



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 data challenged 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 the EEE, is the subject of a Diffusion circulated by the NCB of CCC for "*extremely large scale fraud and [...] embezzlement or misappropriation*" on the basis of an arrest warrant issued on [date] by the CCC.
6. The facts of the case state the following: "[...]"

III. THE APPLICANT'S REQUEST

7. The Applicant requested the deletion of the data concerning him, contending, in essence, that:
 - a) DDD denied his extradition;
 - b) the data lack a clear description of criminal involvement;
 - c) the case is of a predominantly political character and
 - d) there are some irregularities in the proceedings.

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. Extradition issues:
 - Article 31 of INTERPOL's Constitution.
 - Article 10(1), 12(1), 35(1), 81, 84(b) and 87(b) of the INTERPOL Rules on the Processing of Data (RPD).

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- 8.3. Clear description of criminal activities:
- Article 10(2)(a), 12, 35(1) and 97(1)(a), 97(2) of the RPD.
 - IPSG standards for the application of the RPD.
- 8.4. Matters of political character:
- Article 3 of INTERPOL's Constitution.
 - Article 34 of the RPD.
- 8.5. Human rights matters:
- Article 2(1) of INTERPOL's Constitution.
 - Article 11(1) of the RPD.

V. FINDINGS

9. For an appropriate study of the case, the Commission decided to study together the question of lack of description of criminal involvement and the extradition denial since they are interdependent and rely on the same factual allegations.

Extradition denial and clear description of criminal involvement

a) The Applicant

10. The Applicant contended that there is a lack of criminal elements in this case. He was a shareholder of [...].
11. Regarding the charges held against him, his name is always cited along with another person which shows that the investigative bodies, in bringing the Applicant to criminal responsibility found no specific actions on his part.
12. He explained that [...] was not part of his official powers. Similarly, [...] employees who were independent from him and not his subordinates. [...] the Applicant had one vote like the others. He neither influenced the other members nor was in a position to do so. Additionally, there is no information in the CCC proceedings to explain [...]at what time and in what way.
13. [...] The Applicant, [...] was not endowed with organizational and administrative functions and therefore could not exert any pressure on [...] in making any decisions.
14. On [date], the Applicant was arrested in DDD based on the Diffusion. On [date], his extradition to CCC was denied by the DDD Court. The Court considered that the CCC allegations remained unspecific and implausible. For instance, despite being invited to do so, CCC authorities did not answer the Applicant's demonstration during extradition proceedings that [...]. The allegation that he stole documents to conceal his alleged criminal acts was also demonstrably false: on [date]during the [...]. The above few examples of the manner in which CCC authorities attempted to construct an accusation against him demonstrate the existence of political character to the proceedings.

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

15. The NCB confirmed the validity of the proceedings and of the arrest warrant issued against the Applicant. On [date], the Applicant was formally charged under Articles [...] of the CCC Criminal Code for embezzlement of the funds belonging to [...].
16. The criminal scheme started between [date] in CCC when the Applicant created an organized criminal group which was joined by [...].

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17. From [date] to [date], with [...], the Applicant charged some subordinates to [date]. Then, from [date] to [date] under the Applicant's direct supervision, [...]. These funds were then used by the accomplices at their discretion.
18. From [date] to [date], to conceal traces of the embezzlement and [...], the Applicant and his accomplices created the appearance of [...]. While doing so, the members of the organized group knew that [...].
19. From [date] to [date], under the Applicant's guidance and supervision, the accomplices prepared documents [...].
20. In [date], the Applicant [...]. This is confirmed because on [date], only copies of the documents were seized and not the originals.
21. The materials of the criminal case including the testimonies of three other accused individuals and more than six witnesses, as well as documents seized or provided by [...] demonstrate that [...].
22. The same elements of evidence confirm that the Applicant fully controlled [...] financial and economic activity, from the nominations to the key posts, to [...] because he possessed through the persons affiliated to him more than 50% of [...] shares, was member of the Board of Directors and advisor to the Deputy Chairman of [...]. Thanks to his strong position he ensured the vote of [...] by misrepresenting [...] and without conducting a real financial or economic report.
23. While doing so, the Applicant knew that [...].
24. Regarding personal benefit, the NCB answered that sufficient data were received during the preliminary investigation to confirm the existence of the crime and the Applicant's involvement in the acts under investigation, which served as a ground for issuing a resolution to bring charges in compliance with CCC procedural law.
25. On [date], the CCC sent DDD authorities a request for the Applicant's extradition. Between [date] and [date], nine additional answers and guarantees were sent in reply to the DDD.
26. According to the verbal note of the DDD dated [date], the competent DDD court declared the extradition inadmissible because the description of the circumstances of the case set out in the procedural documents did not meet the requirements of the Rule of speciality, in accordance with [...] Convention on Extradition of [date]. However, the specific grounds basing the DDD court's finding that the Rule of specialty would not be upheld are unclear. In this regard, a letter of disagreement was sent to the DDD on [date], with a request to reverse the decision, or provide more detailed reasons for the refusal, or still about the possibility to prosecute the Applicant in DDD.

c) The NCB of DDD

27. The NCB of DDD confirmed that the Applicant was arrested on [date], in DDD on the basis of the INTERPOL Diffusion.
28. On [date], the DDD court found the Applicant's extradition to CCC inadmissible as the CCC extradition request did not contain sufficient information on the offences with which the wanted person is charged in connection with the criminal proceedings conducted in CCC.

d) Findings of the Commission

29. Based on the [date] extradition denial of the DDD Court, the Applicant challenged the validity of the Diffusion, arguing a lack of clear description of criminal involvement.
30. Under Article 99(2) of the RPD, the purpose of this Diffusion is not only to locate the Applicant, 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 CCC authorities took steps to request the

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Applicant's extradition from DDD. Therefore, there is no reason to doubt that the Diffusion still has a valid purpose, and is compliant with applicable rules as described in paragraph 8.2 above.

31. The Commission studies the question of the lack of criminal elements, in accordance with the provisions under paragraph 8.3. On the one hand, the Applicant claims that there are clear elements, supported by the DDD court decision, that the allegations against him, as outlined in the Diffusion are not founded (paragraphs 10 to 14). On the other hand, the NCB gives an account of the [...] fraud, which the Applicant allegedly orchestrated (paragraphs 16 to 23), and bases the charges on several elements of evidence, including testimonies of accused persons or victims and documents seized or provided during the investigation.
32. The NCB's description of facts is very similar, if not identical, to the one provided to the DDD Court by CCC authorities during extradition proceedings. The said Court requested additional information from CCC authorities as stipulated by the NCB of CCC (paragraph 25). The Commission may be presented with more or less similar documents than those which the requested country for extradition may have received. Unlike the DDD courts, which may have the discretion to determine whether the CCC authorities have shown that the suspicion is reasonable in light of the facts and circumstances and the underlying evidence prior to deciding on an extradition request, the Commission's role is limited to evaluating whether sufficient and coherent facts are provided to tie the Applicant to a charge of extremely large scale fraud, embezzlement or misappropriation.
33. While the NCB did refer to a period of time during which [...], the lack of specific dates of these events which should be reported in [...] raise doubts as to the Applicant's involvement in the case. This issue is raised in the DDD Court's reasoning: *"Each of the [...] constitutes an independent act both in the substantive and the procedural sense, The individual offences must be described in such specific and individualised terms that the realization of the objective and mental elements of the offence can be verified (...). Since the [...] had to approve the granting of the relevant [...] agreements before [...] could begin, the explanation of the facts should have contained information on which day the positive vote on the [...] was taken."*
34. On the Applicant having played an influential role in the voting process (paragraphs 17 and 22) there are no elements provided by the NCB to detail the manner in which he would have done so. This is mentioned in the DDD Court decision *"it should have been stated by which actions the prosecuted person induced the other [...] members of the panel (whose names, moreover, were not stated) to agree to the award. The extradition documents only state that the other members had voted "according to a verbal instruction" from the prosecuted person. It is neither explained when and to whom the corresponding instructions were issued nor in which form."*
35. The DDD decision further questioned how the Applicant knew that [...], as it is alleged (paragraph 18), instead of [...] and states that *"The reason given for this is that other prosecuted persons have confirmed that the prosecuted person had knowledge of [...]. However, it is not indicated from what this knowledge results, for example from [...] or from other circumstances."*
36. Concerning the fact that the Applicant [...] to cover up his offence, the DDD courts received a similar statement from CCC authorities as the Commission (paragraph 20) and considered that this explanation was not a sufficiently supported response. Indeed the fact that [...] does not provide concrete information in response to the Applicant's statement that [...] (paragraph 14).
37. Regarding the additional claim to demonstrate the criminal nature of [...], the NCB referred to the evidence in the case (paragraph 21) without giving more detailed explanations. This was also noted by the DDD Court which finds that: *"the CCC authorities merely referred in general terms to statements made by persons otherwise prosecuted and witnesses, as well as to documents seized from [...], among others. Not even a summary elaboration was provided with regard to the content of these statements and findings. Stating the facts in this regard, or at least a statement on the prosecuted person's submission, would have been required, as the prosecuted had pointed out that the data for [...] available from the government platform [...] showed that the companies had actively engaged in [...]."*

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38. Finally, the Commission underlines that the Applicant's direct personal gain was not clarified by the NCB, which merely states that there was sufficient evidence against the Applicant to issue the arrest warrant against him (paragraph 24).
39. Under Article 99(2) of the RPD, the circulation of a Diffusion is conditioned on 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. This information must be 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 personal gain, benefit or the intention to commit the offence.
40. Here considering the Commission's limited role, the elements provided by the NCB of CCC are not sufficient to demonstrate a clear characterization of the facts and possible criminal involvement of the Applicant, and prevent it from concluding that the challenged data meet the criteria stipulated in Articles 12, 35 and 99(2) of the RPD.
41. Since the Commission could conclusively dispose of the matter in favor of the Applicant on the above basis, it did not consider the other elements of the request.

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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