



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:

[...]

Having deliberated in camera during its 102nd session, on [...], delivered the following Decision.

I. PROCEDURE

1. On [...], Ms [...] (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 her on [...].
2. The National Central Bureau of INTERPOL (NCB) of [...] was initially consulted on the arguments set forth in the complaint, in accordance with Article 5(e,4) of the Rules on the Control of Information and Access to INTERPOL's files (RCI).
3. As of [...], the Commission continued the study of the Applicant's request under the Statute of the Commission (CCF Statute) which abrogated and replaced the RCI on that date.
4. During its 101st session, the Commission decided that further study was needed in this case, and therefore, the Commission further consulted the NCB of [...] which provided answers regarding questions that had been posed, which the Commission considered at its 102nd session.
5. Both the Applicant and the NCB of [...] were informed of the fact that the Commission would study this complaint during its 102nd session.

II. FACTS

6. The Applicant is a national of [...]. [...]
7. She is the subject of a Diffusion issued by [...] for [...], on the basis of an arrest warrant issued on [...] by [...].
8. The summary of the facts, as recorded in the Diffusion, is the following: [...].

III. THE APPLICANT'S REQUEST

9. The Applicant requested the deletion of the data concerning her
10. She contends in essence that:
 - a) the prosecution lacks any evidentiary basis
 - b) the case is of a predominantly political character
 - c) the proceedings do not respect human rights
 - d) the case is of a commercial nature

IV. APPLICABLE LEGAL FRAMEWORK

11. 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) states 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".

12. Diffusions:

- Article 97(2) of the RPD states that "the conditions for sending a diffusion are the same as the general conditions for recording data in the Organization's police databases."

13. Matters of political 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 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 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."

14. Offences for which a data may not be published

- Article 83.1(a,i) of INTERPOL's RPD states that "red notices may not be published for offences relating to private matters and for offences originating from a violation of laws or regulations of an administrative nature, unless the criminal activity is aimed at facilitating a serious crime or is suspected of being connected to organized crime".

15. Effective participation of an individual in the acts he/she is accused of: [...].

16. 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.

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 10 above.
19. In addition, the Commission decided to study together under point B below the related issues of whether the charges are politically motivated or constitute a private dispute and if her human rights have been infringed due to political issues.
20. The Commission had studied this case during its 101st (June 2017) session and had expressed concern that the NCB of [...] had not yet answered its queries on the Applicant's Article 2 arguments.

A. Lack of evidentiary basis

a) The Applicant

21. The Applicant asserts that the proceeds lack an evidentiary basis. She claims that she was not involved in the property transaction in question, had no profit from it, [...].
22. [...].

b) The NCB of [...]

23. In its reply, the NCB of [...], it was established and proven that the Applicant committed two episodes of fraud, three episodes of causing serious harm to the health of citizens, [...].
24. The accusations against the Applicant are valid and the arrest warrant issued on [...] is still valid. The arguments of the Applicant are fictional and are used try to avoid criminal liability.

[...]

25. In addition, it was established that the Applicant, having special knowledge of [...] and an aim to cause harm to the health of citizens and to gain illegal monetary benefits, registered [...], whose activity was connected with causing harm to [...]. The Applicant, [...] used psychological techniques to cheat, manipulate, and influence its members to control their [...].
26. Until the criminal case was opened against her, the victims of the Applicant were afraid to contact the legal authorities for help because the Applicant led them to believe that [...].

c) Findings of the Commission

27. The processing of data in INTERPOL's files requires the provision of sufficient facts that link the wanted individual to the charges against her, and a clear description of the criminal activities she is accused of. 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, to weigh evidence, or to make a determination on the merits of a case. That is the function of the competent national authorities.
28. Instead, the Commission reviews whether the NCB provided sufficient information that link the wanted individual to the charges against her, and a clear description of the criminal activities she is accused of to indicate the possible effective and personal participation of the Applicant to the criminal acts of which she is concerned.

29. The Commission finds that this has been provided in the present case, and that the NCB of [...] has put forth a reasonable explanation that the case materials collected refuted the Applicants contentions of lack of evidentiary basis, as the elements provided by the NCB are sufficient to indicate the possible effective and personal participation of the Applicant to the criminal acts of which she is accused.

B. Predominantly political proceedings/lack of human rights/lack of criminality

a) The Applicant

30. The Applicant asserts that she is being persecuted because of her political views, due to her criticisms of [...]. She claims that the recent charges were brought as a result of [...] elections, [...].

31. Specifically, the Applicant asserts that her political party, [...] has been active for more than [...] years even though administrative and law-enforcement bodies have persecuted the party and the Applicant from the beginning of the party's creation. She became widely known [...]. [...] she requested the investigation of [...] in acts of terror and criminal negligence.

32. In connection with the political elements, the Applicant asserts that her right to participate in the electoral process was violated on more than was occasion. [...] In addition, her requests to hold meetings in venues in her city with capacity of over 500 people were rejected, [...]. She also argues that her right to defend her honour and reputation were violated [...]. Finally, she asserts that her right to a private life was violated as [...].

33. Furthermore, the Applicant argues that the proceedings against her are not criminal in nature. She asserts that the case is a simple dispute about the non-repayment of money, and if there was an alleged fraud, it should have been treated as an economic case under the civil code.

b) The NCB of [...]

34. In its reply, the NCB [...] explained that the charges against the Applicant remain valid as outlined in point 22 above, and provided the Commission with a copy of the [...] arrest warrant.

35. It was discovered that [...]. [...] does not have any information concerning the Applicant's nomination in different election campaigns, and this is not connected with her criminal acts.

36. Furthermore, the criminal responsibility of the Applicant is not connected with her political and social views, [...] are ordinary law crimes and do not have any political or religious nature. The evidentiary basis of her involvement in the accused acts and their criminal nature can be found in [...].

37. According to the investigation, the Applicant has been intentionally claiming that the criminal prosecution of her is political in nature to avoid her criminal liability [...].

38. Furthermore, the Applicant may address the court in person or through a lawyer to litigate these charges. The Constitution [...] guarantees that every person receive court protection of his/her rights and freedoms, as well as freedom of thought and speech. [...] [...] on the basis of a court warrant that was received according to [...] legislation. There were no infringements of the criminal procedural legislation [...], and the Applicant's right to privacy was not violated. [...]. If the Applicant has claims against the media concerning her honour and dignity, she may bring civil proceedings through the court.

c) Findings of the Commission

39. 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.

40. 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; and

- the general context of the case.
41. 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 and provided a sufficient explanation that the arrest warrant was issued lawfully according to the national procedures, and their jurisdictional competence.
 42. The Commission considered that the even if the person sought may be perceived as a leader of a political party, the Commission highlighted that the Applicant never held a political office, and therefore the accused offences were not committed during the exercise of political duties.
 43. In addition, no NCB or international organization has taken the position that Article 3 had been violated, and the general context of the case reveals that the Applicant appears to be [...].
 44. Therefore, the Commission finds that even assuming that there may be a political dimension to this case, the information provided is not sufficient to establish that these political elements would be 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.
 45. The Commission notes that the Applicant brought up several violations linked to rights established under the Universal Declaration of Human Rights (UDHR), including the right to life, privacy, freedom of thought, conscious, and religion, freedom of opinion and expression, freedom of peaceful assembly and association, and the right to take part in the government of his country (Articles 3,12,and 18-21 UDHR). The Commission considered that these alleged violations were brought in light of the Applicant's argument that in order to deter her political agenda and hinder her campaign, especially for president, the [...] authorities took unlawful actions against her.
 46. In order to respect the spirit of the UDHR while at the same time respecting the limited role of the Commission, the simple assertion of a violation of rights cannot rise to the level of an Article 2 violation. 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 flagrant denial of her human rights took place.
 47. Furthermore, the Commission recalled that it is not its role to assess a country's law enforcement or judicial system, but that it examines the compliance of the data with INTERPOL's rules on the basis of specific information related to the request.
 48. In light of the above and in consideration of all of the elements available to it, the Commission finds no reason to believe that the Applicant's rights, in the meaning of Article 2 of INTERPOL's Constitution, have been violated.
 49. Finally, concerning the Applicants claim that the proceedings are not criminal in nature, the Commission established that the charges of [...] which form the basis of the diffusion, can be considered as criminal matters. Having established that, the Commission checked whether the summary of facts and the law covering the offence could question the criminal nature of the charges. In this respect, the Commission considered the document drafted by the INTERPOL General Secretariat on offenses relating to "*Economic-related offences originating from a violation of laws and regulations of an administrative nature.*" The Commission underlined that this established that the offenses concerned are those that "*are frequently not considered as common crimes or extraditable offences, since the illegal acts generally originate from a violation of laws of a civil (as opposed to criminal) or administrative nature.*"
 50. Here, the NCB of [...] has provided a sufficient explanation that the criminal charges were issued lawfully according to the national procedures, and their jurisdictional competence.
 51. Therefore, the Commission cannot conclude from what has been presented that the issuance of the Diffusion is prohibited on the ground that the conduct is essentially a private dispute unrelated to criminal conduct.

FOR THESE REASONS, THE COMMISSION

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