



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 Yevgeniy Viktorovich PRIGOZHIN

(Ref. CCF/113/R698A.19)

113th session

29 June to 03 July 2020



DECISION CONCERNING YEVGENIY VIKTOROVICH PRIGOZHIN

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

Vitalie PÎRLOG, Chairperson
Isaias TRINDADE,
Sanna PALO,

Members,

Teresa McHENRY and Petr GORODOV, withdrawing based on Article 2.1 of the Operating Rules of the Commission,

Having deliberated during its 113th session, on 30 June 2020, delivered the following Decision.

I. PROCEDURE

1. On 12 July 2019, Mr Yevgeniy Viktorovich PRIGOZHIN (the Applicant) and CONCORD MANAGEMENT GROUP LLC (the Company, together the Applicants), presented a request for access to INTERPOL's files, 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 Commission informed the Applicant thereof on 16 July 2019.
2. After consultation of the INTERPOL National Central Bureau (NCB) of the United States (USNCB), in accordance with Article 34(1) of the Statute of the Commission, the Commission informed the Applicant, on 26 August 2019, that he was the subject of data registered by the USNCB and provided the information detailed in paragraph 11 below. The Applicant was also invited to contact the relevant national authorities, i.e. the U.S. Attorney's Office in the District of Columbia.
3. On 05 November 2019, the Applicant lodged a complaint addressed to 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 Commission informed the Applicant thereof on 22 November 2019.
4. During the study of the Applicant's case, the Commission consulted the USNCB, the NCB of Russia, 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 complaint.
5. In that context, on 18 February 2020, the Applicant was provided with the summary of facts recorded in the Red Notice, as mentioned in paragraph 12 below.
6. The Commission reviewed the case during its 112th session (06 to 10 April 2020) and decided that the access to the data concerning the Applicant shall be blocked while the Commission continued the study of the Applicant's case. IPSG was informed of the Commission's decision and blocked the access to the data concerned on 20 April 2020.
7. 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 113th session and invited to provide any additional information they may find necessary for the study of the request.
8. Further to Article 35(3) of the Statute of the Commission, restrictions were applied to certain information in the Decision.

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II. FACTS

9. The Applicant is a national of Russia. He was the founder of the Company in 1995, and listed as its owner until 2009. He is commonly described in the media as the “*Chef*” of Russian President Vladimir PUTIN, as he owned a catering business that served Russian officials.
10. The Company, CONCORD MANAGEMENT GROUP LLC, is based in St Petersburg and registered in Russia. It was founded by the Applicant in 1995, and he was listed as owner until 2009. It owns and operates several restaurants. The Applicant’s mother is the listed owner since 2011, according to various open sources. Although the Company is not the subject of an INTERPOL Red Notice or Diffusion *per se*, it is mentioned in the summary of facts of several Red Notices that were issued against other individuals at the request of the USNCB.
11. The Applicant is the subject of a Red Notice issued at the request of the United States for “*Conspiracy to Defraud the United States*” on the basis of an arrest warrant issued on 16 February 2018 by the U.S. District Court, District of Columbia (U.S.A.).
12. The summary of the facts, as recorded in the Notice, is the following: “*From around 2014 to 16 February 2018, in the District of Columbia and elsewhere, Yevgeniy Viktorovich PRIGOZHIN and others affiliated with Internet Research Agency LLC, conspired to defraud the U.S. by impairing, obstructing, and defeating the lawful functions of the Federal Election Commission, the U.S. Department of Justice, and the U.S. Department of State in administering federal requirements for disclosure of foreign involvement in certain domestic activities. Beginning in around June 2014, the Internet Research Agency LLC (IRA LLC), a company based in St. Petersburg, Russia, and operating under the names Internet Research LLC, MediaSintez LLC, GlavSet LLC, MixInfo LLC, Azimut LLC, and NovInfo LLC, engaged in political and electoral interference operations in the U.S.*”
13. [RESTRICTED]

III. THE APPLICANTS’ REQUEST

14. The Applicants requested the deletion of the data concerning them, contending, in essence that:
 - a) there are no grounds for restricting access to the information; and
 - b) the case is of a predominantly political character.

IV. APPLICABLE LEGAL FRAMEWORK

15. 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 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.*”

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16. 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 (the Statute) 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.

17. Matters of political character:

- Article 3 of INTERPOL's Constitution states 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 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.”
- The INTERPOL Repository of Practice on Article 3 provides guidance on the application of Article 3 of INTERPOL's Constitution in a variety of circumstances.
- The resolution ref. AGN/53/RES/7 (1984) sets out a number of offences considered by their very nature to be of a political character. It also emphasizes that each request requires review on a case by case basis with due consideration of the specific context.

18. [RESTRICTED]

19. Clear description of the criminal activities:

- Article 83.2(b,i) of the RPD requires that “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.”

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- IPSC standards for the application of the RPD confirm 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.”
 - “red notices requests or diffusion for several individuals involved in the same criminal activity should each include the summary of the crime, followed by a succinct description of the role played in that crime by each individual in question in the respective red notice or diffusion.”

20. 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 “any restrictions on the disclosure of information must be justified and must specify whether some information, such as summaries, may be provided”. Moreover, the “absence of justification alone will not lead to the disclosure of the content of the information but may be taken into consideration by the Requests Chamber in assessing and deciding on a request.”

V. FINDINGS

21. The Commission assessed the Applicant’s most relevant contentions in the order in which they are described in Section III above.

A. Restriction to communication of information

a) *The Applicant*

22. The Applicant argued that, in view of the public Indictment, none of the possible grounds for restricting information, as provided by Article 35(3) of the Statute, apply in his case. There is no information as laid out in Article 83(2) of the RPD that, if released to him, would create a risk to national security or public safety. He added that restricting its release does nothing to prevent crime either.
23. His prosecution is not confidential, especially in view of the fact that the U.S. Department of Justice has made extraordinary efforts to publicize the Indictment. He referred, for instance to the 16 February 2018 U.S. Department of Justice Press release.
24. He added that the investigation leading up to the indictment was not confidential either. Indeed, the charges against him were filed by Mr Robert MUELLER III who also produced the “*Report on the Investigation into Russian Interference in 2016 Presidential Election*” (known and hereafter as the “Mueller Report”). This report was posted on the website of the U.S. Department of Justice, and pages 14-35 of Volume 1 are devoted to the investigation against the Applicant. Even if some items were redacted, the Applicant argued that the Red Notice should contain information only relating to the criminal charges, which are public.

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25. Finally, the release of information to the Applicant concerning him should not implicate the rights and freedoms of any third parties, as the Red Notice referred only to past-alleged acts and public charges.

b) The NCB of the United States (NCB source of the data)

26. For the purpose of providing the subject with “*information connected with the request*” as indicated under Article 35(1) of the CCF Statute, the USNCB authorized the Commission to inform the Applicant that he is subject to a Red Notice issued at the request of the United States, that he is wanted for “*Conspiracy to Defraud the United States (1 count)*” on the basis of an arrest warrant issued by U.S. District Court, District of Columbia, and that maximum penalty possible is five-year imprisonment. He was also provided with the summary of the facts of the case, as outlined in paragraph 12 above.

27. The USNCB added that the Applicant may avail himself of the right to access to the evidence against him and the other due process rights to which all defendants are entitled in the U.S. judicial system should he wish to access information or contest the charges against him. Therefore, the Commission was authorized to inform the Applicants that they may contact the U.S. Attorney’s Office in the District of Columbia, should they or their counsel wish to discuss this case with the responsible officials or obtain additional information about it.

28. The USNCB also authorized the Commission to refer the Applicants to the indictment that is publically available on the U.S. Department of Justice website, <<https://www.justice.gov/opa/press-release/file/1035562/download>>, and contained a detailed statement of the facts supporting the offence charged.

29. The restrictions on any further information being provided to the Applicants were made pursuant to [RESTRICTED].

c) Findings of the Commission

30. 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.*”

31. In this regard, paragraphs 3 and 4 of the same Article provides that the communication of information may be restricted with a proper justification. 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.

32. The Commission reaffirmed that, in analyzing 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, and the possible risks for INTERPOL.

33. The Commission held 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 to the Applicant of information connected with his request must be necessary and proportionate to their stated purpose. Furthermore, 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 must be undertaken to compensate, up to the extent possible, the interferences with the rights of the parties.

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34. In the context of the present case, the Commission observed that while the USNCB has applied certain restrictions to the information that could be provided to the Applicant, making explicit reference to the grounds mentioned in Article 35(3)(b), the Commission was able to provide the following information to the Applicant: he is the subject of a Red Notice issued at the request of the USNCB, the details of the underlying arrest warrant, and charges, the maximum penalty possible and the summary of facts of the case. The relevant national authority to be contacted in the United States was also provided.
35. The Commission holds that even though restrictions were imposed by the USNCB, here the Applicant had sufficient knowledge of the proceedings initiated against him at the national level (charges held against him and underlying arrest warrant of the Red Notice...) in order to be able to present relevant arguments to the Commission. Nevertheless, the Commission decides that these restrictions would be taken into account in the study of the merits of the request.

B. Political character of the proceedings

a) *The Applicants*

36. The Applicants submitted that the proceedings initiated against them are of a political nature, and provided several arguments to support their submissions.
37. First, they explained that the charges in this case arise from an assessment by U.S. civilian and military agencies. The Applicant argued that the Red Notice is based on criminal charges that originated with an investigation conducted by U.S. intelligence agencies, particular military intelligence. For instance, he noted that the 06 January 2017 “*Intelligence Community Assessment*” entitled “*Assessing Russian Activities and Intentions in Recent U.S. Elections*” included an analytic assessment drafted and coordinated among the Central Intelligence Agency (CIA), the Federal Bureau of Investigation (FBI) and the National Security Agency (NSA), drawing on intelligence information collected and disseminated by those agencies. A copy of this report was provided to the Commission.
38. The Applicant further contended that after criminal charges were filed against him, a Committee of the U.S. Senate expressed its political opinion about the allegations. He supported his contention by providing a copy of the report issued on 07 October 2019 by the Senate Intelligence Committee referring to the indictment in the INTERNET RESEARCH AGENCY LLC (IRA LLC) case as a source of factual information, whereas it is a mere accusation that was not proven. He stated this is contrary to his rights to be innocent until proven guilty. As an elected political body, that is not part of the criminal justice system, the Senate has no legitimate role in criminal investigations or prosecution. He added that the Senate should have remained neutral on the matter until a verdict is reached. However, the fact that it took an official position on the allegations after the charges had already been brought, and the Applicant’s defense team made an appearance in court, is a politization of this ongoing case.
39. According to the Applicant, U.S. sanctions, a tool of the U.S. foreign policy, have been imposed on him and his co-defendants as a political pressure tactic. He argued that the U.S. Department of the Treasury, which issued sanctions against him, is a political executive agency and has no role in investigating or prosecuting crimes. The sanctions were not imposed pursuant to a court order or any request by a prosecutor. In addition, it was made clear that the sanctions were being imposed on the basis of political disagreements between the United States and Russia. To support his contention, the Applicant provided a copy of the 15 March 2018 press release issued by the U.S. Treasury. Based on the description of the sanctions process published by the Atlantic Council, he added that U.S. sanctions are a purely political measure decided by the President of the United States. They require no proof, no hearing and provide no opportunity for the target of the sanctions to oppose before they are imposed. The Applicant also provided copies of two press releases, both dated 30 September 2019, where the U.S. Secretary of the Treasury and the U.S. Secretary of State made prejudicial remarks about him.

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40. The Applicant alleged that the charge is political in nature. He argued that the prosecutors themselves describe the allegations against the Applicant as a “*Scheme to Interfere in the United States Political System*” (U.S. Department of Justice press release on 16 February 2018). According to him, this alone shows that the charges are political. The Applicant also observed that he is only charged with one crime, the most vague of all, i.e. “*Conspiracy to defraud the United States.*” He contended that the language of the statute is vague and broad, that almost any allegation, including political allegations such as “*political interference,*” can be constituted as a crime against the State. He provided a copy of the motion to dismiss filed on 07 October 2019 by the Company.
41. The Applicant stated that in addition to the reports disseminated by the U.S. intelligence agencies and the U.S. Senate, the charges against him are also mentioned in the “Mueller Report” released on 07 October 2019. Moreover, Mr MUELLER testified before the U.S. Congress about the investigation of the Applicant on 24 July 2019. In his testimony, he underscored the political nature of the investigation. For the Applicant, this shows how the U.S. Department of Justice (D.o.J.) made unusual efforts to publicize and politicize the charges.
42. Finally, the Applicant considered that there is a military aspect to this case as the U.S. military attacked the IRA LLC, a codefendant. Based on a 27 February 2019 article of the Washington Post headlined “*U.S. Cyber Command Operation disrupted Internet access of Russian troll factory on day of 2018 midterms,*” the Applicant argued that a covert cyber-attack by the U.S. Cyber Command, a division of the U.S. Military, took place against the IRA LLC. This attack would have taken place in early November 2018, thus approximately nine months after the charges had been filed. He stated that this demonstrates that the U.S. armed forces consider the Applicant to be an enemy that is a legitimate target for military action.

b) The INTERPOL General Secretariat

43. On 03 March 2020, IPSG provided the Commission with the below summary of its legal assessment of the case, which led to the publication, on 24 May 2018, of the USNCB’s Red Notice against the Applicant.
44. At the time of the review, IPSG examined the compliance of the Notice with INTERPOL’s Constitution and Rules by examining all relevant elements under Article 34 of the RPD, namely the nature of the offence, the status of the person concerned, the general context of the case, the obligations under international law and the implications for the neutrality of the Organization.
45. IPSG considered that the USNCB alleged that the Applicant, together with other persons affiliated with the IRA LLC, conspired to defraud the U.S. by unlawfully interfering in elections and political processes in the country, including the 2016 U.S. presidential elections, from around 2014 to February 2018.
46. It found that the USNCB’s description of the Applicant’s acts fall within the definition of “*election crimes*” under section 3.8 of the Repository of Practice on Article 3 of the Constitution. Accordingly, the nature of election crimes does not call for the application of Article 3 as the primary objective behind criminalizing election crimes is to protect individual rights, namely the right to vote and be elected in genuine elections. In addition, the latter is explicitly mentioned in the Universal Declaration of Human Rights (UDHR), thus providing ground, in application with Article 2(1) of the Constitution, for INTERPOL’s involvement in such cases.
47. [RESTRICTED]
48. [RESTRICTED]
49. In light of the relevant facts and the applicable legal framework, while taking into account the political elements surrounding the general context of the case, IPSG considered the Red Notice is of a predominantly ordinary-law character based on the serious ordinary-law nature of the offence, the

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private status of the person who acted in his private capacity, Russia's denial of responsibility, and the obligation to protect the right to vote and be elected in genuine elections under the UDHR.

[Paragraphs 50 to 52 RESTRICTED]

c) The USNCB

53. In its reply to the Commission, the USNCB confirmed that the proceedings against the Applicant remained active and outstanding. It also verified that the arrest warrant underlying the Red Notice was valid and outstanding.
54. The USNCB advised the Commission that there is substantial admissible evidence, which demonstrates the active and intentional participation of the Applicant in the criminal activities as alleged and charged in the indictment currently pending before the U.S. District Court for the District of Columbia. It submitted that the Red Notice contains a detailed and accurate description of the facts, sufficient to describe the direct participation and criminal actions of the Applicant supporting the offences with which he is charged, as required under RPD, Article 83(2)(b)(i). These facts provide sufficient information to link the wanted individual to the charges against him, and a clear description of the criminal activity of which he is accused, establishing his effective and personal participation in these criminal acts. [RESTRICTED].
55. [RESTRICTED].
56. Regarding the possible steps undertaken by the U.S. authorities to request the Applicant's extradition, the USNCB explained that it did not receive any messages from other NCBs concerning his possible location or arrest, and that his location was uncertain. The USNCB added that should the Applicant be located in his native country of Russia, extradition would not be possible due to the absence of an extradition treaty between the United States and Russia. The USNCB highlighted that the United States remains interested in requesting the Applicant's extradition on the charge should he be apprehended in a country from which his extradition is legally possible.
57. According to the USNCB, it is because the Applicant's location was unknown and he did not present himself in a U.S. jurisdiction, that he did not receive notice of the charges against him. As per U.S. laws, notice would occur when he is formally served with the arrest warrant. Nevertheless, the Applicant had and will have every opportunity to present himself in a U.S. court of law where he would be entitled to all legal rights and protections afforded to all defendants - whatever their nationality - to defend themselves and hold the government to its legal burden of proof.

[Paragraphs 58 to 66 RESTRICTED]

d) The NCB of Russia

67. The NCB of Russia provided the Commission with its position concerning the publication of the Red Notice against the Applicant [RESTRICTED].
68. [RESTRICTED]

e) Findings of the Commission

69. With respect to the assertion that the matter is of a political character, in contravention of Article 3 of INTERPOL's Constitution, the Organization applies the predominance test, i.e., it evaluates all relevant information and pertinent elements, as provided for by the rules, to determine whether the case is of a predominantly political character.
70. The rule reflected in the RPD, Article 34(3), requires analysis of all relevant factors, as to which the following appear to the Commission to be key in the present case:

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- the status of the person concerned;
- the nature of the offense, namely the charges and underlying facts;
- the general context of the case;
- the position expressed by another NCB or another international entity; and
- the implications for the neutrality of the Organization.

71. The Commission recalled that the pre-dominance test requires the further evaluation of other elements to determine whether there are indications that the case, overall, is of a predominantly political character. Indeed, it emphasized that this question of political motivation demands that it studies elements beyond whether the offence is of a criminal nature and whether there is sufficient data linking the Applicant to it. In relation to the objection made by the USNCB regarding the relevance of its queries to the case, the Commission highlighted that, as per Article 34(3) of the RPD, various other elements, including context, are fundamental to the Commission's ability to assess any political character to a case. This comprehensive assessment is particularly significant in light of how the Commission does not concern itself with the examination, and adjudication, on the basis of evidence.
72. In reviewing the applicable criteria under the predominance test, the Commission first established that the Applicant is neither a politician nor former politician. However, the Commission highlighted that the Applicant had close links with Russian President Vladimir PUTIN as widely reported in the press.
73. Then, concerning the nature of the offense, the Commission observed that the specific charge "*Conspiracy to Defraud the United States*" is of a common law character. Article 18 U.S.C. 371 on "*Conspiracy to commit offense or to defraud United States*" provides that: "*If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both. If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.*"
74. The publication of a Red Notice also requires a clear description of the criminal activities of which the wanted individual is accused, and the provision of sufficient facts that link the individual in a coherent manner with the charges against him. For this review, the Commission recalled that under Articles 3(1)(a) and 33(3) of the Statute, the function of the Commission is to review whether the processing of data in INTERPOL's files meets INTERPOL's applicable legal requirements in accordance with Article 36 of INTERPOL's Constitution. The Commission is not empowered to conduct an investigation, weigh evidence, or make a determination on the merits of a case. That is the function of the competent national authorities.
75. From the description of the Applicant's criminal activities as reported in the Red Notice, and the information provided by the USNCB, the Commission observed that he is accused, in essence, of having financed activities of the IRA LLC through the Company. The IRA LLC and other individuals, in turn, are accused of illegal foreign interference in U.S. elections by, for instance, failing to register as foreign agents, carrying out political activities in the United States, obtaining visas through false and fraudulent statements or impairing, obstructing, and defeating the lawful functions of the Federal Election Commission, the D.o.J., and the U.S. Department of State in administering federal requirements for disclosure of foreign involvement in certain domestic activities.
76. The Commission studied the examples of alleged illegal activities as outlined by the USNCB, such as the creation of media accounts (on Facebook, etc.), some managed in a covert manner to make believe they were handled by U.S. citizens, and promoting allegations of voter fraud by the U.S. Democratic Party and/or its affiliates, some posting against Ms Hillary CLINTON, Mr Ted CRUZ and Mr Marco RUBIO, posting in support of President Donald TRUMP and Mr Bernie SANDERS, encouraging minorities (Blacks or Muslims) not to vote or to vote for third parties, organizing political rallies, and paying for advertisements in Facebook, via PayPal.

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77. The Commission also observed that, in relation with the question of the nature of the offence and in response to the U.S. accusations, the Applicant stated the following:
- the charges held against him and the Company are unclear and very broad. He questions why he was not charged with violating U.S. electoral law instead, and provides that it is because the burden of proof is much higher for the latter than for “*Conspiracy to Defraud the United States*,” and could not be reached because of insufficient elements.
 - as the Company has no presence in the United States, nor was he in the country, they could not have failed to register as foreign agents carrying out political activities in the United States;
 - spending on the alleged illegal advertisements was of USD 5,000 at most, which is very low in comparison to other activist groups in the United States. The indictment does not break down the amounts dedicated to the United States or foreign countries;
 - this charge is against free speech, which is an essential and long-standing tradition. The Applicants also highlighted that many Americans create fake accounts, whether anonymous or pseudonymous, and sometimes provide false or at least biased information; and
 - there are no legal provisions criminalizing political speeches from other countries. In fact, there is a lot of foreign criticism of President Donald TRUMP, without falling under Article 371.
78. The Commission then reviewed IPSG’s assessment of the case which provided that it found that the Applicant’s acts, as they are described by the USNCB, fall within the definition of “*election crimes*” under section 3.8 of the Repository of Practice on Article 3 of INTERPOL’s Constitution, and which raised the question of qualification of the charge (fraud against the U.S. vs election crime) in view of the alleged offence committed.
79. The Commission resolved that according to INTERPOL’s Article 3 Repository of Practice, election crimes of a mixed nature, like in this instance where the ordinary-law crime would be the alleged fraud, do not as a general rule call for the application of Article 3. However, it also indicated that this conclusion does not “*exclude the need to review such cases in light of Article 3 and the UDHR, in particular in the following instances: (1) Where INTERPOL’s political neutrality may be affected (...).*”
80. The Commission remarked that the USNCB provided no concrete elements concerning the violation of the U.S. citizens’ right to vote that would have resulted from the Applicant’s alleged criminal activities: such as the disruption of the voting process because of disorders, damaging of voting bulletins or other clear abuse of rights. Nevertheless, the Commission determined that while the acts did not result in the Applicant’s personal enrichment or in instigating violent protests, they have indeed lead to a violation of democracy and democratic rights, not by physical barriers for voting or destroying votes, but by wrongfully manipulating voters.
81. In view of the information provided, and recalling 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, the Commission nevertheless finds that while there is a narrative of alleged illegal activities, the link with the Applicant is not very strongly described, and the questions raised by the Applicants regarding the validity, accuracy and possible political nature of the charges cannot be ignored.
82. However, considering the interdependence of this issue with arguments raised in relation to other elements of its Article 3 study, the Commission decides not to make a conclusive pronouncement at this stage, and to continue its review of the other factors.
83. In examining the general context of the case, the Commission noted the numerous declarations of U.S. government officials, and extensive media reports, as well as the information provided by the USNCB concerning this case. From the information provided, it established that there is a link with the 2016 U.S. presidential elections, allegations in the United States of Russian interferences in the electoral process, and the launch of a Special Counsel investigation, led by special prosecutor Mr MUELLER and officially concluded on 22 March 2019. A redacted version of the “Mueller Report” was released to the public on 18 April 2019, and he testified on 24 July 2019 before the House Judiciary Committee and the House Intelligence Committee of the U.S. House of Representatives. The order

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DECISION CONCERNING YEVGENIY VIKTOROVICH PRIGOZHIN

of this investigation, as dated on the 17 May 2017 appointment of Mr MUELLER by the office of the Deputy Attorney General of the United States was to “*Investigate Russian interference with the 2016 Presidential Election and related matters,*” it also specifies that Mr MUELLER is appointed to “*ensure a full and thorough investigation of the Russian government’s efforts to interfere in the 2016 presidential election.*” This reveals that the scope of the inquiry is linked to possible electoral crimes but also specifically target a foreign government, namely Russia.

84. As a result, the Commission resolves that the general context of the case, although factually disputed, is indicative of a politicized character to this matter.

[Paragraphs 85 to 89 RESTRICTED]

90. The existence of [RESTRICTED] the political aspects in the context of the case and the charges which cannot be excluded, leads the Commission to determine that maintaining the data challenged would have significant adverse implications for the neutrality of the Organization, in that there is a significant potential (because of these factors) of the Organization being perceived as siding with one country against another or facilitating politically motivated activities. This is not to say that the U.S. charges should not be borne out in national judicial proceedings or that they are not lawful; however, the function of the Commission is to control whether the processing of data in INTERPOL’s files meets INTERPOL’s applicable legal requirements and thus whether, in view of Article 3 of its Constitution, INTERPOL’s channels can be used.
91. In view of all these elements, the Commission finds that even assuming that the offences as described would be of a common-law character, there is a predominant political dimension to this case and that the information provided by the USNCB does not satisfy the requirements of 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.

[RESTRICTED]

Vitalie Pîrlog
Chairman of the Commission
for the Control of INTERPOL’s Files



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

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