



Request concerning [...]

(Ref. CCF/[...])

DECISION OF THE COMMISSION

(107th session, 28 January to 1 February 2019)

[...], withdrawing based on Article 2.1(d) of the Operating Rules of the Commission,

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

[...]
Members,

Having deliberated in camera during its 107th session, on [...], delivered the following Decision.

I. PROCEDURE

1. In [...], 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 Article 10 of the Operating Rules of the Commission, the request was found admissible, and the Commission informed the Applicant thereof in [...].
2. In [...], during its [...] Session, the Commission studied the complaint of the Applicant and concluded that the data were compliant with INTERPOL's rules.
3. On [...], the Applicant lodged a second complaint addressed to the Commission. The request was found admissible, pursuant to Rule 30 of the Operating Rules of the Commission, and the Applicant was informed thereof on [...].
4. During the study of the Applicant's case, the Commission consulted the INTERPOL National Central Bureaus (NCBs) of [...] and [...], in accordance with Article 34 of the Statute of the Commission, on the arguments set forth in the complaint.
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 107th session and invited to provide any additional information they may find necessary for the study of the request.

II. FACTS

6. The Applicant is a national of [...]. He was the Director of [...].
7. He is the subject of a Diffusion, with a view of arrest, issued at the request of [...] [...] on the basis of a detention order [...].
8. The summary of the facts, as recorded in the Diffusion, is the following: [...].
9. The additional information, as recorded in the Diffusion, is the following: [...].

III. THE APPLICANT'S REQUEST

10. The Applicant requested the deletion of the data concerning him, contending, in essence that:
 - a) [...] authorities failed to request his extradition,

NOT INTENDED FOR PUBLIC DISSEMINATION



- b) the prosecution lacks an evidentiary basis, and
- c) the retention of data is not compliant with Article 2 of INTERPOL's Constitution.

IV. APPLICABLE LEGAL FRAMEWORK

11. 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.*"

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. Requirement for extradition efforts and purpose of the data:

- Article 10 of the Rules on the Processing of Data (RPD) states that data shall be processed in INTERPOL's files for a specific purpose, one of which may be for the arrest, detention, or restriction of movement of a convicted or accused person. Article 97(1)(a) of the RPD permits the request of a diffusion for that purpose.
- Article 31 of INTERPOL's Constitution stipulates that a Member Country shall do all within its power that is compatible with its national legislation to participate diligently in INTERPOL's activities.

14. Requirement for elements of possible effective and concrete participation:

- Article 99(2) of the RPD stipulates that diffusions shall be supported by their quality and lawfulness, compliant with the general conditions for recording data, and subject of interest for the purposes of international police cooperation.
- Article 12 of the RPD states that data recorded in INTERPOL's files must be accurate, relevant and not excessive in relation to their purpose, and up to date.
- Article 35 of the RPD conditions the publication of data on its interest for international police cooperation. This shall be assessed in relation to (a) the purposes specific to international police cooperation, and (b) the international nature of the data and the extent to which the data may be used by National Central Bureaus, or national or international entities other than their source.

V. FINDINGS

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

A. Failure to extradite

a) The Applicant

16. The Applicant explains that [...] authorities are aware of his location in [...]; however, they have not taken steps toward the resolution of the criminal proceedings against him. He describes his current situation as that of confinement without an end to his restrictions on travel that result from the



existence of data concerning him in INTERPOL's files. In support of his claim, he emphasizes that he and his attorney have attempted to contact [...] authorities to settle the case but to no avail.

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

17. In its reply, the NCB of [...] provides clarification regarding the failure to extradite the Applicant from [...], as well as the suspension of the expiry date of the statute of limitation in his criminal proceedings.
18. According to the NCB, [...] authorities received information that the Applicant is a resident in [...]. They addressed a request to [...] for the extradition of the Applicant on [...]. [...] authorities replied on [...], refusing to extradite the Applicant to [...] in the absence of a guarantee that, if he is found guilty, he would be extradited back to [...] to serve his sentence on its territory.
19. The NCB clarifies that [...] national legislation does not permit the issuance of such a guarantee, as conditioned by [...] for the extradition of the Applicant. In view of this predicament regarding his extradition from [...], the NCB further submits that there is no basis to inundate its [...] counterpart with a repetition of the extradition request, and that the search for the Applicant remains valid on the territories of other Member Countries.
20. With regards to the prolongation of the period under which the Applicant has been subject to the criminal proceedings, the NCB explains that the expiry of the statute of limitation in his case has been suspended under the [...] Criminal Procedure Code. The suspension is grounded in the fact that the Applicant has evaded the investigation of the proceedings. Therefore, the arrest warrant for the Applicant and its commitment to request his extradition on its basis continue to be operative.

c) The NCB of [...]

21. The NCB of [...] informs the Commission that its authorities had received an extradition request from [...] in [...]. It clarifies that the request is still under review by the [...] Ministry of Justice.
22. Additionally, the NCB of [...] explains that the last correspondence with the NCB of [...] regarding the location of the Applicant was [...], and in which it confirmed he continues to reside in [...].

d) Findings of the Commission

23. The Commission recalled that Article 31 of INTERPOL's Constitution requires Member Countries to do all within their powers that is compatible with their national legislation to participate diligently in the activities of the Organization.
24. In the present case, on the basis of Articles 10(2)(a) and 97(1)(a) of the RPD, the purpose of the diffusion is to request the arrest, detention or restriction of movement of the Applicant, with a view to his extradition to [...]. The Commission therefore studied whether the NCB of [...] has demonstrated diligent efforts toward the achievement of this purpose of the diffusion.
25. It considered that [...] had submitted an extradition request to [...] within a year of the publication of the diffusion concerning the Applicant, as confirmed by the NCBs of both Member Countries. It noted that the NCBs of [...] and [...] provide the Commission with inconsistent information regarding the outcome of this request: while the NCB of [...] states that [...] authorities have expressed in 2011 their refusal to extradite the Applicant without the specified guarantee, the NCB of [...] clarifies that its authorities continue to review the extradition request.
26. The Commission underlined that this inconsistency is irrelevant in the evaluation of whether the NCB of [...] has adhered to the requirements stipulated in Article 31 of INTERPOL's Constitution. The Commission stressed that the NCB of [...] had taken the necessary steps to request the extradition of the Applicant upon learning of his location.
27. It noted that the [...] authorities, according to its NCB, are unable, rather than unwilling, to provide their [...] counterpart with the required guarantee for the extradition of the Applicant. It considered that this limitation to the possible police cooperation between the two Member Countries is in



accordance with the provision in Article 31 of INTERPOL's Constitution to act within the limitations set in their respective national legislations.

28. As a result, the Commission finds that the NCB of [...] has demonstrated that [...] is acting in compliance with Article 31 of INTERPOL's Constitution.

B. Lack of evidentiary basis

a) The Applicant

29. The Applicant submits that the diffusion lacks clarity, an evidentiary basis, and a clear description of his involvement in the underlying criminal activity. He makes a general plea of his innocence.
30. Firstly, the Applicant provides the following narrative to claim that the charges in his case have been fabricated.
31. The Applicant contends that he was a major business and public figure in [...] due to his ownership of various sought-after commercial properties located in [...]. He alleges that the personal interests of the then mayor of [...], motivate the criminal proceedings. He submits that [...] personally approached him regarding the transfer of their ownership.
32. He adds that, following his refusal to transfer his properties [...], he survived three assassination attempts that he believes were motivated by [...]. He claims these events had led to the deterioration of his health, [...]. In view of these developments, he explains that he visited [...] for urgent cardiovascular treatment in [...].
33. He ultimately submits that the charges were initiated against him at the request of the [...], for the purpose of eventually assuming ownership of his properties, while he was receiving serious medical treatment in [...]. He alleges that the plaintiff in the criminal proceedings against him, [...] immediately prior to his filing of a complaint against him with the [...] police, further evidencing that the charges were fabricated.
34. Secondly, the Applicant provides the following narrative of the proceedings and summary of facts of the criminal case, in support of his claim that the charges are incoherent and lack evidence.
35. He alleges that he has been charged with forcefully holding and kidnapping [...] from a restaurant in the centre of [...] on [...]. He claims that the charges were fabricated in the context of a civil dispute between [...], owned by the Applicant and by [...] respectively. The Applicant explains that the dispute relates to the failure of [...] to adhere to a contractual agreement for the delivery of equipment [...].
36. The Applicant adds that the above recount of events was confirmed within the criminal proceedings related to the case. [...]
37. The Applicant explains that, because of the above [...] decision, the [...] law enforcement authorities cancelled his criminal proceedings [...]. He provides a translated copy of this order for the termination of the proceedings against him, him [...].
38. He clarifies that the proceedings were re-launched [...], in what he claims to be in contravention to the [...] ruling.
39. In view of the above, the Applicant argues that there is a lack of elements of his possible effective and concrete participation in the criminal activity of which he has been accused. [...].

b) The NCB of [...]

40. In [...], during the Commission's previous study of the case in its [...] Session, the NCB of [...] had explained the developments in the criminal proceedings against the Applicant, the most relevant of which are the following:



- a. On [...], the [...] ordered the international search and the detention of the Applicant;
- b. On [...], a law enforcement official ordered the termination of the prosecution of the Applicant due to an alleged absence of a crime;
- c. On [...], on the basis of the above, the preliminary investigation in the case was suspended;
- d. On [...], a law enforcement official annulled the orders for the termination of the prosecution and for the suspension of the preliminary investigation;
- e. On [...], on the basis of the above, the criminal case was approved for execution; and
- f. On [...], the [...] ordered the detention of the Applicant.

41. In relation to the above, the Commission recalled the NCB of [...] had further clarified that the [...] ruling, dated [...], held no relevance to the validity of the proceedings against the Applicant.

42. It had explained that the decision [...] concerned only one of the co-perpetrators of the Applicant, [...].

43. The NCB of [...] had explained there is no legal justification for the application of the above ruling to the case of the Applicant. It had similarly explained that the order dated [...] had incorrectly referred to the [...] ruling as its basis for the termination of the prosecution of the Applicant. The NCB of [...] had provided a copy of [...] in support of its submission that the proceedings in the case remain valid.

44. Presently, the NCB of [...] submits that the evidentiary basis for the charges levied against the Applicant consists of the testimonies of his [...] co-perpetrators and the plaintiff/victim in the case.

45. The Commission had requested the NCB of [...] to provide a clear and succinct description of the criminal involvement of the Applicant, and in particular, in light of the information in the order of termination of prosecution dated [...].

46. In its reply, the NCB of [...] informs the Commission to disregard the order dated [...], on the basis that it contains an incorrect analysis and summary of events concerning the case.

47. It submits the following information regarding the criminal involvement of the Applicant in the underlying offence, specifically that:

[...]

48. The NCB of [...] details that the above summary of events, which occurred on [...], demonstrates the criminal involvement of the Applicant in that he:

- a. [...]
- b. Provided instructions to take the victim out of the factory and forcefully place him in the vehicle belonging to an accomplice; and
- c. Transported, along with an accomplice, the victim to a private residence against his will.

49. The NCB of [...] adds that the Applicant was involved in the events of [...],[...] by virtue of his involvement the day prior in the criminal conspiracy as a whole.

50. The Commission had furthermore requested that the NCB of [...] provide any available information regarding the context of the above summary of events. In its reply, it explains that the Applicant was the Director of [...]. In [...], a dispute arose between the Applicant and the victim regarding a contractual agreement between their two companies. Specifically, the victim had refrained from delivering equipment [...] failed to make his payments under the contract in full to the victim's firm.

51. The NCB states that, on [...], the victim arrived at the [...] to settle the business dispute with the Applicant, however, their meeting turned physically violent after the Applicant injured him. It adds that the Applicant then involved [...] with the intention to coerce the victim in relation to their business dispute.

c) *Findings of the Commission*



52. With regards to challenges to the evidentiary bases of cases, the Commission recalled its general policy 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. It emphasized that it does not rely on an alternative narrative of innocence provided by an applicant as the sole basis for a successful challenge to the data processed at the request of an NCB. However, in fulfilling its functions in accordance with Article 33(3) of its Statute, the Commission examines whether the information provided by the NCB source of the data includes sufficient elements of the possible concrete and effective participation of the individual to the charge. As part of this assessment, the Commission takes into account information and claims submitted by an applicant as well as any NCB third party to a case.
53. In view of this policy, the Commission referred to Article 99(2)(b) of the Rules on the Processing of Data (RPD), which stipulates that diffusions shall meet the general conditions for recording data in INTERPOL's files. This includes Article 12 on quality, requiring that the data must be accurate, relevant and thus corresponding to their nature on a national level. It further engages Article 35 on the interest of the data for international police cooperation, requiring the assessment of such interest in view of the extent to which the data may be used by entities other than their source.
54. In the present case, the Commission preliminary noted that the submissions of the Applicant concerning the fabrication of the charges by particular individuals for their personal interest raise questions that more appropriately fall under the jurisdiction of national authorities. It recalled that the Commission does not conduct investigations or fact-finding inquiries, and cannot therefore conclude based on these individual allegations provided by the Applicant.
55. The Commission rather centred its study on whether the NCB of [...] provided sufficient elements that would form a clear, succinct and coherent description of their criminal involvement of the Applicant in the facts underlying the case.
56. It closely reviewed the information in the summary of facts provided in the Diffusion, the translated copy of [...], and the explanations submitted by the NCB of [...].
57. It discerned that each of the above describes the alleged involvement of the Applicant in the events of [...] as follows: he acted as a member of an organized group, in which they placed the victim in a vehicle, and transported him to a private residence where he was kept until the following day against his will; and under the instruction of the Applicant, [...]. The Commission therefore considered that the submissions of the NCB are coherent with the information recorded in the Diffusion, and which provide elements to describe his possible involvement in these facts of the case.
58. The Commission subsequently studied the description of the possible involvement of the Applicant in the events of [...]. It observed that, according to the Diffusion, [...]. The Commission noted that this contrasts with the information in the [...], dated [...], which does not mention the involvement of the Applicant for that date. It further underlined that, according to the NCB of [...], the involvement of the Applicant [...] is by virtue of his participation in the events of the prior day.
59. In view of the above, the Commission preliminarily considered that the data recorded in the Diffusion do not accurately describe the lack of actual and concrete involvement of the Applicant in the events of [...]. It assessed that this is in conflict with Article 12 of the RPD, which requires that data are accurate, relevant and not excessive to their purpose.
60. As a result, the Commission concluded there is sufficient satisfaction that the data meet the requirements of Article 35 of the RPD, with reservations regarding the quality of some of the data in accordance with Article 12 of the RPD.

C. Retention of data and the right to health

- a) *The Applicant*
61. The Applicant provides a medical certificate that attests he has numerous dire health conditions, including diagnoses of cancer, serious cardiovascular and kidney issues and diabetes, and that he is medically considered to have "100% disability." In particular, he highlights that, since his arrival to



[...], he has undergone several cardiovascular surgeries and a kidney transplant. He adds [...] hospitals have high medical standards and were able to save his life.

62. He emphasizes that he is prevented from seeking medical care outside of [...] for his illnesses because of the Diffusion, given he is unable to travel without fear of his possible arrest and extradition to [...]. He furthermore submits that, in any case, his condition would bar the possibility of his detention or imprisonment in [...], with reference to [...], which call for the assessment of the health of an accused in deciding the appropriate measure of restraint in criminal proceedings.

b) The NCB of [...]

63. The NCB of [...] has confirmed the validity of proceedings in the case of the Applicant; however, it did not submit a reply to his above argument.

c) Findings of the Commission

64. The Commission recalled Article 99(2)(d) of the RPD requires that diffusions comply with Article 2 of INTERPOL's Constitution, which stipulates that the data must be in compliance with the spirit of the Universal Declaration of Human Rights (UDHR). The Commission furthermore noted that Article 25(1) of the UDHR references the right to health.
65. Further to the above, the Commission restated its policy that, in carrying out an analysis of compliance with Article 2 of INTERPOL's Constitution, it considers all relevant information to determine whether the Applicant has convincingly demonstrated the likelihood that a flagrant denial of human rights occurred, or would likely occur were he arrested and extradited on the basis of the data in INTERPOL's files.
66. In the present case, the Commission considered that the Applicant provided a copy of a medical certificate, dated [...], from the [...] concerning his health condition. The medical certificate describes him as having, *inter alia*, [...].
67. The Commission noted other factors related to the Applicant, including his age ([...] years old) and his residence in [...]. It observed that the Applicant has presented a medical certificate regarding his health condition, however, no elements were provided to certify that his right to health is threatened in [...], or that a serious medical treatment needed for his condition cannot be acquired in [...]. On the contrary, the Commission noted that the Applicant has expressed his trust in the level of medical attention he has acquired in [...].
68. In view of the above, the Commission underlined that the particularities of his circumstances, specifically his health and age, and whether such may bar his possible extradition on the basis of the Diffusion, or possible detention in [...], are matters more appropriately left to the study and consideration of national authorities. It is therefore prevented from concluding that the retention of the data is non-compliant with Article 2 of INTERPOL's Constitution.

FOR THESE REASONS, THE COMMISSION

Decides that the data challenged are compliant with INTERPOL's rules applicable to the processing of personal data, subject to the following update of the Applicant's file:

the information in the Diffusion is modified to accurately describe the level of involvement of the Applicant in the events of [...] in the summary of facts.
