



Application for revision concerning [...]
(Ref. CCF/R 391.15)

DECISION OF THE COMMISSION
(101st session, [...])

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

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

Having deliberated in camera during its 101st session, on [...], delivered the following Decision.

I. PROCEDURE

1. The Commission considered the Applicant's complaint at its [...] session and concluded, in light of the information provided by the Applicant and by the National Central Bureau of INTERPOL (NCB) of the [...], that the data recorded in INTERPOL's files concerning the Applicant complied with INTERPOL's rules. On [...], the Commission informed the Applicant thereof.
2. On [...], the Applicant submitted a new complaint to the Commission, requesting the revision of his case and the deletion of the data concerning him recorded in INTERPOL's files. On the same date he was informed of the conditions of revision under Article 19 of the former Operating Rules of the Commission, and on [...] he was informed that his case would be considered at the 101st session of the Commission.
3. The NCB of the [...] was consulted on the new arguments set forth in the complaint.

II. FACTS

4. The Applicant is a national of [...]. [...]
5. [...], he was asked to tutor pupils in [...], accepted, but was finally denied the position because he was the subject of a green notice issued at the request of the [...] for preparing and delivering child porn.
6. He is actually the subject of a Green Notice issued at the request of the NCB of the [...], which purpose is [...].
7. The summary of the facts, as recorded in the Green Notice, is the following: [...]

III. THE APPLICANT'S REQUEST

8. The Applicant applied for the revision of his case and requested the deletion of the data concerning him.

IV. APPLICABLE LEGAL FRAMEWORK

9. 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 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.

10. Application for revision:

- Article 42 of the Statute of the Commission for the Control of INTERPOL's Files states that "*applications for the revision of decisions of the Requests Chamber may be made only when they are based on the discovery of facts which could have led the Requests Chamber to a different conclusion if that fact had been known at the time at which the request was being processed*".

11. Quality of the data:

- Article 12 of INTERPOL's Rules on the Processing of Data (RPD) states that "*data processed [...] must be accurate, relevant, not excessive in relation to their purpose and up to date, to allow them to be used by authorised entities*".

12. Green Notices

- Article 89 of the RPD provides that: "*Green notices are published to warn about a person's criminal activities. Green notices may only be published under the following conditions:*
(a) The person is considered to be a possible threat to public safety;
(b) This conclusion has been drawn from an assessment by a national law-enforcement authority or an international entity;
(c) This assessment is based on the person's previous criminal conviction(s) or other reasonable grounds;
(d) Sufficient data concerning the threat are provided for the warning to be relevant.
A green notice may only be published if it provides sufficient identifiers. (...)
The National Central Bureaus and national entities that receive green notices shall take the appropriate measures, in conformity with their national laws."

13. Respect of national legislation

- Article 11 of the RPD states that "*data processing [...] should be authorized with due regard for the law applicable to the [source] and should respect the basic rights of the persons who are the RP 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.*"
- Article 34 of the RPD requires that recording data in INTERPOL's files is authorized by national laws.

14. Processing of information in cases of sexual exploitation and trafficking of children

- INTERPOL General Assembly Resolution AG-2006-RES-06 :
"ACKNOWLEDGES "the extremely high rate of recidivism and the displacement of offenders throughout countries which expose potential victims to real risks",

REQUESTS the active co-operation of the National Central Bureaus to enable the General Secretariat to retain relevant information as long as necessary for the purposes of international police co-operation, provided that the national laws are observed and that the conditions set up in the rules on the processing of information for the purposes of international police co-operation are still met;

TASKS the General Secretariat to actively use its powers under the Constitution and under the Rules on the Processing of Information for the Purposes of International Police Co-operation in order to ensure that information concerning sexual exploitation and trafficking of children remain available in the Organization's files as long as is necessary for the purposes of international police co-operation."

V. FINDINGS

15. In reviewing the issues raised, the Commission based its findings on information provided by the Applicant, the NCBs concerned and INTERPOL's General Secretariat.

A. Application for revision

16. In his application for revision, the Applicant claims that:

- a) Information recorded in the Green Notice is not accurate:

[...]

- b) The Green Notice contains information relating to third countries that were neither provided by these countries nor controlled before its circulation through INTERPOL's channels.

17. Concerning the new arguments made in paragraph 16, the Commission established that they are based on facts that were not known at the time the Commission concluded on the original complaint, during its [...]

18. However, to determine whether an application for revision may be examined under Article 42 of the CCF Statute, the Commission must also establish whether the discovered fact "*could have led the Requests Chamber to a different conclusion if that fact had been known at the time the request was being processed*".

19. With regard to the Applicant's arguments that information recorded in the Green Notice was not accurate and not controlled before its circulation through INTERPOL's channels whereas it was originating from other countries, the Commission determined that if established, this new arguments may lead to a different conclusion of the Commission.

20. Therefore, the Commission finds that this argument meets the required criteria for revision established in Article 42 of its Statute and that it could study the merits of the case.

B. Lack of accuracy of the data

- a) *The Applicant*

21. The Applicant claims that information recorded in the Green Notice is not accurate concerning:

[...]

22. In addition, the Applicant also argues that the Green Notice contains information not sourced from [...] whereas allegedly coming from [...], which is not accurate and has not undergone the appropriate legal scrutiny.

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

23. On the issues raised by the Applicant relating to the inaccurate information contained in the Green Notice referred to under paragraph 16 above, the NCB of the [...] provided the following:
 - i. On the assertions concerning the Applicant's identity particulars, the NCB of [...] confirmed that this was an error and that his nationality was clearly [...];
 - ii. On the assertions that he was not deported to [...], the NCB of the [...] confirmed that the wording on the notice was incorrect and should read [...], rather than [...];
 - iii. On the assertions that [...];
 - iv. On the conviction of the [...], the NCB of [...] confirmed that it was dated [...] and not [...]. The NCB reiterated that the Applicant remains on the Sex Offenders [...]. This puts him over the [...]. The NCB provided the Commission with copies of correspondences between [...].
24. On the Applicant's claim that the Green Notice contains information not sourced from [...] whereas allegedly coming from [...] which is not accurate and has not undergone the appropriate legal scrutiny, the NCB of the [...] informed the Commission that it had contacted the NCB of [...] to obtain a copy of the Applicant's convictions.
25. The NCB deleted the Previous Green Notices issued against the Applicant, and a new Green Notice was issued on [...], in accordance with the information referred to [...]. On [...], the summary of facts of the newly issued Green Notice was updated by the NCB [...].
26. The NCB of the [...] finally informed the Commission that its authorities had no objection to provide the Applicant with a copy of the first Green Notice issued (which is not anymore recorded in INTERPOL's Files), and of the latest Green Notice issued.

c) Findings of the Commission

27. The Commission considered the Applicant's claims relating to inaccuracies of the Green Notice, and observed that the NCB of the [...] took actions in this regard.
28. The Commission further considered the confirmation of the NCB of [...] that the Applicant remains on the Sex Offenders [...].
29. The Commission finally noticed that the NCB of [...] had consulted with the NCB of [...] to check the information relating to the Applicant's convictions, and that it updated the newly issued Green Notice in this regard.
30. The Commission recalled that, in accordance with Article 36 of INTERPOL's Constitution, and with Articles 3(1)(a) and 33(3) of its Statute, its function is to control whether the processing of data in INTERPOL's files meets INTERPOL's applicable legal requirements.
31. In light of the information in its possession, and after consideration of the information updated by the NCB of [...], the Commission finds that the Green Notice issued concerning the Applicant complies with the criteria detailed in Article 89 of the RPD and specified under paragraph 12 above.
32. As a result, revision does not lead to a different conclusion than the Commission previously reached.

FOR THESE REASONS, THE COMMISSION

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