



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

DECISION OF THE COMMISSION (108th session, 15 to 19 April 2019)

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

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

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

I. PROCEDURE

1. On [...], Mr [...] (the Applicant) lodged a complaint addressed to the INTERPOL General Secretariat, subsequently transferred to the Commission on [...]. 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. The Commission informed the Applicant on [...] that he is wanted through INTERPOL's channels by Cyprus, for the charges of [...] and provided the information described in paragraph 9 below.
4. On [...], the NCB of [...] confirmed the validity of the proceedings and of the arrest warrant, and provided answers to the questions raised by the Commission.
5. Both the Applicant and the NCB source of the data challenged were informed of the fact that the Commission would study the case during its 108th session and invited to provide any additional information they may find necessary for the study of the request.
6. Further to Article 35(3) of the Statute of the Commission, restrictions were applied to certain information in the Decision.

II. FACTS

7. The Applicant is a national of [...].
8. He is the subject of a Red Notice issued at the request of [...] on the basis of an arrest warrant [...]. A Red Notice was issued against the Applicant on the basis of this arrest warrant [...].
9. The summary of the facts, as recorded in the Notice, is the following: [...].

III. THE APPLICANT'S REQUEST

10. The Applicant requested the deletion of the data concerning him, contending, in essence that:



- The extradition proceedings were refused by [...] on the basis that insufficient reassurances were provided that the transfer of the Applicant would respect his right to health in light of his medical condition,
- The prosecution lacks evidentiary basis.

IV. APPLICABLE LEGAL FRAMEWORK

11. 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*".

12. 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.

13. Compliance with 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.*"
- 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 5 of the Universal Declaration of Human Rights (UDHR) states that "*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment*".
- Article 25 of the Universal Declaration of Human Rights states that: "*Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.*"

V. FINDINGS

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

Compliance of the data with the Applicant's human rights



a) The Applicant

15. In his request, the Applicant explained that he was arrested in the [...] on the basis of a European Arrest Warrant (EAW) issued by [...] on [...].
16. The extradition requested was refused by the [...] Court in a Decision of [...], in light of his worsening and complex medical situation. The [...] authorities would have failed to show that the extradition could be operated in line with the requirements of the European Convention on Human Rights (ECHR).
17. Indeed, the Applicant argued that he suffers from a chronic obstructive pulmonary disease [...]. He also has haematological abnormalities [...]. As such, a medical expert recommended that an extradition should not take place in the case of the Applicant, whether it be by plane, boat or roadways, as it has a strong likelihood to irreparably harm his health.
18. He submitted that such an intervention of the [...] Court is a rare occurrence, as the general principle between European states is that EAWs are based on a principle of mutual trust and recognition, and yet the judge concluded that his extradition was unjust and oppressive.

b) The NCB of [...]

19. In its reply, the NCB of [...] indicated that the arrest warrant concerning the Applicant was valid and issued on [...]. It referred the Commission to the EAW [...] for more information on the elements of possible and effective participation of the Applicant to the criminal charges of which he is accused.
20. With regards to the health situation of the Applicant, it recalled that the [...] authorities cooperated with the extradition proceedings and sent all evidence that the Applicant could be granted the necessary medical assistance during his extradition.

c) Findings of the Commission

21. Under Article 34(1) of the RPD, data must be processed in INTERPOL's files in compliance with Article 2 of the Organization's Constitution i.e. notably with the spirit of the Universal Declaration of Human Rights (UDHR).
22. The Commission considered that, as the Applicant pointed out, the judge of the [...] Court noted that [...] could offer medical treatment and care to the Applicant, but that these treatments could not deal with the multiple problems and concerns specific to his situation.
23. The Commission took note of the Decision from [...] Court, which states the following:

[...]

24. Additionally, the Applicant submitted a copy of the medical report of his treating physician, [...] presented as part of the extradition proceedings of the Applicant. This document provides the Applicant's medical history, which reports more than [...] medical incidents concerning the Applicant [...] problems.
25. [...]
26. When assessing extradition refusals, the Commission recalled its position that the mere existence of an extradition refusal by another member states does not necessarily mean that the purpose of the data is no longer valid. In cases where this situation arises, the Commission pays specific attention as to the grounds for the extradition refusal, and whether it is purely procedural or connected to issues linked with analogous principles which are part of INTERPOL's rules.
27. In light of the tenure of Article 2 of INTERPOL's Constitution, the Commission noted that the matter indeed raised issues related to the right to health and security in the event of sickness (Article 25 of the UDHR) and also with the right to be prevented from degrading treatment (Article 5 of the UDHR).



At the same time, it recalled that the UDHR also provides that all human rights set forth in this document may be limited for reasons of public order (Article 29(2) of the UDHR).

28. As such, the Commission recalled that the decision (also cited by [...] Court), *N. v. United Kingdom*¹, which called to: “search for a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual’s fundamental rights” and noted that “neither the decision to remove an alien who was suffering from a serious illness to a country where the facilities for the treatment of that illness were inferior to those available in the Contracting State, nor the fact that the individual’s circumstances, including his or her life expectancy, would be significantly reduced, constituted in themselves “exceptional” circumstances sufficient to give rise to a breach of Article 3.”

[...]

29. The Commission found that though distinct from the matter at hand, it concurred with the approach taken to assess the risks of degrading treatments, and found that it could shed some light as to the approach to take in the present matter. It noted that other decisions had followed in the footsteps of this one at the European level, including in *Paposhvili v. Belgium*.²

30. Therefore, the Commission noted that clear elements were presented by the Applicant and confirmed by the [...] Court (which had the power to weigh in all factors at hand) that an extradition proceeding could irreparably harm the Applicant and would be life-threatening according to medical professionals. It noted that added to the fact that the individual is seriously facing death within the next five years, the prospective threat to the right to be prevented from treatments degrading one’s health as a result of an extradition proceedings appears substantial to a point that cannot be safeguarded by Article 29(2) of the UDHR.

31. The Commission noted that though the NCB of [...] proposed that the Applicant be provided with the assistance of a doctor and/or nurse in his journey to [...], that no specific response appears to have been provided to explain palliative means or alternative avenues to prevent the potentially life-threatening irreparable harm that would be caused by the extradition procedure, according to medical professionals.

32. Therefore, in this specific case, the Commission found that the situation of the Applicant appears to raise serious concerns that the data held in INTERPOL’s files can maintain a valid purpose to extradite the Applicant within the spirit of the UDHR, as requested by INTERPOL’s Constitution.

33. Since the Commission could conclusively dispose of the matter in favor of the Applicant on the above basis, it decided not to examine the Applicant’s other contentions.

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.

¹ Application No. 26565/05 [2008] ECHtR.

² Application No. 41738/10 [2016] ECHtR.