



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 [the Applicant]

(Ref. CCF/[xxx]/[xxx])

[xxx]th session

[date]



DECISION CONCERNING [THE APPLICANT]

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

Members,

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

I. PROCEDURE

1. On [date], [the Applicant], presented a request for access to the information concerning her 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. After being authorized by the INTERPOL National Central Bureau (NCB) source of data, the Commission informed the Applicant on [date] that she is wanted through INTERPOL's channels by [Country 1], and provided the information described in paragraph 8 below.
2. On [date], the Applicant, lodged a request for the deletion of the information concerning her registered in INTERPOL's files. On [date], the Commission informed the Applicant of the admissibility of her new request.
3. During the study of the Applicant's case, the Commission consulted the NCB of [Country 1], and the INTERPOL General Secretariat (IPSG) in accordance with Article 34(1) of the Statute of the Commission, on the arguments set forth in the request.
4. In the absence of answers to the questions raised by the Commission within the set deadline, the Commission decided that access by INTERPOL member countries to the data recorded in INTERPOL's files concerning the Applicant shall be blocked pending further study of the Applicant's file.
5. IPSG was informed of this Decision and blocked access by INTERPOL member countries to the data recorded in INTERPOL's files concerning the Applicant on [date]. The NCB of [Country 1] was informed thereof on [date], and the Applicant on [date].
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]th 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 [Country 1], is the subject of a Red Notice issued on [date], at the request of the NCB of [Country 1] for "(...) *falsely issuing (...) value-added tax invoices*" on the basis of an arrest warrant (no. [xxx] issued on [date] by the [xxx]).
9. The facts of the case state the following: "*From [date] to [date], in [Country 1]: (...) [the Applicant], the legal representative of [Company 1], (...) suspicion of (...) falsely issuing special invoices for value added tax.*"

III. THE APPLICANT'S SUBMISSIONS

10. The Applicant requested the deletion of the data concerning her, contending, in essence that:
 - a) the proceedings do not respect the principles of due process;
 - b) the proceedings do not respect the principles of human rights.

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- c) the data lack a clear description of criminal involvement; and
- d) the case is of a predominantly political character.

IV. APPLICABLE LEGAL FRAMEWORK

11. The Commission considers the following applicable legal framework.

11.1. 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.

11.2. Standards of human rights:

- Article 2(1) of INTERPOL's Constitution,
- Article 34(1) of INTERPOL's Rules on the Processing of Data (RPD),
- Article 3 (*prohibition of torture*) of the European Convention on Human Rights (ECHR).

11.3. Clear description of the criminal activities:

- Article 83(2)(b)(i) of the RPD,
- IPSG standards for the application of the RPD.

11.4. Matters of political character:

- Article 3 of INTERPOL's Constitution,
- Article 34 of the RPD,
- Resolution ref. AGN/20/RES/11 (1951).

V. ANALYSIS OF THE CASE

12. The Commission assesses the Applicant's most relevant contentions described in Section III above.

13. For an appropriate study of the case, the Commission decided to study together under point A below the related issues of due process and human rights, and under point B the questions of the political character and criminal involvement of, since they are interdependent and rely on the same factual allegations.

A. Due process and human rights issues

a) Submissions of the Applicant

14. The Applicant explained that she faces serious risks of breach of human rights if she were to be returned to [Country 1], which is supported by the decision rendered by the European Court of Human Rights in case of [xxx] of [date]. In this case, the Court accepted that if the plaintiff was placed in a [Country 1] detention center or prison, he would be subject to torture and/or degrading treatment and found that extradition would not be compatible with his Article 3 rights of the ECHR.

15. In the case she is accused of, she was the Chairperson of [Company 1]. Her co-defendants, (...) were all said to have had some role in the running of [Company 1]. They have each been found guilty of, and sentenced for, fraud, and received sentences of [xxx] years (...). They were all also ordered to pay fines.

16. The Applicant submitted that, like her co-defendants, if she is arrested for the alleged offence, she will inevitably be detained for a lengthy period both pre-trial and post-. (...).

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17. The background of consistent, documented, and concurring reports of torture routinely being used to extract confessions in [Country 1], is particularly concerning in her case where there was a strong reliance on confessions. The bulk of the evidence came in the form of confessions (...), there are elements that suggest that these testimonies or confessions were made under torture. (...).
18. The case of her co-defendants also demonstrates the heightened risk that she would not be receiving a fair trial before an independent and impartial court in [Country 1]. First, because there are substantial grounds to believe that a “*presumption of guilt*” would be applied in her case (...). Second, because when her codefendant’s retrial was underway, the chief judge was dismissed and the clerk resigned, as explained in the [date] judgment of [xxx] Court.
19. Finally, the Applicant pointed out she was diagnosed with [disease] in [date]. This personal circumstance puts her at heightened risk of involuntary hospitalization often involving unfair treatments; she could also be held in detention for a lengthy period of time, where she would be compelled to provide a forced confession.

b) Submissions of the NCB of [Country 1] (NCB source of data)

20. The NCB confirmed the validity of proceedings and the underlying arrest warrant dated [date].
21. Despite several reminders and requests for extensions of deadlines which were granted by the Commission, the latest until [date], the NCB of [Country 1] provided no responses to the Applicants claims relating to the due process of law, and respect for human rights.

c) Findings of the Commission

22. In view of the quality and details provided by the Applicant in her request, the Commission finds that the lack of answer from the NCB of [Country 1] in relation to the issues raised creates serious doubts as to the compliance of the data challenged with Article 2 of INTERPOL’s Constitution and Articles 10, 31 and 87(b) of the RPD. Yet, it 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.

B. Political character and criminal involvement

a) Submissions of the Applicant

23. The Applicant stated she committed no wrongdoing and gave the Commission an explanation of the alleged fraud she was accused of (...).
24. The Applicant submitted that the proceedings against her in [Country 1] are politically motivated because of the links of [Company 1] with [Person 4, linked to a political party] and former deputy director of the [regional committee]. His wife, [Person 5], was a shareholder of [Company 1] (...). In [date], [Person 4] was arrested for corruption and embezzlement, is alleged to have provided information to the [xxx], and it is believed that he has spoken out about human rights issues.
25. [Company 2] and [its controller], who benefitted the most from the alleged criminal arrangement, were found not guilty by the [xxx] court. Furthermore, all other companies working with [Company 2] and [its controller] in a similar manner as [Company 1] either had their prosecutions withdrawn or not prosecuted. The Applicant added that the allegation that the charges are political motivated is supported by wide-ranging material from reliable international and national sources indicating that political prosecutions are commonplace, such as the UNCAT, Human Rights Watch, Amnesty International, or (...).

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b) Submissions of the NCB of [Country 1] (NCB source of the data)

26. The NCB explained that the Applicant was charged on suspicion of the crime of falsely issuing exclusive value-added tax invoices, based on Article [xxx] of the [Country 1] Criminal Law.
27. Despite several reminders and requests for extensions of deadlines which were granted by the Commission, the latest until [date], the NCB of [Country 1] provided no responses to the Applicants claims.

c) Findings of the Commission

28. The Commission examines the question of the political nature of the proceedings and applies the predominance test to determine whether the case 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, the following of which are key in the present case:
 - the status of the person concerned;
 - and the general context of the case;
 - the nature of the offense, namely the charges and underlying facts, and thus the Applicant's involvement in the facts.
29. The Applicant is not a politician or former politician, she is rather a businessperson. Regarding the general context of the case, the Commission notes that no explanation was provided by the NCB in reply to the Applicant's submissions (paragraphs 24 and 25), which raise doubts as to a possible political context to this case.
30. The Red Notice based on the charge of "(...) *falsely issuing (...) value-added tax invoices*" is defined under the relevant criminal law provisions submitted by the NCB of [Country 1], but could be considered to be an offence of an administrative or civil nature rather than of a criminal nature. Under Article 83 of the RPD, the circulation of a Red Notice is conditioned to the provision of sufficient elements describing the criminal activity underlying the case, and the personal involvement of the wanted individual that would link her to the charges.
31. In view of the information provided by the Applicant, and the question of her personal involvement in criminal acts, the Commission asked the NCB to provide additional elements which would highlight the possible effective participation of the Applicant to a serious ordinary-law crime. It raised specific questions, including whether the Applicant personally benefited from the fraud, or how the sums of [xxx] million of price and tax; [Company 1] earnings of [xxx] million of commission charges, and [Company 2] illegal deductions of [xxx] millions of taxes were calculated and arrived at.
32. The Commission notices that despite extended deadlines and several messages, it received no specific answer from the NCB of [Country 1] on these issues. Neither the summary of facts of the Red Notice, nor the copy of the arrest warrant issued against the Applicant forwarded to the Commission by the NCB contain any information that would provide answers to the questions raised.
33. In conducting its review, the Commission relies on the elements provided by the parties. This information must be concrete and specific in the sense that it must clearly identify the role of the Applicant, her 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. Here, the information available cannot be considered as sufficient to demonstrate any criminal act, criminal intent, or personal benefit, and consequently does not satisfy the requirements of Article 83 of the RPD which call for a clear description of the criminal activities of the wanted person.
34. Given all the circumstances, particularly those relating to Article 2 of INTERPOL's Constitution, outlined in paragraph 22 above, and Article 83 of the RPD, the Commission finds that the data are not compliant.

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DECISION CONCERNING [THE APPLICANT]

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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