



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 [...]

(Ref. CCF/109/[...])

109th session

1 to 5 July 2019

Lyon, FRANCE



Request concerning [...]

(Ref. CCF/[...])

DECISION OF THE COMMISSION

(109th session, 1 to 5 July 2019)

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

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

Having deliberated in camera during its 109th 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), requesting access to the information concerning him registered in INTERPOL's files and its subsequent deletion. 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 [...] and the INTERPOL General Secretariat (IPSG) in accordance with Article 34(1) of the Statute of the Commission (the Statute), on the communication of information and on arguments set forth in the complaint.
3. On [...], the NCB of [...] confirmed the validity of the proceedings, provided answers to the questions raised by the Commission, and authorized the disclosure of the information connected with the request to the Applicant.
4. On [...], the Commission informed the Applicant on that he is wanted through INTERPOL's channels by the NCB of [...], and provided the information described in paragraph 7 and 8 below.
5. Both the Applicant and the NCB source of the data challenged were informed of the fact that the Commission would study the case during its [...] session.

II. FACTS

6. The Applicant is a national of [...], and used to reside in [...].
7. He is the subject of a Diffusion circulated by the NCB of [...], for the charges of [...] on the basis of a Court Decision and an Arrest Warrant [...], and a European Arrest Warrant issued by the same tribunal on [...].
8. The summary of the facts, as recorded in the Diffusion, is the following: [...].

NOT INTENDED FOR PUBLIC DISSEMINATION



9. On [...], the Applicant was tried *in absentia*, found guilty and sentenced to [...] years of imprisonment and the payment of a fine.

III. THE APPLICANT'S REQUEST

10. The Applicant requested the deletion of the data concerning him, contending, in essence that the proceedings in [...] have not respected the principles of due process of law and that he has not been able to present his defense.

IV. APPLICABLE LEGAL FRAMEWORK

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. Due process and respect for human rights :

- 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 (UDHR).*"
- Article 34(1) of the RPD states that "*the National Central Bureau, national entity or international entity shall ensure that the data are in compliance with Article 2 of the Organization's Constitution.*"
- Article 10 of the UDHR states that "*everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.*"

V. FINDINGS

A. Lack of due process of law and trial *in absentia*

a) *The Applicant*

13. The Applicant claims that he was not properly notified of the accusations, and that he was deprived from the possibility to present his defense and to provide evidence which would have explained the situation under a different angle.
14. He claims that he was not contacted in [...], and that other people involved in the case were not interrogated, so that [...] authorities convicted him without offering him an opportunity to cross-examine and challenge the evidence adduced against him.

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

NOT INTENDED FOR PUBLIC DISSEMINATION



15. In its reply, the NCB of [...] confirmed the validity of the criminal proceedings against the Applicant, and of the Diffusion circulated through INTERPOL's channels. The NCB provided copies of the Court Decision of [...], of the European Arrest Warrant of [...], and of the applicable legal provisions.
16. The NCB confirmed that the Applicant was tried *in absentia*, in application of Article [...], since he was no longer present on the [...] national territory and could not be reached, but that he will have the right to oppose the sentencing judgement handed down in his absence and to be tried again, with a lawyer of his choice, in case he surrenders or is extradited. Moreover in such case, he would be presented to a judge, who would decide whether to detain him or grant him bail pending his new trial.
17. The NCB indicated that no extradition request has been transmitted in this case, since the Applicant's location has never been confirmed. However, it confirmed its intent to formally request his extradition from any country where he would later be localized or arrested, in order for him to execute the sentence.

c) Findings of the Commission

18. Under Articles 3(1)(a) and 33(3) of the Statute of the Commission, 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. Therefore, as a general practice, the Commission does not enter into an inquiry designed to take decisions on application of national procedural law.
19. The Commission does not function in a manner akin to that in which a domestic appellate court re-examines the actions of a domestic court of first instance. Rather, in order to respect the spirit of the Universal Declaration of Human Rights mentioned in Article 2 of INTERPOL's Constitution, while at the same time respecting the limits of the role of the Commission, the simple assertion of possible procedural irregularities cannot rise to the level of an Article 2 violation.
20. In this case, the NCB of [...] has provided assurances that the Applicant's trial *in absentia* was adopted following the national criminal procedural law, and that he will be granted the possibility to oppose/appeal the decision issued against him in his absence, with the assistance of a lawyer of his choice. Therefore, whether he surrenders or is extradited, he will have the opportunity to be tried in his presence with a fresh determination of the merits of the case, and to present his defense with the assistance of a counsel.
21. Thus, the Commission finds that the information provided by the Applicant does not demonstrate the likelihood that a flagrant denial of a fair trial could take place, and it concludes that the processing of the data concerning the Applicant is compliant with Article 2 of INTERPOL's Constitution and the principle of due process of law.

B. Remaining contentions

22. The Commission recalled that in studying a request it reviews all of the Applicant's arguments, except when irrelevant. In this case, the Applicant contends that he has been arbitrarily deprived of his fundamental right to travel by the Diffusion circulated through INTERPOL's channels by [...] authorities.
23. The Commission recalled that Article 13 of the Universal Declaration of Human Rights (UDHR), which provided for the right to travel, addresses two separate situations: paragraph 1 establishes a right with respect to movement and residence within a state, while paragraph 2 establishes a right to leave a country, and to return to one's own country.

NOT INTENDED FOR PUBLIC DISSEMINATION



24. These are general principles, which can be subject to lawful, necessary, and proportionate limitations as envisioned in Article 29 of the UDHR. Sovereign states are therefore not prevented for instance from enacting legal requirements regarding access to their territory or from issuing an order to request the arrest of an individual suspected or convicted of having committed a crime.
25. The purpose of an INTERPOL Diffusion (or Red Notice) is to facilitate appropriate law enforcement action, based on such an order. Therefore, since the validity of the Diffusion has been confirmed by the NCB source of the data, the Commission finds that Article 13 of the UDHR is not infringed by the mere issuance of a valid /Diffusion and that the Applicant's contention in this regard is without merit.

FOR THESE REASONS, THE COMMISSION

Decides that the data challenged are compliant with INTERPOL's rules applicable to the processing of personal data.

NOT INTENDED FOR PUBLIC DISSEMINATION