



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

DECISION OF THE COMMISSION (107th session, 28 January to 1 February 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 107th session, on [...], delivered the following Decision.

I. PROCEDURE

1. On [...], Mr [...] (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 Commission informed the Applicant thereof on [...].
2. During the study of the Applicant's case, the Commission consulted the INTERPOL National Central Bureau (NCB) of [...], in accordance with Article 34(1) of the Statute of the Commission on the arguments set forth in the complaint.
3. Both the Applicant and the NCB of [...] were informed of the fact that the Commission would study the case during its 107th session.
4. Further to Article 35(3) of the Statute of the Commission, restrictions were applied to certain information of the Decision.

II. FACTS

5. The Applicant is a national of [...]. [...]
6. The Applicant's passport [...], issued by [...] authorities, is recorded in the SLTD (Stolen and Lost Travel Documents) database as "Revoked" since [...] by the NCB of [...].
7. On [...], while travelling, he was stopped at national airport in [...] by the border police due to the registration of his passport in the INTERPOL's databases and his passport was seized.
8. [...]

III. THE APPLICANT'S REQUEST

9. The Applicant requested the deletion of the data concerning his [...] passport registered in INTERPOL's files, contending, in essence that:
 - a) his passport was revoked without lawful justification;
 - b) the case is of a predominantly political character;
 - c) INTERPOL's channels are misused by [...].

NOT INTENDED FOR PUBLIC DISSEMINATION



IV. APPLICABLE LEGAL FRAMEWORK

10. 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.*”

11. 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.

12. Accuracy and quality of the data:

- Article 12 of the RPD requires that data processed in INTERPOL's files is “*accurate, relevant, not excessive in relation to its purpose and up to date.*”

13. Political character:

- Article 3 of INTERPOL's Constitution states that it is “*strictly forbidden for the Organization to undertake any intervention or activities of a political (...) character.*”
- Article 34 of 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; and*
 - (g) the general context of the case.*”

V. FINDINGS

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



A. Validity of proceedings

a) *The Applicant*

15. The Applicant claims that he is not involved in any criminal activities in [...] and therefore his passport was revoked without lawful justification. [...]

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

16. In its reply, the NCB of [...] indicated that the Applicant is wanted at national level for being a member of [...] and that a red notice request will be sent against the Applicant “in due time”.

17. The NCB of [...] explained that the Applicant’s passport has been cancelled by their competent authorities in accordance with [...].

c) *Findings of the Commission*

18. With respect to concerns with regards to the lawfulness of proceedings, the Commission recalled that Article 11(1) of the RPD states that “*Data processing in the INTERPOL Information System should be authorized with due regard for the law applicable to the National Central Bureau, 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.*”

19. Therefore, given its role of ensuring that INTERPOL’s rules have been complied with, in assessing whether a travel document recorded in the INTERPOL’s files comply with INTERPOL’s rules, the Commission first reviews whether the NCB provided sufficient information indicating the legal framework and the legitimate reasons under which the travel document has been recorded in INTERPOL’s files.

20. In this respect, the Commission analysed the legal framework under which the Applicant’s passport has been revoked by [...] and registered as such in the INTERPOL Stolen and Lost Travel Documents (SLTD) database.

21. [...]

22. The NCB of [...] indicated that the Applicant’s passport has been cancelled by the competent [...] authorities in accordance with [...].

23. [...]

24. Consequently, the Commission considered that the information provided by the NCB of [...] regarding the legal framework under which the Applicant’s passport has been revoked does not foresee the cancelation [...] but only concerns their issuance.

25. Accordingly, the Commission found that the NCB of [...] does not provided coherent information [...].

26. Therefore, the Commission examined, in a second step, whether the NCB of [...] provided sufficient information indicating the legitimate reasons [...].

27. Accordingly, for purposes of this review, the Commission requested further information from the NCB of [...] on the factual reasons [...]. The Commission specifically requested the NCB of [...] to provide it with a copy of the decision revoking the Applicant’s passport and with a copy of the arrest warrant issued against the Applicant. However, despite several requests, the NCB of [...] did not provided the Commission with the requested documents.

28. In light of all of the aforementioned circumstances, the Commission finds that the lack of appropriate answers from the NCB of [...] in relation to the issues raised, prevent it from concluding that the data challenged meet the required criteria to be compliant with INTERPOL’s rules.



29. Since the Commission can conclusively dispose of the matter in favor of the Applicant on the above basis, it was not necessary to make a determination on the Applicant's other claims.

FOR THESE REASONS, THE COMMISSION

Decides that the data concerning the Applicant's passport [...], issued by [...] authorities, are not compliant with INTERPOL's rules applicable to the processing of personal data, and that they shall be deleted from INTERPOL's files
