



DECISION OF THE COMMISSION

The Commission for the Control of INTERPOL's Files (the Commission)

Having deliberated in camera, delivered the following Decision

I. PROCEDURE

1. On ..., the Requesting Party, hereafter "the RP", lodged a complaint addressed to the INTERPOL General Secretariat, and forwarded to the Commission on Following 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 him on
2. In accordance with article 5(e,4) of the Rules on the Control of Information and Access to INTERPOL's files (RCI), the National Central Bureau of INTERPOL (NCB) of Country A was consulted on the arguments set forth in the complaint.
3. On ... and ..., the NCB of Country A was reminded to reply to the Commission's queries. The NCB was also informed that without a reply by ..., the Commission might well recommend to the INTERPOL General Secretariat that the data be blocked or deleted, as it would not be in a position to ensure that the information concerning this person has been processed in conformity with the rules and regulations applicable to the Organization.
4. This case was considered by the Commission during its ... session which considered that due to the lack of an appropriate answer of the NCB of Country A, the Commission could not conclude that the data was compliant with INTERPOL's rules. Therefore, the Commission recommended that access by INTERPOL Member countries to the data concerning the RP be blocked pending further study of the case.
5. The General Secretariat was informed of this recommendation and blocked access to the data concerning the RP on
6. On ..., the NCB of Country A was informed of the Commission's decision and that the data would be deleted if no appropriate reply was received to the Commission's queries by It was invited once more to address the issues raised by the case.
7. The NCB made additional communication to the Commission in support of the Red Notice on

II. FACTS

8. The RP is a national of Country B, where he resides.
9. He is the subject of a Red Notice issued at the request of the NCB of Country A for issuing dud cheques, on the basis of a Court decision handed down ... by the judicial authorities of Country A.
10. The summary of the facts, as recorded in the Red Notice, is the following: "..."

III. THE RP'S REQUEST

11. The RP requested the deletion of the data concerning him.
12. He contends in essence that 1) the dispute is of a civil nature; 2) he was not aware of the charges against him.

IV. APPLICABLE LEGAL FRAMEWORK

13. 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*".

14. Field of competence of the Commission:

- Article 36 of INTERPOL's Constitution provides 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 10(a) of the Rules on the Control of Information establishes 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.

15. Effective participation of an individual in the acts he/she is accused of:

- Article 83.2(b,i) of the RPD requires that "*red notices may be published only when sufficient judicial data has been provided. Sufficient judicial data will be considered to include at least summary of facts of the case, which shall provide a succinct and clear description of the criminal activities of the wanted person, including the time and location of the alleged criminal activity.*"

16. Offenses for which a Red Notice may not be published

- Article 83.1(a,i) of INTERPOL's Rules on the Processing of Data states that "*red notices may not be published for offences relating to private matters and for offences originating from a violation of laws or regulations of an administrative nature, unless the criminal activity is aimed at facilitating a serious crime or is suspected of being connected to organized crime*".
- ...

V. FINDINGS

17. The Commission makes the following findings on the basis of the elements presented by the RP, the NCBs concerned and INTERPOL General Secretariat.

Commercial character of the case

a) The RP

18. The RP claims that while he had regular contact with the companies in Country A, he was not aware of the charges against him.

19. He explained that the dispute is of a civil nature as it is between private companies, in which he should not be personally involved: he signed post-dated checks only on behalf of his company. ...

20. In this business dispute, between private companies and Country A partners and guarantors, the RP is in no way involved. When portions of the contracts were cancelled, one of the companies submitted one of these checks, whereas they knew it was no longer valid.

b) The NCB of Country A (NCB source of the data)

21. The NCB confirmed the validity of suits and provided a copy of the Court decision. Regarding prior notification of the RP, the NCB provided that according to Country A Laws, if the defendant's place of residence or work are unknown, a copy of the notification shall be handed to the Public Prosecutor Office.

22. The NCB provided a summary of what was already stated in the Red notice and no additional elements surrounding the context of the case or regarding the claims made by the RP were received from the NCB of Country A.

c) Findings of the Commission

23. With respect to the allegation that the conduct was not criminal in nature and constitutes a private dispute, Article 83.1(a.1) of the RPD provides that “*red notices may not be published for offences relating to private matters and for offences originating from a violation of laws or regulations of an administrative nature, unless the criminal activity is aimed at facilitating a serious crime or is suspected of being connected to organized crime*”.

24. In addition, Article 83.2(b,i) of the RPD requires that sufficient information is provided regarding the charges and penalties, that demonstrates that the RP is charged with a valid arrest warrant and that shows the RP’s possible effective personal participation in criminal conduct of which he or she is charged. Thus, the processing of data in INTERPOL’s files requires the NCB to provide sufficient facts that link the wanted individual to the charges against him, and that demonstrate that the RP’s conduct is either not of a private or administrative matter, or was aimed at facilitating serious criminality or organized crime.

25. Based on the information submitted, including the submission of the NCB of Country A, the Commission finds that:

- The conduct forming the basis for the charges against the RP is based on the RP’s failure to have had sufficient funding in his bank account to honour a cheque that he signed as representative of a company in the framework of a contractual agreement.
- The circumstances and purpose of the signing of the cheque and of its cashing have not been clearly explained.
- There is no detailed explanation of how, under those circumstances, 1) the RP would have initially signed the cheque while knowing it could not be honoured, 2) or committed fraud or any other criminal offense as a result of signing a cheque on behalf of his company.

26. In view of the above, the Commission concludes that insufficient justification has been provided for the issuance of a Red Notice, in that the conduct the RP is accused of would constitute a criminal offence, rather than a breach of contract, which is a commercial dispute.

27. Therefore the Commission finds that the minimum criteria for the publication of a Red Notice, according to RPD Article 83(1)(a)(i) have not been met.

FOR THESE REASONS, THE COMMISSION

1. Concludes that the data challenged is not compliant with INTERPOL’s rules applicable to the processing of personal data;
2. Recommends that the data provided by the NCB of Country A concerning the RP is deleted from INTERPOL’s files.
