



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. As no data concerning the Applicant were registered in INTERPOL's files at the time of the request, the Commission coordinated with INTERPOL General Secretariat (IPSG) to address the concerns submitted by the Applicant.
3. On [date], the INTERPOL National Central Bureau (NCB) of CCC requested the publication of a Red Notice for the Applicant's arrest in view of extradition. IPSG blocked the access to the data recorded in INTERPOL's files by INTERPOL member countries and decided to take no further action in this case. On [date], IPSG informed the Commission thereof, and provided its preliminary assessment.
4. After consultation of the NCB of CCC, in accordance with Article 34(1) of the Statute of the Commission, it informed the Applicant on [date], of the NCB's request for police cooperation, and provided the information described in paragraphs 8 and 9 below
5. During the study of the Applicant's case, the Commission consulted the NCBs of CCC and DDD, and IPSG in accordance with Article 34(1) and (2) of the Statute of the Commission, on the arguments set forth in the request.
6. 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.
7. Further to Article 35(3) of the Statute of the Commission, restrictions were applied to certain information in the Decision.

II. DATA RECORDED IN INTERPOL'S FILES

8. The Applicant, a national of CCC, is the subject of a request for the publication of a Red Notice, by the NCB of CCC for "[...] *fraud*" on the basis of an arrest warrant issued on [date], by CCC.
9. The facts of the case state the following: "[...]."
10. The NCB has not requested the publication of an extract of the Notice on the INTERPOL public website.

III. THE APPLICANT'S SUBMISSIONS

11. The Applicant requested the deletion of the data concerning him, contending, in essence that:

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- a) the purpose of the Notice cannot be achieved;
- b) the case is of a predominantly political character;
- c) the data lack a clear description of criminal involvement; and
- d) there are some irregularities in the proceedings.

IV. APPLICABLE LEGAL FRAMEWORK

12. The Commission considers the following applicable legal framework.

12.1. 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.

12.2. Compliance with human rights and protective status:

- Article 2(1) of INTERPOL's Constitution,
- Articles 5(2), 11(1), 34(1), 34(3), and 86 of the INTERPOL's Rules on the Processing of Data (RPD),
- The INTERPOL General Assembly Resolution (ref. AGN/2017/86/RES/09) on INTERPOL's policy on refugees,
- Several international and regional human rights instruments establish the right of individuals who hold a protective status to be protected against forcible return or *refoulement to their country of origin, including the following*:
 - the Universal Declaration of Human Rights (Article 14.1),
 - the 1951 Geneva Convention relating to the Status of Refugee (Article 33.1),
 - the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Article 3),
 - the International Covenant on Civil and Political Rights (Article 7),
 - the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 3),
 - the American Convention on Human Rights (Article 22), etc.

12.3. Purpose and Extradition issues:

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

12.4. Matters of political character:

- Article 3 of INTERPOL's Constitution,
- Article 34 of the RPD.

12.5. Clear description of criminal involvement:

- Article 10(2)(a), 12, 35(1) and 83 of the RPD,
- IPSG standards for the application of the RPD.

V. ANALYSIS OF THE CASE

13. For an appropriate study of the case, the Commission decided first to study under point A the question of the purpose of the data and under point B below the related issues of the political nature of the proceedings, the possible lack of criminal elements and existence of procedural irregularities since they are interdependent and rely on the same factual allegations.

A. Purpose of the data

a) *Submission of the Applicant*

14. The Applicant explained that he received a protective status in DDD. On this basis, he requested the application of the INTERPOL policy on refugees and asylum seekers and the deletion the data processed by CCC concerning him in INTERPOL's files.

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

15. The NCB of CCC did not report that the Applicant's location was known to CCC national authorities.

c) Information from the NCB of DDD

16. The NCB reported that the Applicant did not apply for asylum in DDD. He is in possession of a fictional decree for a residence permit as a person that reportedly fled from the EEE to DDD. The residence permit does not award the same protection or status as an asylum or refugee status.

d) Findings of the Commission

17. According to Articles 10(1) and 12(1) of the RPD, the processing of data in INTERPOL's files may only be carried out for a given, explicit purpose.

18. With regards to the Applicant's status in DDD, the legal framework outlined in paragraph 12.2 applies. This means that when an Applicant is wanted in view of extradition to his country of origin, and has been granted a status that protects against *refoulement*, the purpose for which the data have been registered cannot be achieved as the purpose of a Red Notice or Diffusion is not only to locate a person, but also to request his provisional arrest in view of extradition.

19. From the information available, the Applicant does not hold a status in DDD that protects him from *refoulement* to CCC, or any other country. The Commission is thus unable to apply the Refugee policy in this case and continues to assess the Applicant's other arguments.

20. Finally, the Commission considers that the purpose of a Red Notice is not only to locate a person, but also to request his provisional arrest in view of extradition (paragraph 12.3). To date the Red Notice has not been published, and no INTERPOL Member country is aware of the NCB's request for a Red Notice. Therefore, the Commission cannot consider, at this stage, that the publication of the Red Notice would not be in compliance with its stated purpose, in that it may still lead to actual judicial cooperation, and be of interest for the purpose of international police cooperation.

B. Political character, procedural issues and criminal involvement

a) Submissions of the Applicant

21. The Applicant claimed that the case against him was opened on political motives as he strongly opposes the CCC foreign policy. For this reason, he has not been back to CCC since [date], when [...]. He added that, should he be returned to CCC, he would fall under the category of citizens who must be [...]. Moreover, he provided the copy of an identity document demonstrating he is also an EEE national.

22. He submitted that as an entrepreneur and member and founder of several companies, some of which are no longer active, he had some business with CCC. However, he was neither a founder nor an employee and had no relation with [...]. This is confirmed by the data of the CCC tax services which are publicly available. He argued that there are no sufficient elements to implicate him in any criminal act, and no indication of the exact time and place of the alleged criminal acts, the form or motive of his crime, or its goal.

23. He complained of procedural irregularities in this case such as the fact that he was never notified of the proceedings against him while he was living in CCC. He stated there is no decision to initiate a criminal case against him, but rather he was listed as an unidentified person in the decision to initiate the criminal case of [date]. Because of this he could not appeal any actions taken by the investigation during that time, which is contrary to the CCC Constitution and Article [date] of the CCC Criminal Procedure Code.

b) Submissions of the NCB of CCC

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24. The NCB confirmed the validity of the proceedings and arrest warrant. It stated that the investigation was not initiated on political grounds but based on an ordinary criminal act, not the Applicant's political views. Addressing the question of [...].
25. Regarding the Applicant's notification, the NCB reported that he was not named in the criminal case when it was initiated on [date]. He was therefore not notified. His involvement came to light during the preliminary investigation between [date] and [date]. As soon as there was sufficient evidence to charge him under Article [...] of the CCC Criminal Code a decision was made to "*involve [him] as an accused.*" From that moment on, he was able to obtain the information the case and appeal decisions [...].
26. On [date], he was called by the investigator for interrogation. He refused to appear at the investigation department to participate in the investigative actions, explaining that he was afraid of being prosecuted for the acts he committed. The Applicant's father, [...] mother [...] and wife [...] were also notified he was required to appear.
27. On [date], he was notified by the investigator of the decision of involving him as accused of committing a crime under Article [date] of the CCC Criminal Code. The decision was sent in written format to his personal phone number, and to the addresses of his registration and residence. Once again, he did not appear on the required date [...]. The Applicant's mandated representative, [...] was also notified of the specified charge, and a copy of this decision was delivered to her. The [date] judicial decision which serves as the underlying arrest warrant for the Red Notice was appealed by the Applicant. On [date], the CCC Court confirmed the validity of the arrest warrant.
28. Turning to the Applicant's criminal involvement, the NCB reported that he was involved in a pyramid type scheme, where he defrauded at least [...] individuals by promising a high return on investment of their funds, and the payments were made at the expense of new arrivals, until new funds were no longer received.
29. He was the organizer and the leader of an organized criminal group that acted in a cohesive and coordinated manner, led the actions of five accomplices, as well as the actions of persons - employees of organizations included in [...], whom he tricked into committing actions aimed at embezzling [...]. He personally took decisions to involve accomplices and gave mandatory instructions. He also took decisions to create, acquire and liquidate legal entities used to embezzle funds, and he personally determined how the stolen funds would be spent.
30. The alleged criminal acts started in [date] and continued until [date]. They did not come to light earlier because from [date] to [date], the Applicant contacted the victims to convince them that they would receive their funds, while he knew it was not possible as they had already been spent by his accomplices and him.
31. The NCB acknowledged that according to the data of [...], the Applicant is not the founder or employee of [...]. However, during the entire period of the crime, he was its actual leader and the person who made decisions on all financial and economic matters by giving instructions to the heads of [...].
32. It explained that one part of the embezzled funds received by [...] was withdrawn, in cash, [...] and delivered to the Applicant. He then redistributed the funds. The other part of the funds was first deposited into the settlement account [...], and transferred to the settlement accounts of legal entities controlled by the Applicant and his accomplices. The funds were once again transferred, this time to nominal accounts of the Applicant and his accomplices.
33. The amount of the embezzled funds [...], is based on the financial documentation submitted by [...]: contracts, receipt and expense cash orders, and extracts on bank settlement accounts, the testimony of the victims and the conclusion of an accounting forensic examination. The Applicant personally benefitted as, with these embezzled funds, he bought two apartments in CCC, as well as other residential buildings and a land plot, for a value of at least [...].

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34. His involvement is clearly established by [...] accounting forensic examinations, [...] financial and analytical forensic examinations, the testimony of [...] of his accomplices and of [...] employees or legal entities involved in the criminal activities, as well as objects and documents seized during the searches or given voluntarily by witnesses or victims, including banking organizations and the CCC [...]. They all confirm that the Applicant held the leading role in the activities of [...] and was its actual manager.

c) Findings of the Commission

35. The Commission examines the question of the political nature of the proceedings and applies the predominance test to determine whether the offense is of a predominantly political character. In doing so it relies on the rule reflected in Article 34(3) of the RPD requiring the analysis of all relevant factors, which the following are key in the present case:

- the status of the person concerned;
- the nature of the offense, namely the charges and underlying facts, and thus the Applicant's involvement in the facts;
- the general context of the case, including his claim that he would be at risk if extradited to CCC.

36. The Applicant is not a politician or former politician; however, he is an EEE national who reportedly strongly opposes the CCC foreign policy.

37. The offense as described in the Red Notice request and the judicial documents provided (“[...] *fraud*”) are defined under the relevant criminal law provisions submitted by the NCB of CCC, and can be considered as *a priori* of an ordinary law nature. Under Articles 35 and 83 of the RPD, and other IPSG standards found in paragraph 12.5 above, the publication of the present Red Notice requires the provision of facts that link the wanted individual to the charges against him, and a clear description of the criminal activities in which he is accused.

38. The Applicant alleged that he committed no wrongdoing and had no relation with [...] (paragraph 22). The NCB presented several elements confirming the Applicant's possible involvement in the criminal acts held against him (paragraphs 28 to 34). It also specified that he personally benefited from the criminal scheme (paragraph 33).

39. Since the Commission is not empowered to conduct an investigation or to make a determination on the merits of a case, but to control whether the processing of data in INTERPOL's files meets the applicable legal requirements, it determines that here the concrete elements provided by the NCB of CCC are sufficiently precise and factual to establish the Applicant's possible involvement in the acts with which he was charged. It also resolves that these acts are of a criminal nature rather than of a commercial or civil character.

40. Turning to the general context of the case, the NCB responded point by point with reasonable answers to the Applicant's submissions about procedural irregularities and the notification of the proceedings against him (paragraphs 25 to 27).

41. Lastly, the risks faced by the Applicant should he be returned to CCC as set out by him are essentially based on the fact he is an EEE national, the current situation between CCC and EEE, and he stands against CCC foreign policy (paragraph 21). This includes the possibility that [...] (paragraph 24). For the Commission's assessment, the assertion of general issues linked with a country's judicial system is not sufficient here to be considered as an Article 2 violation as it does not demonstrate that a flagrant violation of the Applicant's fundamental human rights would take place as a result of his arrest and extradition in execution of the Red Notice. They may rather constitute potential bars to extradition to be debated before national judges in the context of extradition proceedings.

42. Considering once more its limited fact-finding role, the Commission finds the information provided by the Applicant does not demonstrate that a flagrant violation of his fundamental human rights would take place as a result of his arrest and extradition in execution of the Red Notice.

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43. In the absence of additional elements from the Applicant to support his claims, the ordinary law nature of the crime and the likelihood of the Applicant's involvement are such that the Commission is not able to consider that the case is not compliant with Article 3 of INTERPOL's Constitution.

FOR THESE REASONS, THE COMMISSION

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

Commission for the Control
of INTERPOL's Files

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

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