



Commission de Contrôle des Fichiers de l'O.I.P.C. - INTERPOL

Commission for the Control of INTERPOL's Files

Comisión de Control de los Ficheros de la OIPC-INTERPOL

لجنة الرقابة على محفوظات المنظمة الدولية للشرطة الجنائية (الإنتربول)

*INTERPOL's Independent Authority for the Control and Protection of Personal Data*

## **DECISION OF THE COMMISSION**

### **REQUESTS CHAMBER**

**Request concerning Aaa BBB**

*(Ref. CCF/xxx)*

**xxx session**

**[date]**



## DECISION CONCERNING AAA BBB

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

xxx

Members,

Having deliberated during its xxx session, on [date], delivered the following Decision.

### I. PROCEDURE

1. On [date], Mr Aaa BBB (the Applicant), lodged a request for the deletion of the information concerning him registered in INTERPOL's files. On [date], the Commission found the request admissible as per Rule 30 of its Operating Rules and informed the Applicant thereof.
2. During the study of the Applicant's case, the Commission consulted the INTERPOL National Central Bureaus (NCB) of CCC and DDD, and the INTERPOL General Secretariat (IPSG) in accordance with Article 34(1) and (2) of the Statute of the Commission, on the arguments set forth in the request.
3. The Commission informed the Applicant on [date] that he is wanted through INTERPOL's channels by CCC, and provided the information described in paragraphs 5 and 6 below.
4. Both the Applicant and the NCB source of the challenged data were informed of the fact that the Commission would study the case during its xxx session.

### II. DATA RECORDED IN INTERPOL'S FILES

5. The Applicant, a national of CCC and DDD, is the subject of a Diffusion, circulated on [date], by the NCB of CCC for "*extremely large scale fraud*" on the basis of an arrest warrant issued on [date], by the CCC.
6. The facts of the case state the following: "[date]"

### III. THE APPLICANT'S SUBMISSIONS

7. The Applicant requested the deletion of the data concerning him, contending, in essence, that:
  - a) the data lack a clear description of criminal involvement;
  - b) the Diffusion has no purpose; and
  - c) there are procedural irregularities in the case.

### IV. APPLICABLE LEGAL FRAMEWORK

8. The Commission considers the following applicable legal framework.
  - 8.1. Field of competence of the Commission:
    - Article 36 of INTERPOL's Constitution,
    - Articles 3(1)(a) and 33(3) of the Statute of the Commission.
  - 8.2. Lawfulness:
    - Article 2(1) of INTERPOL's Constitution,
    - Articles 11(2) and 34(1) of INTERPOL's Rules on the Processing of Data (RPD).
  - 8.3. Extradition issues:

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- Article 31 of INTERPOL's Constitution,
- Articles 10, 34(1), 81, 82, 84(2) and 87(b) of the RPD.

### 8.4. Clear description of criminal involvement:

- Articles 10(2)(a), 12, 35(1) and 97(1)(a), and 97(2) of the RPD,
- IPSPG's standards for the application of the RPD.

## V. ANALYSIS OF THE CASE

### A. Procedural irregularities and purpose

#### *a) Submissions of the Applicant*

9. The Applicant contended that there are several procedural irregularities, in particular a search of [...] on [date], in his absence, and without the presence of a member of the CCC Bar. He also complained that the arrest warrant wrongly mentioned he fled the country to avoid prosecution. In [date], he left before any proceedings were initiated, first to EEE, based on his doctor's recommendation because of serious health issues, which worsened in [date] after a fall. There, he underwent rehabilitation with [...]. However, he had to undergo another surgery in DDD, where his relatives recommended a surgeon. He remained there [date] and continues to require regular care and rehabilitation sessions. The Courts failed to assess the documents provided concerning his state of health. To support his contentions, he provided copies of medical reports confirming the existence of a disability since [date] and the accident of [date].
10. He stated that the data serve no purpose as no extradition was requested by CCC, despite knowing his location in DDD since [date]. Moreover, he voluntarily surrendered to DDD authorities and was detained, which demonstrates his willingness to cooperate with the investigative authorities. Finally, he argued that CCC authorities refused to transfer the proceedings to DDD without a clear basis.

#### *b) Submissions of the NCB of CCC (NCB source of the data)*

11. The NCB confirmed that the proceedings and the arrest warrant were still valid.
12. It reported that the [date] search of the Applicant's [...] was carried out based on the decision dated [date] of the [...] Court of CCC, and led in accordance with the requirements of the CCC criminal procedure legislation. No violations occurred during the preliminary investigation.
13. On [date] the relevant investigative unit issued [...] and on the same day his name was added to the [...] wanted list because his whereabouts were unknown. Being later located outside of CCC, it was not possible to send him the written notification. However, since [date], the Applicant was reliably informed about the pre-investigation check against him [...], as well as about the subsequent criminal case initiated against him. It is to avoid criminal liability, that he left CCC.
14. The Applicant being a national of both CCC and DDD, the investigating authority considered sending a criminal case to court according to Article [...] of the CCC Criminal Procedure Code. It also considered sending copies of the criminal case file to the competent DDD authorities, without a request for criminal public prosecution, to take measures in accordance with DDD legislation. No transfer of proceedings occurred because the Applicant also holds CCC nationality.

#### *c) Information from the NCB of DDD*

15. The NCB of DDD reported that the Applicant was detained on [date]. Considering his DDD citizenship he was released, and his case was not presented to the courts.
16. The CCC was informed that the Applicant's extradition was precluded under DDD law because he is an DDD citizen. It was suggested to transfer the criminal proceedings to the competent authorities of DDD. The CCC authorities informed the DDD that the case could not be transferred because the Applicant is also a CCC citizen. No formal request for extradition was received from CCC.

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### *d) Findings of the Commission*

17. The Commission reviews the Applicant's claims of the existence of several procedural irregularities in his case in CCC, which raise the question of compliance of the data with Article 2 of INTERPOL's Constitution and Article 11 of the RPD. It recalls that the simple assertion of possible procedural irregularities cannot rise to the level of an Article 2 violation.
18. Here, the NCB provided general answers to the issues raised by the Applicant, regarding the search of his office (paragraph 12), his notification and the fact that being informed of the investigation against [...], he left CCC to avoid prosecution (paragraph 13).
19. While there are elements to support the fact that the Diffusion's underlying arrest warrant, of which the NCB provided a copy, is valid, there remain doubts on the existence of procedural irregularities in particular regarding the search of the Applicant's office. However, in view of the complexity of the case and the interdependence of arguments raised in relation to other legal issues, the Commission decides not to make a final pronouncement on the compliance of the data challenged at this stage, and to continue to study the Applicant's additional arguments.
20. Under Article 99 of the RPD, the purpose of this Diffusion is not only to locate the subject, but also to request his provisional arrest in view of extradition. The information provided by the NCB of CCC, and confirmed by the NCB of DDD, highlights that as an DDD national the Applicant cannot be extradited from DDD. Therefore, this argument is not sufficient to consider that there is no willingness of the authorities of CCC to respect their obligations under applicable law and to request the extradition of the Applicant, if possible.
21. Regarding the lack of transfer of proceedings from CCC to DDD, this question can be seen as a form of international cooperation as it would increase the efficiency and effectiveness of a prosecution in a country that is initiating proceedings, in lieu of extradition. However, the issue that arises in consideration of these transfers of proceedings is whether domestic laws permit the transfer of criminal proceedings to a foreign jurisdiction and, if so, under what conditions. In the present case, the CCC authorities clearly stated that as the Applicant is a CCC national there can be no transfer of proceedings in this case, and none was requested. These matters of transfers of proceedings are best decided by national or regional courts.
22. Therefore, the Commission finds there is no reason to doubt that CCC authorities intend to fulfil the purpose of the Diffusion and that it still has a valid purpose in compliance with the applicable rules as described in paragraph 8.3 above.

### **B. Lack of criminal elements**

#### *a) Submissions of the Applicant*

23. The Applicant submitted that the case materials demonstrate that, [...] he [...] had no link to the crime. [...].
24. [...]
25. His alleged accomplice, [...] was convicted and sentenced to [...] years of imprisonment on [...]. In her statement of [date], a copy of which was provided by the Applicant, [...] did not mention the Applicant. She only implicated him later, as [...] refused to testify under the right to remain silent. Accordingly, he should not be accused in a crime he was not aware of, and that was committed by third persons.
26. He added that the interrogation protocols demonstrate that the [...] were transferred and paid to [...], who is the one who provided the alleged forged decision [...]. The Applicant's name was cited only based on the witness testimonies of [...]. No other material proof was provided to implicate the Applicant in any criminal act.

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### *b) Submissions of the NCB of CCC (NCB source of the data)*

27. The NCB reported that, from [date]to [date], the Applicant, as [...]. The Applicant and [...] received [...] and disposed of them at their own discretion.
28. The Applicant's involvement is not only based on the testimony of [...], it is also confirmed by the testimony of the two victims, two witnesses, the results of operational and search activities, and other evidence contained in the materials of the criminal case.

### *c) Findings of the Commission*

29. With respect to the facts of this case, the Applicant disputes the factual allegations set out in the charging documents (paragraphs 23 and 24), and the NCB in turn disputes the factual allegations set out by the Applicant before the Commission (paragraphs 27 to 28).
30. The Commission is not empowered to conduct an investigation, to weigh evidence, nor to make a determination on the facts or merits of a case; such is the function of the competent national authorities. However, under Article 99(2) of the RPD, the circulation of a Diffusion is conditioned by the provision of sufficient elements describing the criminal activity underlying the case, and the personal involvement of the wanted individual that would link him to the charges. In conducting its review, the Commission relies on the elements provided by the parties. For this evaluation, it is essential that the NCB's information is concrete and specific, in the sense that it must clearly identify the role of the Applicant, his specific criminal actions, the time and the means to commit the infraction. It should be precise, detailed and demonstrate, when relevant, a benefit or the intention to commit the offense.
31. Here, the information provided by the NCB regarding the Applicant's personal criminal acts are not described precisely contrary to those of [...], nor are there clear elements provided by the NCB that ascertain the Applicant was aware of the falsification of documents by [...], and that he received funds beyond the fee for [...]. It makes general statements as to the existence of evidence against the Applicant (paragraph 28) without addressing his relevant submissions (paragraphs 25 and 26).
32. Therefore, the Commission finds that the data are not compliant with Articles under paragraph 8.4.

## 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.

Commission for the Control  
of INTERPOL's Files

Secretariat to the Commission  
for the Control of INTERPOL's Files

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