

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 الم د ش ج - انتربول



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INTRODUCTION

The aim of the present report is to provide a summary of the work of the Commission for the Control of INTERPOL's Files in 2007 and in January 2008.

1. COMPOSITION OF THE COMMISSION IN 2007 AND JANUARY 2008

The five members of the Commission are of different nationalities. Their terms of office began in January 2005 and ran for a period of three years. When they ended in January 2008, the composition of the Commission was as follows:

| FUNCTION | MEMBER | ALTERNATE |
|--|---|--|
| Chairman | Mr Peter Hustinx (Netherlands) European Data Protection Supervisor (Brussels) | Mr Kevin O'Connor (Australia) President, Administrative Decisions Tribunal |
| Member appointed by the French Government | Mr Pierre Leclercq (France) <i>Conseiller honoraire à la Cour de Cassation</i> (Honorary Adviser to the Court of Appeal) | Ms Pascale Compagnie <i>Chef du Bureau des Libertés publiques au Ministère de l'Intérieur, de la Sécurité intérieure et des Libertés locales</i> (Head of the Department for public freedoms at the Ministry of the Interior, internal security and local freedoms) |
| Data-protection expert | Claudio Grossman (Chile) Dean of the American University Washington College of Law | Mr Bart De Schutter (Belgium) Chairman, Institute for European Studies - Free University of Brussels |
| Executive Committee member | Up to October 2006: Mr Mohand Amokrane Mahmoud (Algeria) <i>Commissaire Divisionnaire</i> Secretary General of the <i>Direction Générale de La Sureté Nationale</i> Since September 2006: Mr Mouzouni (Morocco) <i>Contrôleur Général</i> (Asst. Chief Constable) <i>Préfet de Police de la Ville de Casablanca</i> (Police Commissioner for the City of Casablanca) | Mr Ki-Ryun Park (Korea) Director General of the Bureau of Foreign Affairs Korean National Police Agency |
| Information technology expert | Mr Iacovos Themistocleous (Cyprus) Head of the Information Technology Department of the Central Information Service, Cyprus Police | Captain Mohammad Sameh Fasha (Jordan) |

2. INDEPENDENCE OF THE COMMISSION

By virtue of its composition, and as laid down in the Exchange of Letters between the French Government and INTERPOL (Article 1.3), and in the Rules on the Control of Information and Access to INTERPOL's Files (Article 5(a)), the Commission acts entirely independently. Its sessions are held in camera. In 2007, it held three two or three-day sessions at the Organization's Headquarters in Lyon. It also met once in January 2008.

3. OPERATING RULES OF THE COMMISSION

- During 2007, the General Secretariat and the Commission continued to attach great importance to the preparation of a set of operating rules for the Commission.

This undertaking stems from a shared desire on the part of the General Secretariat and of the Commission to equip the Organization with the best tools for ensuring the Commission's independence, the effectiveness of its checks on the processing of information by INTERPOL, and offering individuals an effective system for appealing against any processing of information about them by the Organization.

This approach is an essential stage in the process for consolidating INTERPOL'S immunity from jurisdiction, it being understood that no operating rule will be interpreted in such a way as to restrict the Commission's remit, as laid down in the Rules on the Control of Information and Access to INTERPOL's files.

- The operating rules will cover the three roles of the Commission: verifying that the processing of personal information has been carried out in conformity with the applicable rules, advising the Organization, and processing requests. They will also allow the Commission to carry out spot checks, *ex officio*, independently of its other functions and at any time, except when such a measure is incompatible with another its functions.

This essential function helped the Commission gain accreditation in 2003 during the International Conference of Data Protection and Privacy Commissioners in Sydney (Australia). It is an indispensable guarantee of the effective control of any supervisory body and its independence, and therefore of the adequacy of INTERPOL's level of data protection in the light of international standards. The operating rules should therefore reflect this essential and independent function of the Commission.

In practice, the Commission has always conducted spot checks with a view to providing useful advice to the Organization and better serving its interests.

- The operating rules should reflect the fact that a requesting party's right to access to INTERPOL'S files includes the right to know whether any information exists about him in INTERPOL's files. This vital component of the right of access is one of the conditions included in the notion of an "adequate" level of data protection. It is recognized in international agreements and is protected as such, namely in INTERPOL's rules.

The operating rules must embody the following principles, applied to date:

- . The admissibility of a request does not depend on the existence or non-existence of information concerning the requesting party in INTERPOL's files;
- . A request for access which does not call into question the content of INTERPOL's files does not have to be justified to be admissible, although the response provided may depend on grounds presented by the requesting party;
- . Any admissible request systematically results in a spot check to verify that the information concerning the requesting party has been processed in conformity with INTERPOL's rules.

However, a requesting party may not claim a right he does not have. Thus, the Commission will not issue a "certificate of good conduct". Nor does it consider admissible a request from an employer who has been given power of attorney by his employee to access INTERPOL's files in order to find out if the latter's name appears in the files, due to the conflict of interest between the nature of the right of access and the purpose of such a request for access.

The Commission is always able to contact a National Central Bureau to obtain additional information with a view to assessing whether information in the General secretariat's files has been processed in conformity with INTERPOL's rules.

- The operating rules must stipulate the deadlines for processing requests with a view to ensuring sound management.
- Furthermore, to process requests efficiently and expeditiously, the Commission outlined the need to have the utmost flexibility and transparency in administrative relations between the Commission and the General Secretariat.
- In January 2008, the Commission produced an advanced draft set of operating rules, which it hopes to finalize by the end of 2008.

4. ONGOING PROJECTS CONCERNING THE PROCESSING OF PERSONAL INFORMATION

4.1 - Technical projects

The Commission was consulted about various projects linked to the processing of personal information through INTERPOL channels.

It expressed a generally favourable opinion on the projects presented, subject to the General Secretariat developing control procedures to ensure the projects complied with INTERPOL's rules "*a priori*" and/or "*a posteriori*", with a steering committee able to regularly assess the efficiency and the relevance of the monitoring tools developed.

The Commission noted with satisfaction that the General Secretariat was currently working on implementing a compliance control system for the processing of information which could be used for all these projects.

The Commission also emphasized that each new project involving the processing of personal information should be subject to a "data protection impact assessment". The assessment would concern practical, technical and legal aspects linked to the processing of this information, and should then be submitted to the Commission so that it could check whether each project complied with INTERPOL's data protection rules.

It drew the General Secretariat's attention to the fact that any form of co-operation between INTERPOL and the United Nations regarding the exchange of personal information was a source of additional responsibilities that had to be taken into account, not only in terms of the procedures for the processing of information exchanged in this context, but also in terms of all of the checks concerning such processing.

4.2 - Draft implementing rules for the rules on the processing of information

The Commission outlined the importance of the work conducted, both for international police co-operation and for basic human rights. It nonetheless encouraged the working group in charge of finalizing these draft rules to expand on issues relating to downloading, co-operation between private entities, bilateral communication between National Central Bureaus through INTERPOL channels and the methods for exercising the option of retaining information in INTERPOL's databases.

5. QUESTIONS REGARDING INFORMATION PROCESSING REVISED IN THE CONTEXT OF REQUESTS AND SPOT CHECKS

5.1 - General information

The Commission highlighted the General Secretariat's efforts to process requests as a higher priority and to provide the Commission with detailed, high-quality analysis reports.

In the context of the study on requests and its spot checks, the Commission observed that the checks on the processing of information to verify compliance with INTERPOL's rules had raised recurring questions. A number of new questions had also been considered. All of these issues are discussed in more detail below.

5.2 - Admissibility of the request

The Commission confirmed its position according to which the simple fact that a requesting party institutes proceedings with a body with international jurisdiction such as the European Court of Human Rights cannot be considered to challenge the admissibility of a request, nor can it be considered to deprive the Commission or the General Secretariat of the right to undertake any appropriate action in order to determine if the latter processed the information in question in compliance with INTERPOL's rules. In the same way, when a person is the subject of an arrest warrant issued by a national authority, the judicial proceedings in progress do not preclude the administrative examination of a file.

The Commission wanted to make the General Secretariat aware of the fact that a refusal to proceed with the required administrative checks, purely on the grounds that judicial proceedings were in progress, would in itself constitute an infringement of the requesting party's basic rights.

The Commission stated that it would nonetheless remain open to the possibility of postponing certain decisions pending a judicial ruling.

5.3 - Principle of confidentiality of individual requests

The Commission confirmed its position whereby, by virtue of the principle of free access to INTERPOL's files, the General Secretariat had to abide by the principle of confidentiality with regard to individual requests, which should not be entered in the General Secretariat's criminal databases or divulged to the National Central Bureaus, even when the latter so requested.

5.4 - Validity of arrest warrants issued by police authorities

The Commission wondered about the validity of arrest warrants issued by police authorities. In such cases, it deemed it necessary to consult the National Central Bureau, which had provided the information, with a view to determining whether the warrant in question was issued by an independent tribunal, as understood in Article 10 of the Universal Declaration of Human Rights. The Commission also checked that the persons concerned could appeal to an independent tribunal.

5.5 - Article 3 of INTERPOL's Constitution

The Commission considered that when the elements provided by the National Central Bureau (NCB) which was the source of the information did not make it possible to rule out the predominantly political nature of proceedings against a requesting party, the NCB in question should provide copies of judicial documents giving a precise description of the charges against the individual and demonstrating, firstly, his active participation in the offence charged and, secondly, the predominance of ordinary-law aspects over the political aspects of the case.

It recommended, pending receipt of the required documents, that the red notice issued against the requesting party be suspended. However, the Commission stated that it would not object, on the one hand, to the NCBs still being informed that the requesting party was the subject of proceedings, provided that no arrest request had been issued on the basis of the information disclosed, or to the publication of a blue notice instead of a red one, on the other.

5.6 - Political-refugee status

The Commission recommended that once the General Secretariat was certain that a person has obtained political-refugee status in a country, an addendum reflecting this information be put in the person's file, except when the source of information was expressly against it.

5.7 - Retention of information after cancellation of the search request

The Commission noted that, while INTERPOL's rules permitted the General Secretariat to take the initiative to retain an item of information after a request for cancellation from the source (Articles 14 (c.3) and (15.3(c) of the RPI), this provision could only be applied in exceptional circumstances. In the absence of such exceptional circumstances, it is therefore to be assumed that the information on which a search request is based will be destroyed.

Furthermore, for the information which has given rise to the cancellation of a search request to be retained on an exceptional basis, the following conditions must be met:

- . The relevance of the information, i.e. its specific international interest for the police (Article 14(c.2) of the RPI), must have been determined on the basis of clearly established principles,
- . A check must have been made to ensure compliance with the conditions for processing the information in INTERPOL's files (Article 14(d) of the RPI),
- . There must be serious reasons for retaining information in INTERPOL's files (Article 14(e) of the RPI).

To this end, the General Secretariat should consult the source of the information.

5.8 - Retention of information in the light of its purpose

The Commission emphasized that the only purpose to be taken into account to determine the need to retain an item of information in INTERPOL's files was the specific purpose indicated by its source and which justified the need to alert the police.

Thus, the Commission considered that the simple fact that a National Central Bureau had requested that a red notice be retained constituted insufficient grounds for the General Secretariat to consider that the notice and the information contained therein had been communicated to members of INTERPOL for a new purpose.

It stated that when the General Secretariat was of the opinion, in the light of the elements in the file, that the information about a person should be retained in its files for a purpose other than the one stated by its source, it should consider the addition of this new purpose as a modification of the information contained in the file. Therefore, the General Secretariat should consult the source of the information and take any other appropriate measure to determine, whether it was possible and opportune, to take the action requested.

5.9 - Quality of information and the need to consult its source

The Commission also drew the General Secretariat's attention to the need to consult the National Central Bureaus when the information was provided by one country and concerned action taken by another country, with a view to ensuring the information was up to date.

Similarly, it recalled the need to contact the source of the information when the information was challenged, in order to obtain a copy of the arrest warrant in question when it had not been provided and to check that the information was accurate and was still of specific international interest to the police.

5.10 - Retention of information and lack of co-operation by its source

The Commission is of the opinion that regardless of the type of crime concerned, in cases where the information source has not responded to the questions asked of it and when the conformity of the processing of that information has been called into question, none of the provisions of INTERPOL's rules on the processing of information should be interpreted in such a way as to conclude that the General Secretariat is required to retain that item of information.

The Commission also felt it necessary to confirm its position that when an NCB failed to co-operate, it was not possible to check if the information in question has been processed in INTERPOL's files in compliance with the Organization's rules. The information in question should therefore be blocked or destroyed.

5.11 - Respect for national legislation

The Commission emphasized the General Secretariat's obligation to regularly remind members of INTERPOL that the tools developed by the Organization to facilitate international police co-operation could not be used to circumvent national laws and thus retain an item of information if such an operation was prohibited by the national legislation in the source country.

It also considered it necessary to draw the attention of NCBs to the fact that the processing of an item of information through the Organization's channels could only be conducted by its source "within the limits of the laws existing in the different countries [...]" (Article 2(a) of INTERPOL's Constitution and Articles 10.1 (a.5) of the RPI).

5.12 - Abstracts of notices subject to legal study on INTERPOL's website

The Commission confirmed its position whereby as soon as a file became the subject of a study to verify compliance with INTERPOL's processing rules, any information extracted from this file appearing on INTERPOL's public website should be removed from the site pending the findings of the study.

The Commission also recalled its decision of principle, ratified by the General Secretariat in several cases, according to which every time an addendum to a notice was issued and contained information relating to the main content of the said notice, the abstract of this notice should be withdrawn from INTERPOL's website.

5.13 - Transcription of information offences on INTERPOL's website

The Commission reminded the General Secretariat of the requirement to ensure that the information relating to charges communicated by National Central Bureaus was not distorted when it was placed on the Organization's website.

5.14 - Notion of a "project"

The Commission observed that a large number of the files whose deadline for review had expired and which had not yet been the subject of a study to determine the need to retain them, were connected with police projects.

The Commission stated the term “project” was a vague notion which would on no account constitute sufficient reason, in itself and as a matter of principle, to justify the need to retain information, without its accuracy and its specific international interest for the police first being checked.

The Commission therefore encouraged the General Secretariat to provide a strict definition of the notion of a “project” to ensure it was managed in an entirely satisfactory manner. It asked to be rapidly informed of the progress of the General Secretariat’s work on this subject.

5.15 - Processing of information concerning witnesses

In light of the files studied in the context of requests, the Commission agreed to implement spot checks on the General Secretariat’s files concerning the processing of information relating to witnesses. Indeed, it is of the opinion that it is a category of entities at risk, as some countries do not hesitate to restrict the movements of witnesses, or even to detain them, because of their status.

These checks should enable the Commission to gain an understanding, from the examination of specific cases, of the relevant processing rules and, where necessary, to advise the General Secretariat in the light of basic data protection principles.

6. BASIC TEXTS OF INTERPOL AND THE COMMISSION FOR THE CONTROL OF INTERPOL’S FILES

The following texts comprised the main regulations applicable in 2007 for the processing of information by INTERPOL and for the monitoring of the such processing:

- The Exchange of Letters between INTERPOL and the French Government concerning the organization of the internal control of files held by the ICPO-INTERPOL,
- The Rules on the Processing of Information for the Purposes of International Police Co-operation,
- The Implementing Rules for the Rules on the Processing of Information for the Purposes of International Police Co-operation (since 1 January 2008),
- The Rules on the Control of Information and Access to INTERPOL’s Files,
- The 2nd part of the Rules on International Police Co-operation and on the Internal Control of INTERPOL’s Files,
- The Rules Governing Access by an Intergovernmental Organization to the INTERPOL Telecommunications Network and Databases,
- INTERPOL’s Constitution,
- The Rules of Procedure of the Commission for the Control of INTERPOL's Files,
- The Agreement between the Commission for the Control of INTERPOL's Files and the ICPO-INTERPOL General Secretariat.
