



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

**DECISION OF THE COMMISSION**  
(104<sup>th</sup> session, 24 - 27 April 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 104<sup>th</sup> session, on [...], delivered the following Decision.

**I. PROCEDURE**

1. On [...], Mr [...] (the Applicant) lodged a request for access to the data concerning him registered in INTERPOL's files, and its subsequent deletion. Following the submission of all the required documents in accordance with Rule 30 of the Operating Rules of the Commission, the request was found admissible, and the Commission informed the applicant thereof on [...].
2. In accordance with Article 34(1) of the Statute of the Commission (Statute), the National Central Bureau of INTERPOL (NCB) of [...] was consulted on the communication of information and on the arguments set forth in the complaint.
3. On 2 February 2018, the NCB of [...] confirmed the validity of [...] and provided answers to the questions raised by the Commission. The NCB of [...] requested restrictions to the communication of information to the Applicant, further to Article 35 of the Statute.
4. The Commission informed the Applicant on [...] that it conducted the appropriate checks in relation to his request for access, and that the NCB of [...] had restricted the communication of information to him, on the grounds set forth in Article 35(3)(c) of the Statute.
5. 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 104<sup>th</sup> session.
6. During the study of the Applicant's case, the Commission consulted the NCB of [...], the NCB of [...], and INTERPOL's General Secretariat (IPSG) in accordance with Article 34(1) and (2) of the Statute, on specific issues set forth in the complaint.

**II. FACTS**

7. The Applicant is a national of [...].
8. He is the subject of data registered in INTERPOL's files [...].
9. [...]
10. On [...], the Applicant was arrested in [...] on the basis of the data registered in INTERPOL's files. He was detained until [...], and released on bail pending the conduct of extradition proceedings.

**III. THE APPLICANT'S REQUEST**

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11. The Applicant previously sought access to the data processed in INTERPOL's files. He now seeks deletion of the data concerning him.
12. He contends in essence that:
  - a) the absolute restrictions to the communication of information connected with his request impede his ability to effectively challenge the data concerning him ;
  - b) the case is of a predominantly political character, and the data processed is not compliant with Article 3 of INTERPOL's Constitution.

#### **IV. APPLICABLE LEGAL FRAMEWORK**

##### 13. 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.

##### 14. Communication of information :

- Article 35(1) of the Statute states that "the information connected with a request shall be accessible to the Applicant and the source of the data, subject to the restrictions, conditions and procedures set out in this article".
- Article 35(3) of the Statute exhaustively lists the grounds on which the communication of information may be restricted at the request of one of the parties, or on the own initiative of the Commission.
- Article 35(4) of the Statute states that restrictions on the communication of information must be properly justified and the party requesting the restriction must indicate whether some information such as summaries may be provided instead. Moreover, if the improper justification of a restriction may not lead to the disclosure of the information by the Commission, it may be taken into account while analysing a request.

##### 15. 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;
    - (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.”
- INTERPOL’s Repository of practice on Article 3 provides guidance on the application of Article 3 of INTERPOL’s Constitution in a variety of circumstances.
- The diffusion addressed by INTERPOL General Secretariat to the NCBs on 5 April 2012 states 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”.

## V. FINDINGS

16. In reviewing the issues raised, the Commission based its findings on information provided by the Applicant, the NCBs concerned and INTERPOL’s General Secretariat. The Commission treats the Applicant’s contentions in the order in which they are described in paragraph 12 above.

### A. Communication of information :

#### *a) The Applicant*

17. The Applicant explains that, after being detained in [...] on the basis of an alert circulated through INTERPOL’s channels, he requested access to the information concerning him registered in INTERPOL’s Files. Without being granted access to any information concerning the criminal proceedings at the basis of the alert circulated by INTERPOL, he claims that he is deprived of the possibility to effectively exercise his right to challenge the data processed at the request of the [...] authorities.

18. He also requested the Commission not to disclose the arguments of his request to the NCB of [...], out of fear of retaliation in view of the sensitive political issues raised and to ensure the confidentiality of his prior protective status, and on the basis of Article 35(3)(c) (“to protect the rights and freedoms of the Applicant or third parties”).

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

19. [...]

20. On this basis, the NCB of [...] requested the absolute restriction of any communication of information to the Applicant. [...]

#### *c) Findings of the Commission*

21. The Commission recalled that Article 35(1) of the Statute affirms the principle that “the information connected with a request shall be accessible to the Applicant and the source of the data, subject to the restrictions, conditions and procedures set out in this article”.

22. In this connection, paragraph 3 of the same Article provides that the communication of information may be restricted by the Commission at the request of a party to the case, for one or more of the following reasons: “a) to protect public or national security or to prevent crime, b) to protect the confidentiality of an investigation or prosecution, c) to protect the rights and freedoms of the Applicant or third parties, or d) to enable the Commission or the Organization to properly discharge their duties”.

23. Moreover, pursuant to paragraph 4 of the same Article, any restriction on the communication of information must be properly justified and the party requesting the restriction must indicate whether some information such as summaries may be provided instead. In addition, if the improper

justification of a restriction may not lead to the disclosure of the information by the Commission, it may be taken into account while assessing and deciding on a request.

24. The Commission reaffirmed that, in analysing the justification of requested restrictions, it tries on the one hand to protect the interests of the parties, while preserving at the same time the essence of an adversarial procedure in order to provide an effective remedy. In doing so, the Commission takes into account, *inter alia*, the general context of the case, the other avenues available to the Applicant to obtain access to the information at the national level, the potential violation of other rules or international obligations, the possible risks for INTERPOL.
25. The Commission recalled that restrictions under Article 35(3) of the Statute are an exception to the general principle of communication of information, bearing consequences on the rights of the parties, and which must therefore be interpreted strictly. Such restrictions to the communication of information by one party to the other must be necessary and proportionate to their stated purpose, and the Commission itself must be allowed unlimited access to the information concerned in order to make an effective determination. In addition, in order for a decision not to be based solely or decisively on non-disclosed information, counter-balancing measures can be undertaken to compensate, up to the extent possible, the interferences with the rights of the parties.
26. In the present case, the Applicant has requested restrictions to the communication of information to the NCB of [...], on the basis of Article 35(3)(c) of the Statute. The Commission held that, in view of the sensitive nature of the arguments of his request, and considering his allegations of politically-motivated prosecution by the [...] authorities and his past protective status, the restrictions sought appear justified. Moreover, based on the information already registered in INTERPOL's files, the Commission was nevertheless able to process the request and to transmit questions to the NCB source in relation to the issues raised in the Applicant's request.
27. The Commission also considered that the Applicant has presented a request for access to the information concerning him after being detained and exposed to extradition proceedings, *i.e* being directly affected by the processing of data. Yet, the NCB source of the data concerned has opposed any disclosure and has requested an absolute restriction of communication of information to the Applicant, without any reference to the grounds mentioned in Article 35(3).
28. The Commission considered that the [...], is not adequate to justify the restriction imposed. [...]
29. The Commission also underlined that the source of the data has not consented to any counter-balancing measures (such as the provision of a redacted summary, of a minimum set of information, or simply a confirmation of the existence of data), which may have minimized the impact of the restrictions on the rights of the Applicant, as requested under Article 35(4) of the Statute.
30. The Commission concluded that the restrictions requested by the NCB of [...] were not properly justified, and that the NCB did not demonstrate their relevance and proportionality in the context of this case. It established, further to Article 35(4), that such improper justification would not lead to the disclosure of the data concerned without the consent of the NCB of [...].
31. However, the Commission held that these restrictions were hindering the adversarial nature of the proceedings by preventing the Applicant from being able to present specific counter-arguments, and that the imbalance between the parties will have to be taken into account in the study of the merits of the request.

## **B. Political character of the case :**

### ***a) The Applicant***

32. The Applicant claims that the data provided by the NCB of [...] concerning him is contrary to Article 3 of INTERPOL's Constitution, as it is grounded on a politically-motivated criminal case.
33. He argues that he was a journalist in [...] continued to be regularly questioned by the police even after his release. He claims that he [...] where he was recognized as a refugee. He has later become a [...] citizen [...], and he has provided official documents relating to his past refugee status and his naturalization.

34. He worked [...] News Agency [...]. He is a vocal critic of [...].
35. He claims that he was arrested in [...] on [...], on the basis of an alert circulated through INTERPOL's channels by [...] authorities, and detained for several days. He has been released on bail, and he remains exposed to a possible extradition to [...]. He invites the Commission [...], he remains at risk of persecution on the basis of his political opinion in case of return to his country of origin.

**b) The NCB of [...]**

36. [...]

**c) The NCB of [...]**

37. The NCB of [...] confirmed that the Applicant was arrested on [...] on the basis of the red notice and the underlying arrest warrant. Following a request for temporary release, the magistrate's chamber decided on [...] to release the Applicant on parole and on payment of a bail. He was effectively released on [...].

38. Following a second request by the Applicant, the restrictive conditions were lifted by order of the [...] dated on [...]. [...]

**d) The NCB of [...]**

39. The NCB of [...] has been queried by the Commission concerning the Applicant's recognition as a refugee, and his subsequent naturalization. [...]

**e) Findings of the Commission**

40. With respect to the assertion that the matter is of a political character, the Commission 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.

41. 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;
- and the implications for the neutrality of the Organization.

42. In reviewing the applicable criteria under the predominance test, the Commission established first that the offenses as described [...] are ordinary-law offences punished under the criminal law of [...].

43. The Commission assessed whether the underlying facts [...] were consistent with the above-mentioned charge. It carefully considered the [...].

44. Recalling the jurisprudence of the European Court of Human Rights on restrictions to the freedom of expression<sup>1</sup>, the Commission held that although States may adopt measures (even of a criminal-law nature) in their capacity as guarantors of public order, to react to unjustified attacks against third persons, it is nevertheless incumbent on the press to impart information and ideas on issues of political importance and of general interest, including divisive ones.

45. The Commission held that it is not within its competence to determine whether the criminal proceedings brought against the Applicant linked to [...] constituted a proportionate, necessary and legitimate interference with his freedom of expression. However, it held that in view of [...], the resort to anti-terrorism criminal provisions and penalties called for closer scrutiny notably with regard to elements of effective participation.

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<sup>1</sup> [...]

46. The Commission reviewed the [...]. In addition, recalling here its previous findings on the issue of communication of information, the Commission underlined that the Applicant had not been in a position to provide counter-arguments on the specific criminal acts he is accused of, since he has not been made aware of the charges nor of the facts of the case, further to the restrictions to communications analyzed above.
47. Regarding the status of the Applicant, the Commission established that he is not a politician or a former politician, but rather a journalist [...] and international media.
48. [...] It also took into consideration that Article I,C of the Geneva Convention relating to the Status of Refugee (the "cessation clause"), provides that the Convention shall cease to apply to an individual who has acquired a new nationality and enjoys the protection of the country of his or her new nationality.
49. Yet, although the protection against *refoulement* stemming from Article 33 of the Convention *stricto sensu* no longer extends to such an individual, the factual situation leading to the earlier recognition of a well-founded fear of persecution may well continue to exist after the acquisition of a new nationality. While the principle of *non-refoulement* is most commonly associated with international refugee law, its recognition in most international human rights instruments and extradition treaties, as well as its status as a customary norm of international law makes it of relevance to any individual who risks being subjected to serious harm or to a flagrant denial of other fundamental human rights upon return to his/her country of origin.
50. Accordingly, the principle of *non-refoulement* may still be taken into account in the assessment of cases of former refugees who have later obtained citizenship in their host country. In such situation, the Commission held that the most important factor is to assess whether the situation which had put the individual at risk and initially justified the protective status has substantially changed. If there is no indication that the situation has changed, the processing of data provided by the NCB of the country of origin in order to request extradition, would still generally be found not compliant with INTERPOL's rules as the purpose for the registration of data would not be achievable while respecting the principle of *non-refoulement*.
51. In the present case, the Commission considered that, [...] the Applicant was recognized as a refugee by the [...] authorities, prior to his naturalisation [...]. It also held that none of the information available to it demonstrates that the situation which prompted the recognition of his protective status may have ceased to exist in his country of origin.
52. [...]
53. The Commission found that these elements raised serious doubts as to the compliance of the data concerning the Applicant with INTERPOL's rules, but it decided to continue to review the other factors listed in Article 34 of the RPD in order to make a final determination.
54. The general context of the case reveals that the Applicant, living outside [...] and working as a journalist for [...] media, was arrested in [...], on the basis of data registered in INTERPOL's files and [...]. The Commission noted that despite being informed of the Applicant's detention, the [...] authorities have not submitted an official request for his extradition to their [...] counterparts as requested by Article 87 of the RPD, and that they have not provided any explanation for their lack of diligence.
55. Furthermore, it appears that several organizations defending journalists have publicly denounced the criminal proceedings against the Applicant and his arrest in [...], as an example of misuse of INTERPOL's channels and a disproportionate interference with his journalistic work and freedom of expression. The Commission took into account for instance, [...].
56. The Commission also paid attention to other independent sources such as the Report of the UN Special Rapporteur on [...].
57. It also recalled the Report published [...] by the Office of the United Nations High Commissioner for Human Rights on the impact of the state of emergency on human rights in [...], indicating that [...].
58. In light of all the above-mentioned elements, the Commission found that there are strong political elements surrounding the case, and that maintaining the data challenged would have significant and

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adverse implications for the neutrality of the Organization in that it could be perceived as facilitating politically motivated activities. Therefore, it concluded that the data concerning the Applicant are not compliant with Article 3 of INTERPOL's Constitution.

### **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.

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