



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

DECISION OF THE COMMISSION (107th session, 28 January to 1 February 2019)

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

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

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

I. PROCEDURE

1. On [...], 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 Rule 30 of the Operating Rules of the Commission, the request was found admissible, and the Commission informed the Applicant thereof on 12 June 2018.
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 CCF Statute, on the arguments set forth in the complaint.
3. 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.

II. FACTS

4. The Applicant is a national of [...].
5. He is the subject of a Red Notice issued at the request of [...] for issuing an unfunded cheque on the basis of a court decision of [...].
6. The summary of the facts, as recorded in the Notice, is the following: [...].

III. THE APPLICANT'S REQUEST

7. The Applicant requested the deletion of the data concerning him, contending, in essence that:
 - a) the case is of a civil nature; and
 - b) the case lacks interest for the purpose of international police cooperation.

IV. APPLICABLE LEGAL FRAMEWORK

8. 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.*"

NOT INTENDED FOR PUBLIC DISSEMINATION



- 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.”*

9. 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.

10. Conditions for the publication of a red notice:

- Article 83(1)(a)(i) of the RPD states that Red Notices may only be published if *“the offence concerned is a serious ordinary-law crime.”*
- The minimum criteria required by the General Secretariat for the publication of Red Notices for unfunded cheques require a total amount of at least USD 10,000 or the issuance of multiple cheques on several occasions in a repetitive manner, regardless of the amount of the cheques.
- Article 83(2)(b)(i) of the RPD states that Red Notices may be published only when sufficient judicial data has been provided, which should include a succinct and clear description of the criminal activities of the wanted person.

11. Interest for international police cooperation:

- Article 35(1) of the RPD states that *“in conformity with Article 5(3) of the present Rules, prior to any recording of data in a police database, the National Central Bureau, national entity or international entity shall ensure that the data are of interest for the purposes of international police cooperation.”*
- Article 35(2)(b) of the RPD states that *“compliance with this condition for recording data shall be assessed in relation to [...] the international nature of the data and, in particular, the extent to which the data may be used by National Central Bureaus, national entities or international entities other than the source.”*

V. FINDINGS

12. For an appropriate study of the case, the Commission decided to study together below the related issues of whether the case is civil in nature and the data is of interest for the purpose of international police cooperation.

Nature of the dispute and interest for international police cooperation

a) The Applicant

13. The Applicant claims he had no intention to issue an unfunded cheque, and that the dispute resulted from an honest inability to meet his financial obligations at the time. He explains that he had requested and received a loan from [...] during his previous employment in [...]. He then migrated to [...] for another employment opportunity, [...]. He adds that, in [...], he had met serious financial



difficulties that prevented him for continuing his repayment on the loan, with an outstanding amount of [...].

14. He provides documents in support of his claim that he is currently reaching a settlement [...], which he adds is indicative of his lack of criminal intent. He submits a copy of a letter, dated [...], sent to him by a [...] debt collection company, [...] which notified him of the outstanding amount of [...]. The letter requested that the Applicant settle the unpaid account within [...] days from his receipt of the letter, and informed him that, in the failure of such, he would face criminal charges.
15. He furthermore submits a copy of a letter, dated [...], sent from his lawyer to [...], in which it stated that the Applicant “will cooperate and coordinate with the fulfilment of the said obligation with the bank and is not running away or reneging from his obligations.”
16. Lastly, the Applicant emphasizes that this case has had a negative repercussion on his livelihood in the [...]. He explains that he has been suspended from his employment, and faces the termination of his contract, after his place of employment was notified of his lack of security clearance because of the Red Notice.

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

17. The NCB of [...] confirms that the proceedings continue to be valid in the case of the Applicant. It reiterates the summary of facts in the Red Notice, which is that on [...], the Applicant issued a cheque [...] without sufficient funds.
18. In reply to the queries of the Commission, the NCB of [...] submits copies of the extradition request in the case, dated [...], the court decision, dated [...], and the applicable legislation.
19. In the extradition request, it is explained that the Applicant is accused of issuing a cheque for [...]. Its elements characterizing his possible concrete and effective participation consist of copies of the cheque, the police complaint, the testimony of the attorney of the Bank, and the notification from the Bank that the account lacks sufficient funds.
20. In the court decision, it reproduces the elements above as the basis on which the Applicant was found guilty of his commission of the underlying offence. The court further states that, in cases of unfunded cheques, no special intent is required, reasoning that the intent is apparent in the act of issuing the cheque with the knowledge of not having sufficient funds.
21. In response to the Applicant's claim that he is in the process of reaching a settlement in the dispute, the NCB of [...] explains that the court may end the criminal proceedings in the event of reconciliation between him and the plaintiff.

c) Findings of the Commission

22. Concerning the publication of red notices for charges of [...] the Commission recalled IPSP's implementing rules in this regard, [...].
23. The Commission determined that in the present case, the minimum threshold envisioned by IPSP has been reached, as the amount of the cheque concerned is above [...].
24. However, the Commission recalled that under Article 35 of the Rules on the Processing of Data (RDP), any data recorded in INTERPOL's files must be “of interest for the purposes of international police cooperation.” It furthermore observed that Article 83(1)(a) of the RDP stipulates that Red Notices specifically are reserved for serious ordinary-law crimes. The Commission therefore underlined that this interest shall be assessed, *inter alia*, in relation to the nature of the data and the extent to which the data may be used by NCBs for extradition purposes.
25. Firstly, as a general issue, the Commission considered that the offence of “[...] is seldom recognized as a crime and extraditable offence in many national systems. The Commission noted that a large number of INTERPOL Member Countries do in fact consider the inability to pay a debt as a civil, rather



than criminal, matter. It preliminarily established that the lack of dual criminality would prevent most national authorities from entering into international police cooperation for such a case.

26. The Commission recalled that, as stated in the court decision, a copy of which was provided by the NCB, [...] laws consider the mere writing of a cheque unmet with sufficient funds, for whichever reason, encompasses both the criminal act and intent.
27. The Commission, however, underlined that it must nonetheless ensure that cooperation through INTERPOL's channels is in accordance with its rules and aims as an international entity, and in particular with Article 83(1)(a) of the RPD, which limits the use of Red Notices for ordinary-law crime.
28. With regards to the criminal nature of the act of the Applicant, the Commission noted the following considerations before it:
 - The International Covenant on Civil and Political Rights stipulates, in Article 11, "No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation," which would include debt;
 - [...] of the UN Working Group on Arbitrary Detention states [...];
 - Most Member Countries do not qualify the mere act of issuing an unfunded cheque as criminal, and an inability to repay a debt has been decriminalised in most national legal systems.
29. In the present case, the Commission noted that, on the one hand, the Applicant has contracted a legal representative to reach a settlement with the plaintiff in the case. It considered that the Applicant submitted he had made several repayments on the loan prior to leaving [...]. It underlined that this submission is supported in the documents provided by the Applicant, which demonstrate that the outstanding amount, of [...], is lesser than that originally loaned, [...]. The Commission discerned that, on the other hand, there was a lack of elements that could characterize the act of the Applicant as one of possible malicious or fraudulent intent.
30. As a result, and in light of the above considerations concerning the qualification of the act of issuing an unfunded cheque, the Commission expressed strong concern that the data on the Applicant in INTERPOL's files may not be of interest for the purpose of international police cooperation. Indeed, it appears to the Commission that, in the particular case of the Applicant, the mere act of issuing an unfunded cheque where no criminal intent has been demonstrated does not meet the criteria of a "serious ordinary-law crime."

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.
