would not be compliant with Article 2 of INTERPOL's Constitution and with the "spirit of the Universal Declaration of Human Rights.

C. Remaining contentions

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[...]

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.
