



EINGEGANGEN

- 9. März 2017

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)

**Beilage 21**  
eingereicht durch  
LENZ & STAEHELIN  
Zürich

6 March 2017

Our ref: CCF/100/R401AB.15/c1016.17

Subject: Request concerning Mr Andrew Zivy and Mr Beat Ruprecht

Dear Sir,

We would like to inform you that, in accordance with its functions, these requests were studied by the Commission during its 98<sup>th</sup> session which took place from 23 to 26 January 2017.

The Commission concluded that the data challenged were not compliant with INTERPOL's rules and recommended the deletion from INTERPOL's files of the data provided by the NCB of Russia concerning your clients.

Accordingly, this recommendation was forwarded to INTERPOL General Secretariat, which deleted from INTERPOL's files, on 3 March 2017, the data challenged concerning your clients.

Additionally please be advised that INTERPOL General Secretariat has informed all INTERPOL National Central Bureaus (NCB) that:

- in application of recommendations made by the Commission for the Control of INTERPOL's Files, the General Secretariat has deleted the information relating to your clients;
- all international police cooperation via INTERPOL's channels in these cases would not be in conformity with INTERPOL's Constitution and Rules.

You will find enclosed the Commission's Decisions concerning your clients, and an official letter from INTERPOL General Secretariat, certifying that Mr Zivy and Mr Ruprecht are not known to its databases and that they are not subject to an INTERPOL Red Notice or diffusion.

Yours faithfully,

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

Encl. (4)

Mr Lorenz Erni, Dr. iur., Rechtsanwalt  
Erni Brun Forrer  
Ankerstrasse 61  
Postfach 1343  
CH-8026 Zurich  
SWITZERLAND



## **Request concerning Beat RUPRECHT** (Ref. CCF/R 401B.15)

### **DECISION OF THE COMMISSION** (98<sup>th</sup> session, 23 to 26 January 2017)

The Commission for the Control of INTERPOL's Files (the Commission), composed of:

Nina VAJIĆ, Chairperson,  
Jean FRAYSSINET,  
Drudeisha MADHUB,  
Andrew PATRICK,  
Members,

Having deliberated in camera during its 98<sup>th</sup> session, on 24 January 2017, delivered the following Decision. In its deliberations, the Commission was assisted by Florence AUDUBERT, Secretary to the Commission.

#### **I. PROCEDURE**

1. On 11 September 2015, Mr Beat RUPRECHT (the Requesting Party, hereafter the "RP") lodged a complaint addressed to the Commission. Following submission of all required documentation in accordance with Chapter 1.2 of the Operating Rules, the request was found admissible, and the Commission informed him on 28 September 2015.
2. In accordance with article 5(e)(4) of the Rules on the Control of Information and Access to INTERPOL's files, the National Central Bureau of INTERPOL (NCB) of Russia was consulted.
3. This case was considered by the Commission during its 96<sup>th</sup> session (June 2016), at which time the Commission decided that, on the basis of the available elements, the processing of the data challenged was in conformity with INTERPOL's Rules.
4. On 19 August 2016, the NCB of Russia and the RP were informed of this outcome.
5. The RP's request for re-examination of his case sent to the Commission on 8 July 2016 was studied during the 97<sup>th</sup> session of the Commission (October 2016). In view of the elements provided, the Commission decided to re-examine the case, and informed him of such on 20 October 2016. He was also informed that this request should be presented and studied during the 98<sup>th</sup> Session of the Commission, and to provide any additional information before 6 January 2017, which he did on 6 January 2017.
6. In accordance with Article 5(e,4) of the Rules on the Control of Information and Access to INTERPOL's files, the NCB of Russia was consulted on the arguments of the RP. On 14 December 2016, it was also informed that this request should be presented and studied during the 98<sup>th</sup> Session of the Commission, and to provide any additional information before 6 January 2017.

#### **II. FACTS**

7. The RP is a Swiss national.
8. He is the subject of a request for Red Notice sent by the NCB of Russia for Misappropriation by fraud committed by organized criminal group or in especially large scale, on the basis of an arrest warrant issued by the Basmany district court of Moscow city in Russia on 26 December 2014.
9. The summary of the facts set forth in the request for Red Notice, is the following: "*RUSSIA, Samara region: From 01 January 2008 to 31 December 2011: The subject being one of the owners "Nitrochem Distribution AG" (Switzerland) entered organize criminal group led by Makhlay Vladimir, dob 09.06.1937 who was a chairman of board of directors of "Toliattiazot" (Russia). Other group*

*members were: Makhlay Sergey, dob 16.02.1969, Korolev f/n Evgeniy, dob 02.10.1962; Zivy Andreas, dob 19.10.1955. The a/m persons by means of deceit and abuse of trust misappropriated extra large amount of liquid anhydrous ammonia and carbamide from the corporation "Toliatiazot". The product of the corporation was sold to Swiss company "Nitrochem Distribution AG" at the underestimated price. Total damage to stockholder of "Toliatiazot" was 3 035 806 493 US dollars."*

### III. THE RP'S REQUEST

10. The RP requested the deletion of the data concerning him, contending, in essence that 1) the suits against him are political; 2) there have been procedural violations in the issuance of the AW; 3) the prosecution lacks any evidential basis.
11. In the most recent complaint, he provides further support for his contentions regarding the political character of the charges.

### IV. APPLICABLE LEGAL FRAMEWORK

#### 12. General provisions:

- Article 2(1) of INTERPOL's Constitution states that the Organisation 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 11(1) of the Rules on the Processing of Data (RPD) provides that "data processing in the INTERPOL Information System should be authorized with due regard for the law applicable to the NCB, national entity or international entity and should respect the basic rights of the persons who are the subject of the cooperation, in accordance with Article 2 of the Organization's Constitution and the Universal Declaration of Human Rights to which the said Article refers".

#### 13. Matters of political character:

- Article 3 of INTERPOL's Constitution provides that "[i]t is strictly forbidden for the Organization to undertake any intervention or activities of a political (...) character."
- Article 34 of the 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 provides 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."



14. Confidentiality of requests:

- Article 20 of the Commission's Operating Rules, "Requests, or items making up the requests, shall not be recorded in INTERPOL's files used for the purposes of international police co-operation".

## V. FINDINGS

15. The Commission had studied this case during its 96<sup>th</sup> session (June 2016) and had expressed concern that the data challenged could be of a political character. It had found that even though there may exist some political elements surrounding the case, it was not demonstrated that these political elements were predominant over the common law crime elements of the case.

16. Therefore, the Commission addresses this issue first.

### Political character of the proceedings

#### *a) The RP*

17. In the new complaint, the RP claims that the matter is of a political character, in that:

- ToAZ was the subject of corporate raiding.
- On 8 December 2016 Westminster Magistrate's Court in the United Kingdom refused the extradition to Russia of Evgeniy Korolev, General Director of ToAZ and mentioned in the summary of facts of the RN. This decision was not appealed by Russian authorities.
- In November 2016, proceedings were initiated in Ireland by majority shareholders of ToAZ who collectively own more than 70% of the outstanding shares in ToAZ. They set out a claim against Mr Mazepin and the other parties involved in the current raid against ToAZ, for the tort of conspiracy to defraud them of their shares in ToAZ. The High Court in Dublin, Ireland authorized the service out of the proceedings against all of the defendants, including Mr Mazepin, and further authorized substituted service, instead of proceeding with service through The Hague Convention.
- Swiss authorities have already questioned the propriety and accuracy of the allegations against him.

18. To support his request he also provided the affidavit of an individual within the Russian Federation, who is able to confirm that political pressure has been brought to bear in this case and to describe in some detail the nature of this pressure, as well as further evidence stemming from meetings and recordings of Mr Mazepin that the red notice against the RP would be removed if the company ownership was transferred.

19. The RP added, that on 26 May 2016, a meeting took place with Mr Mazepin's representative in Zurich where it was made clear that Mr Mazepin would be ready to 'settle the Red Notice' in the event of the sale of ToAZ shares to him at a heavily discounted price.

20. The RP further claimed, in essence, that in June 2016, during other meetings, Mr Mazepin would have made clear his dissatisfaction at the fact that no agreements had yet been reached for the sale of ToAZ to him, and would have warned that he would proceed with his activities on the criminal case.

*[Restricted information]*

#### *b) Findings of the Commission*

21. In determining whether a case is of a political character the practice of the Commission is to apply the predominance test, i.e., it evaluates all relevant information and pertinent elements, as provided by the rules, to determine whether the offense is of a predominantly political character.

22. Pursuant to RPD Article 34(3), the main pertinent elements to be considered in the context of an Article 3 analysis, are essentially: the nature of the offense, namely the charges and underlying facts; the status of the person concerned; the position expressed by another NCB or another international entity; the neutrality of the Organization and the general context of the case.

23. In reviewing the applicable criteria under the predominance test, the Commission found that the offense charged was of a common law character and the RP is not a politician or former politician. However, reports in four separate fora, independent from the assertions of either the RP or NCB, are indicative of a politicized character to this matter.
24. Specifically, information obtained from the RP indicated that the RP's partner company ToAZ has been the target of corporate raiding. The NCB Russia has provided no facts which demonstrate that this is not the case. Instead, the response of the NCB states that the above mentioned elements are irrelevant to the predominance test, and the information provided does not provide sufficient reason to change that outcome.
25. Accordingly, even assuming that the offense as described is of a common law character, the Commission considers that there is a predominant political dimension to this case and that the information provided by the NCB does not satisfy the requirements of Article 3 of INTERPOL's Constitution.
26. In view of this finding the Commission the considered that it was not necessary to address the other claims of the RP.

### FOR THESE REASONS, THE COMMISSION

1. Concludes that the data challenged is not compliant with INTERPOL's rules applicable to the processing of personal data;
2. Recommends that the data provided by the NCB of Russia concerning the RP is deleted from INTERPOL's files.

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**Request concerning Andrew ZIVY**  
(Ref. CCF/R 401A.15)

**DECISION OF THE COMMISSION**  
(98<sup>th</sup> session, 23 to 26 January 2017)

The Commission for the Control of INTERPOL's Files (the Commission), composed of:

Nina VAJIĆ, Chairperson,  
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Andrew PATRICK,  
Members,

Having deliberated in camera during its 98<sup>th</sup> session, on 24 January 2017, delivered the following Decision. In its deliberations, the Commission was assisted by Florence AUDUBERT, Secretary to the Commission.

**I. PROCEDURE**

1. On 11 September 2015, Mr Andrew ZIVY (the Requesting Party, hereafter the "RP") lodged a complaint addressed to the Commission. Following submission of all required documentation in accordance with Chapter 1.2 of the Operating Rules, the request was found admissible, and the Commission informed him on 28 September 2015.
2. In accordance with article 5(e)(4) of the Rules on the Control of Information and Access to INTERPOL's files, the National Central Bureau of INTERPOL (NCB) of Russia was consulted.
3. This case was considered by the Commission during its 96<sup>th</sup> session (June 2016), at which time the Commission decided that, on the basis of the available elements, the processing of the data challenged was in conformity with INTERPOL's Rules, but it recommended the permanent removal of the extract of the Red Notice from the INTERPOL public website concerning RP.
4. On 19 August 2016, the NCB of Russia and the RP were informed of this outcome.
5. The RP's request for re-examination of his case sent to the Commission on 8 July 2016 was studied during the 97<sup>th</sup> session of the Commission (October 2016). In view of the elements provided, the Commission decided to re-examine the case, and informed him of such on 20 October 2016. He was also informed that this request should be presented and studied during the 98<sup>th</sup> Session of the Commission, and to provide any additional information before 6 January 2017, which he did on 6 January 2017.
6. In accordance with Article 5(e,4) of the Rules on the Control of Information and Access to INTERPOL's files, the NCB of Russia was consulted on the arguments of the RP. On 14 December 2016, it was also informed that this request should be presented and studied during the 98<sup>th</sup> Session of the Commission, and to provide any additional information before 6 January 2017.

**II. FACTS**

7. The RP is a Swiss national.
8. He is the subject of a Red Notice issued at the request of the NCB of Russia for large scale swindle, on the basis of an arrest warrant issued by the Basmany district court of Moscow city in Russia on 24 December 2014.
9. The summary of the facts set forth in the Red Notice, is as follows: "*RUSSIA, Samara region: From 01 January 2008 to 31 December 2011: The subject being an owner of "Nitrochem Distribution AG" (Switzerland) entered organized criminal group led by Makhlay Vladimir, DOB 09.06.1937 who was a*



*chairman of board of directors of "Toliattiazot" (Russia). Other group members were Makhlay Sergey, dob 16.02.1969, Korolev f/n Evgeniy, dob 02.10.1962; Beat Ruprecht-Wedeymeyer, dob 15.09.1958. A/m persons by means of deceit and abuse of trust misappropriated extra-large amount of liquid anhydrous ammonia and carbamide from the corporation "Toliattiazot". The product of the corporation was sold to Swiss company "Nitrochem Distribution AG" at the underestimated price. Total damage to stockholder of "Toliattiazot" was 3 035 806 493 US dollars."*

### III. THE RP'S REQUEST

10. The RP requested the deletion of the data concerning him, contending, in essence that 1) the suits against him are political; 2) there have been procedural violations in the issuance of the AW; 3) the prosecution lacks any evidential basis.
11. In the most recent complaint, he provides further support for his contentions regarding the political character of the charges.

### IV. APPLICABLE LEGAL FRAMEWORK

#### 12. General provisions:

- Article 2(1) of INTERPOL's Constitution states that the Organisation 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 11(1) of the Rules on the Processing of Data (RPD) provides that "data processing in the INTERPOL Information System should be authorized with due regard for the law applicable to the NCB, national entity or international entity and should respect the basic rights of the persons who are the subject of the cooperation, in accordance with Article 2 of the Organization's Constitution and the Universal Declaration of Human Rights to which the said Article refers".

#### 13. Matters of political character:

- Article 3 of INTERPOL's Constitution provides that "[i]t is strictly forbidden for the Organization to undertake any intervention or activities of a political (...) character."
- Article 34 of the 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".
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    - (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 provides 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."

14. Confidentiality of requests:

- Article 20 of the Commission's Operating Rules, "Requests, or items making up the requests, shall not be recorded in INTERPOL's files used for the purposes of international police co-operation".

## V. FINDINGS

15. The Commission had studied this case during its 96<sup>th</sup> session (June 2016) and had expressed concern that the data challenged could be of a political character. It had found that even though there may exist some political elements surrounding the case, it was not demonstrated that these political elements were predominant over the common law crime elements of the case.

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#### *a) The RP*

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- In November 2016, proceedings were initiated in Ireland by majority shareholders of ToAZ who collectively own more than 70% of the outstanding shares in ToAZ. They set out a claim against Mr Mazepin and the other parties involved in the current raid against ToAZ, for the tort of conspiracy to defraud them of their shares in ToAZ. The High Court in Dublin, Ireland authorized the service out of the proceedings against all of the defendants, including Mr Mazepin, and further authorized substituted service, instead of proceeding with service through The Hague Convention.
- Swiss authorities have already questioned the propriety and accuracy of the allegations against him.

18. To support his request he also provided the affidavit of an individual within the Russian Federation, who is able to confirm that political pressure has been brought to bear in this case and to describe in some detail the nature of this pressure, as well as further evidence stemming from meetings and recordings of Mr Mazepin that the red notice against the RP would be removed if the company ownership was transferred.

19. The RP added, that on 26 May 2016, a meeting took place with Mr Mazepin's representative in Zurich where it was made clear that Mr Mazepin would be ready to 'settle the Red Notice' in the event of the sale of ToAZ shares to him at a heavily discounted price.

20. The RP further claimed, in essence, that in June 2016, during other meetings, Mr Mazepin would have made clear his dissatisfaction at the fact that no agreements had yet been reached for the sale of ToAZ to him, and would have warned that he would proceed with his activities on the criminal case.

*[Restricted information]*

#### *b) Findings of the Commission*

21. In determining whether a case is of a political character the practice of the Commission is to apply the predominance test, i.e., it evaluates all relevant information and pertinent elements, as provided by the rules, to determine whether the offense is of a predominantly political character.

22. Pursuant to RPD Article 34(3), the main pertinent elements to be considered in the context of an Article 3 analysis, are essentially: the nature of the offense, namely the charges and underlying facts; the status of the person concerned; the position expressed by another NCB or another international entity; the neutrality of the Organization and the general context of the case.



23. In reviewing the applicable criteria under the predominance test, the Commission found that the offense charged was of a common law character and the RP is not a politician or former politician. However, reports in four separate fora, independent from the assertions of either the RP or NCB, are indicative of a politicized character to this matter.
24. Specifically, information obtained from the RP indicated that the RP's partner company ToAZ has been the target of corporate raiding. The NCB Russia has provided no facts which demonstrate that this is not the case. Instead, the response of the NCB states that the above mentioned elements are irrelevant to the predominance test, and the information provided does not provide sufficient reason to change that outcome.
25. Accordingly, even assuming that the offense as described is of a common law character, the Commission considers that there is a predominant political dimension to this case and that the information provided by the NCB does not satisfy the requirements of Article 3 of INTERPOL's Constitution.
26. In view of this finding the Commission considered that it was not necessary to address the other claims of the RP.

### **FOR THESE REASONS, THE COMMISSION**

1. Concludes that the data challenged is not compliant with INTERPOL's rules applicable to the processing of personal data;
2. Recommends that the data provided by the NCB of Russia concerning the RP is deleted from INTERPOL's files.

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## TO WHOM IT MAY CONCERN

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The General Secretariat of the International Criminal Police Organization-INTERPOL hereby certifies that, as of today, Mr Beat RUPRECHT, born on 15 September 1958, is not subject to an INTERPOL Red Notice or diffusion and is not known in INTERPOL's databases.

Done in Lyon, on 3 March 2017.



Office of Legal Affairs  
General Secretariat  
ICPO-INTERPOL



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## TO WHOM IT MAY CONCERN

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The General Secretariat of the International Criminal Police Organization-INTERPOL hereby certifies that, as of today, Mr Andrew ZIVY, born on 19 October 1955, is not subject to an INTERPOL Red Notice or diffusion and is not known in INTERPOL's databases.

Done in Lyon, on 3 March 2017.



Office of Legal Affairs  
General Secretariat  
ICPO-INTERPOL



**Informelle Übersetzung – Beilage 21**

**Originaltext:**

"Request concerning Beat RUPRECHT

(...)

***I. Procedure***

1. On 11 September 2015, Mr Beat RUPRECHT (the Requesting Party, hereafter the “RP”) lodged a complaint addressed to the Commission. (...)

***IV. Applicable Legal Framework***

12. General provisions:

- Article 2(1) of INTERPOL’S Constitution states that the Organisation 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 11(1) of the Rules on the Processing of Data (RPD) provides that “data processing in the INTERPOL Information System should be authorized with due regard for the law applicable to the NCB, national entity or international entity and should respect the basic rights of the persons who are the subject of the cooperation, in accordance with Article 2 of the Organization’s Constitution and the Universal Declaration of Human Rights to which the said Article refers”.

13. Matters of political character:

- Article 3 of INTERPOL’S Constitution provides that “[i]t is strictly forbidden for the Organization to undertake any intervention or activities of a political (...) character.”
- Article 34 of the 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 provides 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."

14. Confidentiality of requests:

- Article 20 of the Commission's Operating Rules, "Requests, or items making up the requests, shall not be recorded in INTERPOL'S files used for the purposes of international police cooperation".

***V. Findings***

(...)

*b) Findings of the Commission*

21. In determining whether a case is *of* a political character, the practice of the Commission is to apply the predominance test, i.e., it evaluates all relevant information and pertinent elements, as provided by the rules, to determine whether the offense is of a predominantly political character.

22. Pursuant to RPD Article 34(3), the main pertinent elements to be considered in the context of an Article 3 analysis, are essentially: the nature of the offense, namely the charges and underlying facts; the status of the person concerned; the position expressed by another NCB or another international entity; the neutrality of the Organization and the general context of the case.

23. In reviewing the applicable criteria under the predominance test, the Commission found that the offense charged was of a common law character and the RP is not a politician or former politician. However, reports in four separate fora, independent from the assertions of either the RP or NCB, are indicative of a politicized character to this matter.

24. Specifically, information obtained from the RP indicated that the RP's partner company ToAZ

has been the target of corporate raiding. The NCB Russia has provided no facts which demonstrate that this is not the case. Instead, the response of the NCB states that the above mentioned elements are irrelevant to the predominance test, and the information provided does not provide sufficient reason to change that outcome.

25. Accordingly, even assuming that the offense as described is of a common law character, the Commission considers that there is a predominant political dimension to this case and that the information provided by the NCB does not satisfy the requirements of Article 3 of INTERPOL'S Constitution.

26. In view of this finding the Commission the considered that it was not necessary to address the other claims of the RP.

#### **FOR THESE REASONS, THE COMMISSION**

1. Concludes that the data challenged is not compliant with INTERPOL'S rules applicable to the processing of personal data;
2. Recommends that the data provided by the NCB of Russia concerning the RP is deleted from INTERPOL'S files."

#### **Informelle Übersetzung:**

"Anfrage in Bezug auf Beat RUPRECHT

(...)

#### **I Verfahren**

1. Am 11 September 2015 reichte Herr Beat RUPRECHT (die antragstellende Partei, hiernach "AP") eine Beschwerde bei der Kommission ein. (...)

#### ***IV. Anwendbarer Rechtsrahmen***

12. Allgemeine Bestimmungen:

- Artikel 2 Absatz 1 der INTERPOL-Verfassung besagt, dass die Organisation "im Rahmen der in den einzelnen Ländern geltenden Gesetze und im Geiste der Erklärung der Menschen-



rechte eine möglichst umfassende gegenseitige Unterstützung zwischen allen kriminalpolizeilichen Autoritäten gewährleisten und fördern soll".

- Artikel 11 Absatz 1 der Regeln für die Datenverarbeitung (RPD) sieht vor, dass "die Datenverarbeitung im INTERPOL-Informationssystem unter gebührender Beachtung des auf das NZB, die nationale Einrichtung oder die internationale Einrichtung anwendbaren Rechts zugelassen werden und die Grundrechte der Personen, die Gegenstand der Zusammenarbeit sind, gemäß Artikel 2 der Verfassung der Organisation und der Allgemeinen Erklärung der Menschenrechte, auf die sich der genannte Artikel bezieht, respektieren sollen".

#### 13. Fragen des politischen Charakters:

- Artikel 3 der Verfassung von INTERPOL sieht vor, dass es "strengstens verboten ist, dass die Organisation Interventionen oder Aktivitäten mit politischem (...) Charakter durchführt".
- Artikel 34 der RPD besagt folgendes:
  - 34(2): "(...) vor der Aufzeichnung von Daten in einer Polizeidatenbank stellen das Nationale Zentralbüro, die nationale Stelle oder die internationale Stelle sicher, dass die Daten mit Artikel 3 der Verfassung der Organisation übereinstimmen".
  - 34(3): "Um festzustellen, ob die Daten mit Artikel 3 der Verfassung übereinstimmen, werden alle relevanten Elemente geprüft, wie z.B.:
    - a) Art der Straftat, nämlich die Anklagepunkte und die zugrundeliegenden Tatsachen;
    - b) den Status der betroffenen Personen;
    - c) die Identität der Quelle der Daten;
    - d) die Position, die von einem anderen nationalen Zentralbüro oder einem anderen internationalen Büro vertreten wird.
    - e) Verpflichtungen nach dem internationalen Recht;
    - f) Auswirkungen auf die Neutralität des Unternehmens;
    - g) den allgemeinen Kontext des Falles."
- Beschluss ref. AGN/20/RES/11 (1951) verlangt die Anwendung der Vorherrschaftstests (auch wenn im antragstellenden Land die Tatsachen eine Verletzung des ordentlichen Rechts darstellen). Er sieht vor, dass "(...) niemals ein Auskunftersuchen, eine Benachrichtigung über gesuchte Personen und vor allem kein Ersuchen um vorläufige Verhaftung wegen Straftaten mit überwiegend politischem (...) Charakter an das Internationale Büro oder die nationalen Zentralbüros gerichtet wird, auch wenn die Tatsachen im ersuchenden Land einen Verstoß gegen das ordentliche Recht darstellen".

#### 14. Vertraulichkeit der Anfragen:

- Artikel 20 der Geschäftsordnung der Kommission "Anträge oder Gegenstände, aus denen sich die Anträge zusammensetzen, dürfen nicht in den Daten von INTERPOL gespeichert werden, die für die Zwecke der internationalen polizeilichen Zusammenarbeit verwendet werden".

*V Befunde*

(...)

b) Befunde der Kommission

21. Bei der Feststellung, ob ein Fall politischen Charakter hat, wendet die Kommission den Test der Vorherrschaft an, d.h. sie bewertet alle relevanten Informationen und relevanten Elemente, wie in den Regeln vorgesehen, um festzustellen, ob die Straftat überwiegend politischen Charakter hat.

22. Gemäß RPD-Artikel 34 Absatz 3 sind die wichtigsten relevanten Elemente, die im Rahmen einer Analyse nach Artikel 3 zu berücksichtigen sind, im Wesentlichen: die Art der Straftat, nämlich die Anklagepunkte und die zugrunde liegenden Tatsachen; der Status der betroffenen Person; die von einem anderen NZB oder einem anderen internationalen Unternehmen zum Ausdruck gebrachte Position; die Neutralität der Organisation und der allgemeine Kontext des Falls.

23. Bei der Überprüfung der anwendbaren Kriterien im Rahmen des Vorherrschaftstests stellte die Kommission fest, dass die angeklagte Straftat einen gewohnheitsrechtlichen Charakter hatte und dass der AP kein Politiker oder ehemaliger Politiker ist. Nichtsdestotrotz, deuten Berichte in vier verschiedenen Foren, unabhängig von den Behauptungen der AP oder des NZB, auf einen politisierten Charakter dieser Angelegenheit hin.

24. Insbesondere die aus dem AP gewonnenen Informationen zeigten, dass das Partnerunternehmen von RP, ToAZ, das Ziel von Unternehmensplünderung war. Das NZB Russland hat keine Fakten vorgelegt, die belegen, dass dies nicht der Fall ist. Stattdessen heißt es in der Antwort des NZB, dass die oben genannten Elemente für den Vorherrschaftstest irrelevant sind und die vorgelegten Informationen keinen ausreichenden Grund liefern, dieses Ergebnis zu ändern.

25. Dementsprechend ist die Kommission, selbst wenn sie davon ausgeht, dass die beschriebene Straftat einen gewohnheitsrechtlichen Charakter hat, der Auffassung, dass dieser Fall eine vorherrschende politische Dimension aufweist und dass die von dem NZB bereitgestellten Informationen nicht den Anforderungen von Artikel 3 der Verfassung von INTERPOL entsprechen.

26. In Anbetracht dieser Feststellung vertrat die Kommission die Auffassung, dass es nicht notwendig sei, die anderen Ansprüche der AP zu prüfen.

AUS DIESEN GRÜNDEN, kommt die KOMMISSION zu dem Schluss

1. dass die angefochtenen Daten nicht mit den Regeln von INTERPOL für die Verarbeitung personenbezogener Daten übereinstimmen;

2. und empfiehlt, dass die von dem NZB Russlands übermittelten Daten, die die AP betreffen, aus den Dateien von INTERPOL gelöscht werden."

**Originaltext:**

"Request concerning Andrew ZIVY

(...)

**II. Procedure**

2. On 11 September 2015, Mr Andrew ZIVY (the Requesting Party, hereafter the "RP") lodged a complaint addressed to the Commission. (...)

***IV. Applicable Legal Framework***

12. General provisions:

- Article 2(1) of INTERPOL'S Constitution states that the Organisation 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 11(1) of the Rules on the Processing of Data (RPD) provides that "data processing in the INTERPOL Information System should be authorized with due regard for the law applicable to the NCB, national entity or international entity and should respect the basic rights of the persons who are the subject of the cooperation, in accordance with Article 2 of the Organization's Constitution and the Universal Declaration of Human Rights to which the said Article refers".

13. Matters of political character:

- Article 3 of INTERPOL'S Constitution provides that "[i]t is strictly forbidden for the Organization to undertake any intervention or activities of a political (...) character."
- Article 34 of the 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 provides 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."

14. Confidentiality of requests:

- Article 20 of the Commission's Operating Rules, "Requests, or items making up the requests, shall not be recorded in INTERPOL'S files used for the purposes of international police cooperation".

*V Findings*

(...)

*b) Findings of the Commission*

21. In determining whether a case is *of* a political character, the practice of the Commission is to apply the predominance test, i.e., it evaluates all relevant information and pertinent elements, as provided by the rules, to determine whether the offense is of a predominantly political character.

22. Pursuant to RPD Article 34(3), the main pertinent elements to be considered in the context of an Article 3 analysis, are essentially: the nature of the offense, namely the charges and underlying facts; the status of the person concerned; the position expressed by another NCB or another international entity; the neutrality of the Organization and the general context of the case.

23. In reviewing the applicable criteria under the predominance test, the Commission found that the offense charged was of a common law character and the RP is not a politician or former politician. However, reports in four separate fora, independent from the assertions of either the RP or NCB, are indicative of a politicized character to this matter.

24. Specifically, information obtained from the RP indicated that the RP's partner company ToAZ has been the target of corporate raiding. The NCB Russia has provided no facts which demonstrate that this is not the case. Instead, the response of the NCB states that the above mentioned elements

are irrelevant to the predominance test, and the information provided does not provide sufficient reason to change that outcome.

25. Accordingly, even assuming that the offense as described is of a common law character, the Commission considers that there is a predominant political dimension to this case and that the information provided by the NCB does not satisfy the requirements of Article 3 of INTERPOL'S Constitution.

26. In view of this finding the Commission the considered that it was not necessary to address the other claims of the RP.

#### **FOR THESE REASONS, THE COMMISSION**

1. Concludes that the data challenged is not compliant with INTERPOL'S rules applicable to the processing of personal data;
2. Recommends that the data provided by the NCB of Russia concerning the RP is deleted from INTERPOL'S files."

#### **Informelle Übersetzung:**

Anfrage in Bezug auf Andrew ZIVY

(...)

#### **I Verfahren**

2. Am 11 September 2015 reichte Herr Andrew Zivy (die antragstellende Partei, hiernach "AP") eine Beschwerde an die Kommission ein. (...)

#### ***IV. Anwendbarer Rechtsrahmen***

12. Allgemeine Bestimmungen:

- Artikel 2 Absatz 1 der INTERPOL-Verfassung besagt, dass die Organisation "im Rahmen der in den einzelnen Ländern geltenden Gesetze und im Geiste der Erklärung der Menschen-

rechte eine möglichst umfassende gegenseitige Unterstützung zwischen allen kriminalpolizeilichen Autoritäten gewährleisten und fördern soll".

- Artikel 11 Absatz 1 der Regeln für die Datenverarbeitung (RPD) sieht vor, dass "die Datenverarbeitung im INTERPOL-Informationssystem unter gebührender Beachtung des auf die NZB, die nationale Einrichtung oder die internationale Einrichtung anwendbaren Rechts zugelassen werden und die Grundrechte der Personen, die Gegenstand der Zusammenarbeit sind, gemäß Artikel 2 der Verfassung der Organisation und der Allgemeinen Erklärung der Menschenrechte, auf die sich der genannte Artikel bezieht, respektieren sollen".

13. Fragen des politischen Charakters:

- Artikel 3 der Verfassung von INTERPOL sieht vor, dass es "strengstens verboten ist, dass die Organisation Interventionen oder Aktivitäten mit politischem (...) Charakter durchführt".
- Artikel 34 der RPD besagt folgendes:
  - 34(2): "(...) vor der Aufzeichnung von Daten in einer Polizeidatenbank stellen das Nationale Zentralbüro, die nationale Stelle oder die internationale Stelle sicher, dass die Daten mit Artikel 3 der Verfassung der Organisation übereinstimmen".
  - 34(3): "Um festzustellen, ob die Daten mit Artikel 3 der Verfassung übereinstimmen, werden alle relevanten Elemente geprüft, wie z.B.:
    - h) Art der Straftat, nämlich die Anklagepunkte und die zugrundeliegenden Tatsachen;
    - i) den Status der betroffenen Personen;
    - j) die Identität der Quelle der Daten;
    - k) die Position, die von einem anderen nationalen Zentralbüro oder einem anderen internationalen Büro vertreten wird.
    - l) Verpflichtungen nach dem internationalen Recht;
    - m) Auswirkungen auf die Neutralität des Unternehmens;
    - n) den allgemeinen Kontext des Falles."
- Beschluss ref. AGN/20/RES/11 (1951) verlangt die Anwendung der Vorherrschaftstests (auch wenn im antragstellenden Land die Tatsachen eine Verletzung des ordentlichen Rechts darstellen). Er sieht vor, dass "(...) niemals ein Auskunftersuchen, eine Benachrichtigung über gesuchte Personen und vor allem kein Ersuchen um vorläufige Verhaftung wegen Straftaten mit überwiegend politischem (....) Charakter an das Internationale Büro oder die NZBs gerichtet wird, auch wenn die Tatsachen im ersuchenden Land einen Verstoß gegen das ordentliche Recht darstellen".

14. Vertraulichkeit der Anfragen:

- Artikel 20 der Geschäftsordnung der Kommission "Anträge oder Gegenstände, aus denen sich die Anträge zusammensetzen, dürfen nicht in den Daten von INTERPOL gespeichert werden, die für die Zwecke der internationalen polizeilichen Zusammenarbeit verwendet werden".



*V Befunde*

(...)

b) Befunde der Kommission

21. Bei der Feststellung, ob ein Fall politischen Charakter hat, wendet die Kommission den Test der Vorherrschaft an, d.h. sie bewertet alle relevanten Informationen und relevanten Elemente, wie in den Regeln vorgesehen, um festzustellen, ob die Straftat überwiegend politischen Charakter hat.

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