Request concerning [...]

(Ref. CCF/[...])

DECISION OF THE COMMISSION

(108th session, 15 to 19 April 2019)

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

Vitalie PIRLOG, Chairperson
Leandro DESPOUY,
Petr GORODOV,
Sanna PALO,
Isaias TRINDADE,
Members,

Having deliberated in camera during its 108th session, on [...], delivered the following Decision.

I. PROCEDURE

1. On [...], Ms [...] (the Applicant) lodged a complaint addressed to the Commission for the Control of INTERPOL's Files (the Commission). 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 Applicant was informed thereof on [...].

2. During the study of the Applicant's case, the Commission consulted the INTERPOL National Central Bureaus (NCBs) of [...] and [...], in accordance with Article 34 of the Statute of the Commission, on the arguments set forth in the complaint.

3. No data concerning the Applicant were registered in INTERPOL's files at the time of the complaint. The INTERPOL General Secretariat (IPSG) received a request for the publication of data concerning the Applicant on [...], and regarding which it deferred to the Commission to assess the compliance of the request with INTERPOL's rules.

4. The Commission informed the Applicant on [...] that she is the subject of data requested for publication by [...], and provided the information described in paragraphs 7 and 8 below, in accordance with the authorization given by the NCB source of the data.

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 108th session.

II. FACTS

6. The Applicant is a national of [...].

7. She is the subject of a Red Notice requested by [...] for [...] on the basis of a court decision of [...] imprisonment issued *in absentia* [...].

8. The summary of the facts, as recorded in the Notice, is the following: [...].

III. THE APPLICANT'S REQUEST

9. The Applicant requested the deletion of the data concerning her, contending, in essence that:

   a) the purpose of the Notice was achieved; and

b) the prosecution lacks an evidentiary basis.

IV. APPLICABLE LEGAL FRAMEWORK

10. 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.

11. General provisions:

- Article 2(1) of INTERPOL's Constitution states that the Organization 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 12 of INTERPOL's Rules on the Processing of Data (RPD) stipulates, *"Data processed [...] must be accurate, relevant, not excessive in relation to their purpose and up to date, to allow them to be used by authorised entities."*

- Article 35(1) of the RPD conditions that *"in conformity with Article 5(3) of the present Rules, 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 of interest for the purposes of international police cooperation."*

- Article 35(2)(b) of the RPD states that *"compliance with this condition for recording data shall be assessed in relation to […] the international nature of the data and, in particular, the extent to which the data may be used by National Central Bureaus, national entities or international entities other than the source."*

12. Purpose and retention of a red notice:

- Article 10 of the RPD states that data shall be processed in the INTERPOL Information System for a specific purpose.

- Article 82 of the RPD states: "*Red Notices are published […] in order to seek the location of a wanted person and his/her detention, arrest or restriction of movement for the purpose of extradition, surrender, or similar lawful action*."

- Article 51(3) of the RPD stipulates: "*When the purpose for which the data were recorded has been achieved, the National Central Bureau, national entity or international entity that recorded the data shall delete them from the police databases, unless it has decided to determine and justify a new purpose for recording them*."

- Article 81 of the RPD states that "*the General Secretariat shall cancel a notice if […] the National Central Bureau or international entity that requested the notice obtains data allowing it to carry out the required action but has not taken any steps to this end and, after being consulted, has not provided reasonable grounds for its lack of action*."

13. Conditions for the publication of a red notice:

- Article 83(1)(a)(i) of the RPD states that Red Notices may only be published if *"the offence concerned is a serious ordinary-law crime."*

- Article 83(2)(b)(i) of the RPD stipulates, *"Red notices may be published only when sufficient judicial data has been provided. Sufficient judicial data will be considered to include at least summary of facts of the case, which shall provide a succinct and clear description of the criminal activities of the wanted person, including the time and location of the alleged criminal activity."*

V. FINDINGS

14. The Commission assesses the Applicant's contentions in the order in which they are described in Section III above.

A. Purpose and retention of the Red Notice

a) The Applicant

15. The Applicant stated that, on [...],[...] authorities stopped her based on an INTERPOL Red Notice requested from [...]. She explained that she was then subject to extradition proceedings in [...] at the request of [...], in which [...] ultimately rejected the request. She specified that [...] authorities issued a final decision regarding the matter on [...]. With reference to Articles 81 and 82 of the RPD, the Applicant argued that the data has fulfilled its purpose and consequently should be revoked.

16. In support of her claim, the Applicant provided a copy of the decision of the [...] in [...], dated [...]. In this document, the Court rejected the request for the Applicant's extradition to [...] given that there is no applicable treaty between the two countries concerning extradition, and therefore such an action would be unlawful. The Applicant additionally submitted that the [...] confirmed this first instance ruling in a decision dated [...].

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

17. The NCB of [...] confirmed that the Applicant continues to be wanted by its authorities, and that her extradition will be sought in accordance with the purpose of the Red Notice. It provided a copy of the extradition file, dated [...] and sent to [...] authorities, concerning the Applicant. In this document, [...] authorities were invited to arrest the Applicant and process the request for her extradition to [...].

c) The NCB of [...]

18. The NCB of [...] confirmed its national authorities arrested the Applicant on [...] on the basis of the international alert issued by [...]. On [...], a court decision was issued rejecting the extradition of the Applicant to [...] since there is no legal basis for such action. On [...], its authorities had received the extradition file from their [...] counterpart; however, its processing was barred by the court decision to reject the extradition request.

d) Findings of the Commission

19. Under Article 82 of the RPD, the purpose of a Red Notice is to seek the location of its subject and their detention, arrest or restriction of movement, in view of their extradition, surrender, or similar lawful action. Article 84(2) of the RPD stipulates that the extradition of an individual, following their arrest, should be requested "in conformity with national laws and/or the applicable bilateral and multilateral treaties." A Red Notice may be deleted, pursuant to Article 81 of the RPD, in cases where the NCB which had requested the data does not take any steps in pursuit of the purpose of the Notice, absent of any reasonable grounds for such.

20. Primarily, the Commission observed that the police action and extradition proceedings in [...] for the underlying facts of the present case occurred between [...]. It recalled that the Red Notice for the Applicant has yet to be published in INTERPOL's files, given that the NCB of [...] recorded its request for its publication on [...].

21. In light of the fact that its study in the present case centres on the requested Red Notice, the Commission considered that the extradition proceedings mentioned by the Applicant predate the registration of the Red Notice in INTERPOL's files. Therefore, the reference to Articles 82 and

consequently Article 81 of the RPD as a basis for the cancellation of the Red Notice request is invalid, given that these rules were not operative at the time of her extradition proceedings in [...] since no data existed at the time in INTERPOL's files.

22. In any case, the Commission nonetheless underlined that the rejection by [...] of the extradition request from [...] would be insufficient reason for the revocation of the Red Notice.

23. The Commission noted that the NCB of [...] had taken steps to request the extradition of the Applicant, which would be considered in accordance with Article 81 of the RPD, and has expressed its commitment to seeking the extradition of the Applicant from countries other than [...], in accordance with applicable law. The Commission similarly noted that the NCB of [...] had rejected the extradition of the Applicant in conformity with its national laws, which would be permitted by Article 84 of the RPD.

24. In view of the above, the Commission considered that national law barred an action towards the extradition of the Applicant from [...], which would be in accordance with INTERPOL's rules. The Commission emphasized this does not in itself challenge that the Notice has yet to achieve its purpose, and which may indeed be achieved in the future within the limits of lawful police action.

25. Therefore, the Commission finds that the Applicant's claim did not demonstrate that the data has served the purpose for which it was requested for publication in INTERPOL's files, in light of the fact that her arrest and extradition, surrender, or similar lawful action, continue to be sought by [...]from Member Countries other than [...].

B. Lack of evidentiary basis

a) The Applicant

26. The Applicant alleged that [...] authorities coerced her into signing a false confession of committing the underlying offence. She explained that in [...], while she was attending university in [...], she was summoned to a police station and pressured to confess that she had stolen a mobile phone and an identity card, and that she subsequently sold this phone using the stolen identity card to misidentify herself to the buyer and conceal her crime. She added that the [...] officials who interrogated her had threatened to arrest her family members if she did not sign the confession.

27. The Applicant claimed she later discovered that one of the [...] officials who interrogated her held the position of chief prosecutor, [...]. In that context, she alleged that her statement of confession was somehow distributed throughout the university, causing public humiliation that prompted her to leave [...].

b) The NCB of [...]

28. In its reply, the NCB of [...] denied that the Applicant was subject to any form of pressure or coercion during her interrogation before its police and prosecutorial authorities in [...]. It specified that the Applicant had confessed to her theft of the mobile phone and identity card that were the focus of the interrogation, and additionally, by her own accord, confessed to having stolen and sold [...] other mobile phones within that same period. The NCB furthermore provided a copy of the court decision issued on [...] against the Applicant, and which it submitted contains additional elements characterizing her criminal involvement.

29. In the court decision, the Applicant was accused of stealing a mobile phone that belonged to [...], and stealing and making use of an identity card that belonged to [...]The decision includes the testimonies of these two victims of the alleged crime and which were part of the police investigations that eventually led to the Applicant's interrogation [...]:

    a. [...] testified that his mobile phone, which valued at [...], was stolen while he was at the [...]. By inquiring with his telecommunications service provider, it was discovered that the mobile phone was in the possession of another individual, [...]who later told police authorities that he had purchased it from a woman who identified herself, with an identity card, as [...]; and

b. [...] testified that her identity card was stolen [...] on the university campus of the Applicant, who she believed had taken it.

30. The court decision further recounts the Applicant's testimony from her interrogation in [...], in which she had confessed to her commission of the crime for financial gain, and specifically that:

a. [...]she misappropriated the above-mentioned identity card after finding it on the university campus;

b. Subsequent to the above, she used the identity card to purchase a SIM card, which she briefly used before giving it to her [...];

c. In [...], she stole the above-mentioned phone and sold it to [...] in exchange for [...], misidentifying herself during the transaction by using the stolen identity card; and

d. Between late [...], she had stolen [...] other phones on campus ([...]), all of which she then sold while misidentifying herself with the stolen identity card.

c) Findings of the Commission

31. Under Article 83(2)(b)(i) of INTERPOL's Rules on the Processing of Data (RPD), a Red Notice must contain "a succinct and clear description of the criminal activities of the wanted person," which is comprised of factual elements provided by the NCB source of the data that describe the individual's involvement in the underlying criminal activity.

32. In that regard, the Commission underlined that it is not in a position to examine evidence and make a judgment on the guilt or innocence of a subject of a national court. It emphasized that it does not rely on an alternative narrative of innocence provided by an Applicant as the sole basis for a successful challenge to the data processed at the request of an NCB. However, in fulfilling its functions in accordance with Article 33 of its Statute, the Commission examines whether the information provided by the NCB source of the data includes sufficient elements of the possible concrete and effective participation of the individual to the criminal offence. As part of its assessment, the Commission takes into account information or claims submitted by an Applicant as well as any NCB third party to a case.

33. In the present case, the Commission noted that the NCB of [...] provided sufficient elements characterizing the possible involvement of the Applicant in the offence of which she was convicted. It observed that the investigations conducted by [...] law enforcement had led them to the Applicant, and upon her interrogation, that she had confessed to and provided details of her alleged crime. The Commission therefore preliminarily considered that the information provided by the NCB of [...] meet the criteria of Article 83(2)(b)(i), and indeed link the Applicant to the underlying offence.

34. The Commission subsequently considered the claims presented by the Applicant, in which she essentially refutes the validity of the confession she made before [...] authorities, and any involvement she had in the alleged crime. In its study of her claims, the Commission observed that the Applicant merely relied on an alternative narrative of events to question the evidentiary basis of the charges. With regards to her specific claim of having been coerced into signing a confession, the Commission emphasized that the Applicant did not provide any element in support of her contention, which bars the Commission from considering its validity or relevance in the study of the case.

35. As a result, the Commission finds that the NCB of [...] submitted a clear description of the criminal involvement of the Applicant and the evidentiary basis of the charges, whereas the Applicant did not provide information that adequately counters these elements provided by the NCB. The Commission is therefore unable to find that the Applicant's claim of a lack of evidentiary basis holds merit.

C. Quality of the data and its interest for international police cooperation

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

36. The NCB of **[...]** was invited to provide additional information on the underlying facts of the case, and in particular, a description of the private property allegedly stolen by the Applicant, including their financial value and the financial sum constituting her personal benefit from the act.

37. In its reply, the NCB clarified that the Applicant had committed the theft of a total of **[...]** mobile phones and an identity card between the period of **[...]**. The NCB restated the information available in the court decision, which is that the mobile phone owned by **[...]**. With regards to the **[...]** other mobile phones allegedly stolen by the Applicant, the NCB clarified that their details are unknown to its national authorities.

b) Findings of the Commission

38. At its own motion, the Commission considered whether the data are compliant with Articles 12, 35 and 83(1)(a)(i) of the RPD. It recalled that data processed in INTERPOL's files must be accurate and relevant, pursuant to Article 12 of the RPD; must be of international interest, in accordance with Article 35 of the RPD; and, for the publication of a Red Notice, must concern a "serious ordinary-law crime," as conditioned under Article 83(1)(a)(i) of the RPD.

39. In the present case, the Commission preliminarily noted that the summary of facts recorded in the Red Notice request specifies that the Applicant had stolen **[...]** mobile phones. The Commission observed that, according to the court decision and the NCB of **[...]**, the Applicant was accused and convicted for (a) stealing an identity card, which she used to buy a SIM card and sell **[...]** mobile phones that she had stolen, and for (b) stealing the mobile phone belonging to **[...]**.

40. The Commission considered that the recorded data contain some inaccuracy: rather than **[...]**, the number of stolen phones is **[...]**; and additionally, the Applicant was not convicted for having stolen the mobile phones, and instead for the acts as they are specified above. The Commission therefore preliminarily underlined that the data are not in full compliance with Article 12 of the RPD.

41. The Commission subsequently studied the question of whether the data are of interest for the purpose of international police cooperation, and specifically meet the criteria of relating to an offence of a serious ordinary law crime, as required by Articles 35 and 83 of the RPD.

42. On the one hand, the Commission noted that the offence of theft is universally recognized as an ordinary-law crime. It further discerned that the penalty threshold specified under Article 83 of the RPD is met, which is an indicator of the serious nature of the criminal activity on a national level.

43. On the other hand, the Commission paid particular consideration to the following elements:

    a. The Applicant was between 18 to 21 years of age at the time of her alleged commission of the crime;

    b. The available elements specify that the Applicant had allegedly stolen a phone with the original value of **[...]**, and had made a financial profit of **[...]**from its selling;

    c. The underlying facts essentially concern the theft of private property that, with regards to the **[...]** mobile phones stolen, would not exceed the estimated value of **[...]**; and

    d. The available elements do not demonstrate that serious, concrete damage was caused to a public or private interest in her theft and misuse of the identity card of another, or purchase of a SIM card with the use of this card.

44. Therefore, the Commission finds that, for the purposes of INTERPOL and in light of the reservation of Red Notices for serious crimes, the case of the Applicant concerns a petty crime that does not meet the requirements of Articles 35 and 83 of the RPD for the publication of the Notice.

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.
