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 المنظمة الدولية للشرطة الجنائية (الإنتربول)

INTERPOL's Independent Authority for the Control and Protection of Personal Data

DECISION OF THE COMMISSION

REQUESTS CHAMBER

Request concerning [the Applicant]

[xxx] th session
[date]

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

Members,

Having deliberated during its [xxx] th session, on [date], delivered the following Decision.

I. PROCEDURE

1. On [date], Mr [the Applicant] lodged a request for access to the information concerning him registered in INTERPOL's files. On [date], the Commission found the request admissible as per Rule 30 of its Operating Rules and informed the Applicant thereof. After being authorized by the INTERPOL National Central Bureau (NCB) source of data, the Commission informed the Applicant on [date] that he is wanted through INTERPOL's channels by the authorities of [Country 1], for the charges of " *abuse of authority with grave consequences* " and provided the information described in paragraphs 06 and 07 below.

2. On [date], the Applicant lodged a request for the deletion of the data. Following the submission of all the required documents, in accordance with Rule 30 of the Operating Rules of the Commission, the new request was found admissible, and the Commission informed the Applicant thereof on [date].

3. During the study of the Applicant's case, the Commission consulted the NCBs of [Country 1] and [Country 2], and the INTERPOL General Secretariat (IPSG) in accordance with Article 34 of the Statute of the Commission, on the arguments set forth in the request.

4. Both the Applicant and the NCB source of the challenged data were informed of the fact that the Commission would study the case during its [xxx] th session.

5. Further to Article 40(3) of its Statute, the Commission also decided that the processing of the file warranted an extension of the standard time limit to decide on a request for deletion established in Article 40(2) of the said Statute.

II. DATA RECORDED IN INTERPOL'S FILES

6. The Applicant, a national of [Country 1], is the subject of Diffusion circulated for his arrest in view of extradition on [date] by the NCB of [Country 1] for " *abuse of authority with grave consequences*". The Diffusion is based on an arrest warrant issued on [date] by the [Court].

7. The facts of the case state the following: "*From [date] to [date], [District], [Region], [Country 1]. The subject being the member of the board of directors of the company "[Company A]", acting out of selfish motives with the aim of illegal enrichment, colluded with [Person 1] to steal funds of the company "[Company A]" by gratuitously actual alienation of the company's fixed assets (buildings and land plots) in favour of the controlled company "[Company B]" and then to the controlled company "[Company C]". Further, implementing the criminal plan, the subject attracted [Person 2], who was appointed deputy general director of the company "[Company A]" and on the basis of the power of attorney issued to him, had to conclude contracts for the purchase and sale the a/m company's property, while the subject with [Person 1] intended to ensure that the board of directors and the general meeting of participants of the company "[Company A]" approved the deal. In order to conceal the illegal nature of their actions, they convinced the management of the company "[Company A]" that the property purchase and sale agreements in favour of the company "[Company B]" would contain conditions for the repurchase of property, however, they were not going to commit these actions, as they planned to transfer the property to the controlled company in the future. Then, [Person 2], on behalf of the company "[Company A]" concluded contracts for the purchase and sale of the real estate of the a/m company at a reduced price. Subsequently, the*

property was sold to third parties at market value. The actions of the subject and accomplices entailed grave consequences in the form of termination of the company's work due to its insolvency. As a result, the subject and accomplices misappropriated property in the amount of more than [Amount], having caused the company "[Company A]" financial damage on an extremely large scale."

III. THE APPLICANT'S SUBMISSIONS

8. The Applicant requested the deletion of the data concerning him, contending, in essence, that:

   a) the data lack a clear description of his criminal involvement;
   b) the case is of a commercial nature;
   c) the proceedings do not respect the principles of due process; and
   d) the data lack purpose as the authorities of [Country 1] did not request his extradition.

IV. APPLICABLE LEGAL FRAMEWORK

9. The Commission considers the following applicable legal framework.

   9.1 Field of competence of the Commission:

   - Article 36 of INTERPOL's Constitution,
   - Articles 3(1)(a) and 33(4) of the Statute of the Commission.

   9.2 Clear description of criminal involvement:

   - Articles 12, 35, 97(2) and 99(2)(a) of INTERPOL's Rules on Processing of Data (RPD),
   - IPSG standards for the application of RPD.

   9.3 Nature of the dispute:

   - Articles 35 and 97(2) of RPD.

   9.4. Compliance with principle of due process:

   - Article 2 (1) of INTERPOL's Constitution,
   - Articles 11 and 34(1) of RPD.

   9.5 Purpose of the data:

   - Articles 10 and 97(1)(a) of RPD.

V. ANALYSIS OF THE CASE

10. For an appropriate study of the case, the Commission decided to study together under a point A below the related issues of the clear description of criminal involvement and the nature of the dispute, since they are interdependent and rely on the same factual allegations.

A. Description of criminal activities and nature of the dispute

a) *Submissions of the Applicant*

11. The Applicant contended that the data does not clearly describe his alleged criminal activities. In support of this, he stated that, on [date], he obtained an independent legal opinion concerning his criminal case, which concluded that the accusation lacked a clear description of his alleged criminal activities, as well as the nature and extent of the damage allegedly caused by them.

12. Additionally, he argued that the facts underlying the criminal proceedings, including the bankruptcy of [Company A], correspond to a corporate dispute, rather than to a criminal offence. The criminal case was used as a tool in corporate disputes between companies. In fact, [Company B] was not the legal owner of the real estate property allegedly acquired at a reduced price; rather, it was a collateral asset held by [Company B] as security under the terms of a guarantee. As the debtor failed to fulfil its contractual obligations, the property was lawfully sold — a process conducted in full compliance with the provisions of the original agreement.

b) ***Submissions of the NCB of [Country 1] (NCB source of the data)***

13. The NCB confirmed the validity of the proceedings and the arrest warrant, providing a copy of the court decision ordering the Applicant's arrest.

14. Regarding the Applicant's argument concerning the lack of a clear description of his criminal activities, the NCB provided a statement issued by the head of the unit responsible for the criminal investigation. This document stated that the Applicant, alongside [Person 1], were considered to have held managerial roles in [Company A], as both were members of its board of directors. Additionally, the Applicant served as general director of [Company B] — the entity that ultimately owned 95% of the shares in [Company A] — thereby granting him the right to participate in its general shareholder meetings.

15. In describing the criminal conduct attributed to them, the document stated that the Applicant, along with [Person 1] and [Person 2], colluded to cause significant property damage to [Company A] by transferring assets of the company below its real value. This was carried out by [Person 2] on [date], who acting under power of attorney on behalf of [Company A] and in his capacity of the company's deputy general director, entered into a contract with [Company B] for the transfer of real property located in [Country 1]. The transaction was recorded at a value of [Amount 1], while the property's stated market value at the time was approximately [Amount 2].

16. The NCB described the aforementioned contract was carried out in the interest of the Applicant and [Person 1] and to the serious disadvantage of the company by deteriorating its financial situation and ultimately leading to its insolvency. According to the information provided by the NCB, the Applicant and [Person 1] were aware of the deliberately unfavourable conditions of the contract and procured its execution.

17. The document further stated that, according to the accusation levied against them, the Applicant, [Person 1] and [Person 2] colluded to commit the criminal offence established in [Article Number] of the Criminal Code of [Country 1]. This provision punishes the abuse of authority by a person discharging managerial functions in a commercial organization, contrary to the lawful interests of that organization and for the purpose of obtaining benefits or advantages for himself or other persons, where such conduct has resulted in substantial damage to the rights and lawful interests of organizations, or to the legally protected interests of society or the state, and has led to serious consequences.

18. Finally, regarding the Applicant's argument that the facts underlying the criminal case are actually a corporate dispute rather than a criminal offence, it stated that the aforementioned document, with the description of facts as set out in paragraph 14 above, demonstrate that the description of the conduct attributed to the Applicant is coherent with a criminal offence, in accordance with the applicable legal provision explained above.

c) Findings of the Commission

19. The Commission recalls that under INTERPOL's legal framework, the processing of data in its files — particularly in relation to Red Notices and Diffusions requesting the arrest and extradition of the subject — requires the provision of sufficient factual information establishing a plausible connection between the individual sought and the specific charges, along with a clear and detailed description of the alleged criminal activities.

20. Under Article 99(2) of the RPD, the circulation of a Diffusion is conditioned on, *inter alia*, its compliance with the requirements for the interest of the data for the purposes of international police cooperation, pursuant to Article 35 of the RPD. This interest is intrinsically tied to the requirement, stipulated in Article 12 of the RPD and outlined in IPSG's standard as per paragraph 9.2 above, for the provision of sufficient elements describing the criminal activity underlying the case, and the personal involvement of the wanted individual that would link him to the charges.

21. Pursuant to Article 36 of INTERPOL's Constitution, and Articles 3(1)(a) and 33(4) of its own Statute, the Commission's mandate is strictly limited to reviewing whether the processing of data in INTERPOL's files complies with INTERPOL's applicable legal requirements. The Commission is not empowered to conduct investigations, assess the credibility or weight of evidence, or determine the merits of the underlying criminal case. These functions remain exclusively within the purview of competent national authorities. Accordingly, the Commission does not evaluate the guilt or innocence of the individual. Rather, its role is limited to determine whether the NCB has provided adequate and specific information demonstrating a plausible connection between the Applicant and the alleged offence(s), indicating his possible individual involvement therein.

22. In this case, the Commission first notes that the information provided in the Diffusion contains a comprehensive account of the date, manner, and location of the alleged conduct attributed to the Applicant. It details his role as a member of the board of directors of [Company A] and alleges that, in this capacity, he colluded with [Person 1] and [Person 2] to transfer fixed assets of the company to [Company B] at a price three times lower than the market value, thereby causing significant financial damage to the company. The Diffusion further specifies that the Applicant and [Person 1] played a role in proposing [Person 2] as deputy general director - who ultimately executed the contract that harmed the company- and in securing the approval of the transaction by the board of directors and the general meeting of participants of [Company A]. In order to do it, they misrepresented to the company's management that the purchase and sale agreements with [Company B] would include conditions for the repurchase of the property. However, the Applicant was allegedly aware that the plan was to subsequently transfer the assets to another company under his ultimate control.

23. Furthermore, as referenced in paragraph 14, the NCB submitted a document issued by the investigator of the case. This document first supports the facts set forth in the Diffusion, thereby enabling a proper corroboration of the accuracy of the information presented. Secondly, it provides additional details regarding the Applicant's alleged participation, describing that he is accused of having had effective capacity over the decisions of [Company A], since he was a member of the board of directors of the company and, additionally, the general director of [Company B], which ultimately owned 95 per cent of the shares of the first-mentioned company, thereby having the right to participate in the general meetings of shareholders of [Company A]. It also specifies the precise location and the contract price of the asset, as well as the alleged market value of the property. Additionally, it states that the Applicant served as director of the company that, in principle, benefited from the challenged transaction.

24. In summary, there is a clear description of the Applicant's role, which is coherent with the description of the criminal provision with which he is charged ([Article Number] of the Criminal Code of [Country 1]).

25. The Applicant further claimed that the alleged lack of clear description of criminal activities stemmed from the fact that the underlying facts constitute a corporate dispute regarding the conditions of the contract rather than a criminal offense.

26. The Commission recalls that Article 35 of the RPD states that data must be "*of interest for the purposes of international police cooperation. (2) Compliance with this condition for recording data shall be assessed in relation to: (…) (b) 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*". Thus, in addition to the standard requirement that the NCB must provide sufficient facts linking the wanted individual to the charges against him and demonstrating his possible effective participation, it may also be asked to clarify that the Applicant's conduct is not

a private or administrative matter, or that it does not derive from a private dispute.

27. In this regard, the Commission observes that the Applicant is charged with "*abuse of authority with grave consequences*," which is clearly a criminal offence under the national legislation of the country source of the data, pursuant to [Article Number] of the Criminal Code of [Country 1].

28. The Commission further notes that both the Diffusion and the information submitted by the NCB of [Country 1] illustrate the alleged abuse of a managerial position by the Applicant: first, to secure the appointment of [Person 2] as deputy general director of the company; and second, to pressure other members of the company into approving a contract that was detrimental to it, with full awareness that it would have such an effect, and while misrepresenting the actual consequences of the transaction. Therefore, the description provided by the NCB includes elements such as the capacity to influence corporate decisions, the abuse of a managerial position to cause property damage to the company through fraudulent means, and the pursuit of personal benefit, since the Applicant is described to have served as director of the company that benefited from the transaction.

29. For the limited purpose of assessing compliance with the above criteria, the Commission notes that the underlying facts, as set out in the summary of facts contained in the Diffusion and further explained in the documents submitted by the NCB, adequately describe an alleged criminal offence under domestic law and, specifically for the purposes of international police cooperation, the existence of criminal conduct rather than a mere contractual dispute.

30. In this regard, the Applicant's allegations that the true contractual conditions were different than those stated in the criminal case constitute matters of factual and evidentiary assessment that fall squarely within the jurisdiction of the domestic courts. The Commission, by contrast, is strictly empowered under its mandate to determine only whether the facts as presented to INTERPOL may, *prima facie*, constitute a criminal offence — without delving into the existence, terms, or specific clauses of the contract, as such determinations are exclusively the purview of the domestic courts.

31. As a result, the Commission finds that the Applicant's allegations are insufficient to establish that the Diffusion either (i) fails to clearly describe criminal activities, or (ii) concerns a private dispute rather than a criminal offence. Therefore, it concludes that the data are compliant with the rules set out in paragraphs 9.2 and 9.3 above.

B. Compliance with principles of due process

a) Submissions of the Applicant

32. The Applicant alleged a violation of his right to a fair trial, arguing that the decision of the [Court] of [date], which denied his request to discontinue criminal proceedings, was not based on a comprehensive assessment of all relevant facts. He contended that he was not afforded a meaningful opportunity to present alternative facts or legal arguments in his defence, as these were neither considered nor addressed by the court. Furthermore, the Applicant asserted that there was no tangible evidence supporting the charges against him, highlighting that one of the main pieces of evidence — an expert evaluation report — was fundamentally flawed. He argued that the report omitted several critical factors that should have been taken into account when assessing the circumstances of the alleged real estate transaction, and contained multiple factual inaccuracies and omissions, thereby undermining its reliability and probative value.

b) Submissions of the NCB of [Country 1]

33. The NCB explained the decision referred by the Applicant was based on a comprehensive assessment of all available facts and evidence in the case. It further stated that the Applicant was afforded the opportunity, both independently and with the assistance of his lawyer, [Person 3], to present alternative facts and legal arguments in his defence. According to the NCB, the Applicant did not avail himself of this opportunity and failed to appear before the preliminary investigation authorities upon summons.

c) Findings of the Commission

34. The Commission refers to Article 2 of INTERPOL's Constitution, which stipulates that data processed in INTERPOL's files must respect the basic rights of the data subjects in the spirit of the Universal Declaration of Human Rights. Under Article 11 of the RPD, data must be processed with due regard for the laws of the country source.

35. The Commission finds that the Applicant has failed to substantiate his allegations, as no supporting documentation was provided to corroborate his claims. Regarding the alleged violation of the right to a fair trial, the Commission notes that the NCB rebutted this assertion, affirming that the Applicant was afforded the opportunity to present his defence and participate in the proceedings. The Commission further recalls that the Applicant has yet to be tried and thus retains the possibility to exercise his rights of the defence. As for the Applicant's challenge to the evidentiary basis of the criminal accusation, the Commission observes that such arguments pertain to the merits of the underlying criminal case — an assessment that falls outside the Commission's mandate. The Commission does not function as an appellate body for national court decisions, nor does it reassess the sufficiency or accuracy of evidence evaluated by domestic authorities.

36. In light of the above, the Commission considers that that the Applicant has not convincingly demonstrated the existence of flagrant procedural irregularities or breach of due process in this case that would amount to a violation of INTERPOL's rules set out under paragraph 9.4 above.

C. Purpose of the data

a) Submissions of the Applicant

37. The Applicant contended that the purpose of the Diffusion was not to secure his extradition, as, given the alleged non-criminal nature of the dispute, the authorities of [Country 1] did not seek to have the legal basis of the request reviewed by an independent court.

38. Additionally, he claimed that in [year] he was questioned by the police of [Country 2] at the request of [Country 1]. Furthermore, on [date], the Ministry of Justice of [Country 2] informed the [Court 2] in [City] that it had contacted its counterparts in [Country 1] to inquire whether they intended to submit an extradition request and set a deadline of [date] for a response. However, as of [date], the Ministry of Justice of [Country 2] informed the same court that the authorities of [Country 1] had not submitted any request for the Applicant's extradition.

b) Submissions of the NCB of [Country 1]

39. The NCB explained that the authorities of [Country 1] have not submitted an extradition request for the Applicant to [Country 2] due to the absence of reliable information regarding his current whereabouts. It further informed the Commission that the General Prosecutor had not received any letter from the Ministry of Justice of [Country 2] inquiring whether [Country 1] intended to submit an extradition request. Additionally, while the Applicant was previously interrogated in connection with a separate criminal proceeding initiated in [year], the current Diffusion is based on a distinct criminal case, which was opened in [year], and the Applicant was not located and remains at large.

c) Information from the NCB of [Country 2]

40. The NCB of [Country 2] informed the Commission that the Applicant was not arrested in connection with the Diffusion. It further stated that it never informed the authorities of [Country 1] about his whereabouts. Additionally, it stated that the Ministry of Justice of [Country 2], by a letter dated [date], asked the General Prosecutor's Office of [Country 1] whether it intended to seek the Applicant's extradition, also informing them that if no extradition request were submitted by [date], the authorities of [Country 2] would consider the extradition waived; however, no response was received within that timeframe.

d) Findings of the Commission

41. Here, the Applicant challenged the purpose of the data stating that beside being fully aware of his location in [Country 2], the authorities of [Country 1] did not seek his extradition.

42. Under Article 10 of the RPD, the processing of data in the INTERPOL Information System may only be carried out for a given, explicit purpose which is in conformity with the Organization's aims and activities. Under Article 97 of RPD, Diffusions are published, among others, in order to arrest, detain or restrict the movements of a convicted or accused person. The conditions governing the issuance of a Diffusion are identical to the general conditions for recording data in INTERPOL's databases. In particular, where the purpose of the Diffusion is to facilitate arrest, it must be intended solely to enable extradition, surrender, or another form of lawful judicial cooperation. In that sense, Article 81(3)(d) of the RPD referring to Red Notices, which may be applied *mutatis mutandis* to Diffusions circulated for the same purpose, states that Red Notices can be cancelled if "*the National Central Bureau or international entity that requested the notice obtains data allowing it to carry out the required action but has not taken any steps to this end and, after being consulted, has not provided reasonable grounds for its lack of action.*"

43. In this case, the Commission finds that the Applicant has failed to substantiate his allegation that the authorities of [Country 1] were aware of his precise location in [Country 2] and, consequently, failed to request his extradition.

44. In this regard, the NCB of [Country 1] explained that it did not possess precise information regarding the Applicant's whereabouts, which was further confirmed by the NCB of [Country 2], which informed the Commission that the Applicant was not arrested on their territory and that the NCB of [Country 1] was not notified about his whereabouts.

45. In addition, given its limited fact-finding capacity, and in light of the authorities of [Country 1]'s denial regarding the letter from the Ministry of Justice of [Country 2], the Commission is not in a position to conclude that [Country 1], despite having both the means and the legal capacity to pursue the Applicant's extradition, failed to take any action to request the Applicant's extradition.

46. Consequently, the Commission finds that the Applicant's allegations do not undermine the validity of the data registered in the Diffusion, and that it remains justified under its original purpose.

FOR THESE REASONS, THE COMMISSION

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

Commission for the Control
of INTERPOL's Files

Secretariat to the Commission
for the Control of INTERPOL's Files