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]

(Ref. CCF/[xxx]/[xxx])

[xxx]th session

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], [the Applicant] presented 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 [Country 1] authorities and provided the information described in paragraph 7 below.

2. On [Date], the Applicant lodged a request for the deletion of the information concerning him, registered in INTERPOL's files. On [Date], he was informed of the admissibility of his new request.

3. During the study of the Applicant's case, the Commission consulted the NCB of [Country 1] 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. At its [xxx]th session, the Commission considered that the lack of appropriate answers from the NCB of [Country 1] raised questions concerning the compliance of the data with INTERPOL's rules. Therefore, the Commission decided that access by INTERPOL member countries to these data recorded in INTERPOL's files shall be blocked pending further study of the file at the [xxx]th session.

5. IPSG was informed of this Decision. On [Date], access by INTERPOL member countries to the data recorded in INTERPOL's files concerning the Applicant was blocked by IPSG.

6. 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.

7. Further to Article 40(3) of its Statute, the Commission also decided that the processing of the file, in particular the delays caused by the NCB source in responding to the Commission's queries, warranted an extension of the standard time limit to decide on a request for deletion established in Article 40(2) of the said Statute.

8. Further to Article 35(3) of the Statute of the Commission, restrictions were applied to certain information in the Decision.

II. DATA RECORDED IN INTERPOL'S FILES

9. The Applicant, a national of [Country 1], is the subject of a Red Notice issued on [Date] at the request of the NCB of [Country 1] for "*crime of smuggling ordinary goods*" on the basis of an arrest warrant issued on [Date] by the [Law Enforcement Body].

10. The facts of the case state the following: "*From [Date] to [Date], [Country 1]: On [Date], the [Law Enforcement Body] filed a case against [the Applicant] and other for the alleged crime of smuggling ordinary goods and articles. According to the investigation, the suspect, [the Applicant] was the actual controller of [Company 1] In order to gain illegal profits, [the Applicant] smuggled frozen goods into [Country 1] through his company. From [Date] to [Date], [the Applicant] organized his employees to smuggle 361,400 tons of frozen products into [Country 1], worth [xxx]. The total illegal profits were [xxx].*

[The Applicant] was responsible for arranging for his employees to collect frozen goods from domestic cargo owners without imported permission, as well as directing them to carry out devanning, LCL, and other operations in [City 1] to smuggle by bypassing the customs territory. His illegal proceeds are under investigation. Before the case was filed, [the Applicant] had fled abroad. On [Date], the [Prosecutorial Authority] approved the arrest warrant of [the Applicant] for the crime of smuggling ordinary goods and articles."

III. THE APPLICANT'S SUBMISSIONS

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

    a) the data lack quality and a clear description of criminal activities; and
    b) the proceedings do not respect the principles of human rights, including due process.

IV. APPLICABLE LEGAL FRAMEWORK

12. The Commission considers the following applicable legal framework.

    12.1. 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.

    12.2. Data quality and description of criminal activities:

    - Articles 12 and 83(2)(b)(i) of INTERPOL's Rules on the Processing of Data (RPD),
    - IPSG's standard for the application of this criterion.

    12.3. Respect for human rights principles, including due process:

    - Article 2 of INTERPOL's Constitution,
    - Article 11 of the RPD.

V. ANALYSIS OF THE CASE

Data quality and description of criminal activities

a) Submissions of the Applicant

13. The Applicant argued that the Red Notice fails to provide accurate and clear information linking him to the criminal activity described in the facts of the case, emphasizing that his only connection to these facts is his association with his nephew, [Person 1], who is a defendant in the case.

14. He explained that he established a [Country 1]-based company, [Company 1], in [Year] and he has served as its director since its establishment. The company is a legitimate business subject to annual auditing and taxation in [Country 1].

15. While the facts of the case describe him as the head of a large-scale smuggling operation carried out via his company, he emphasized that he never met any of the [xxx] co-defendants in the case, except his nephew [Person 1], and none of these co-defendants were ever employed by or associated with his company. There is no direct or indirect connection between their activities and him or his company. From the information that he was able to gather on the criminal proceedings, it appears that the case materials only contain information on [Person 1]'s conduct, including the communications of the latter with co-defendants, but not concerning him (the Applicant). He contended it may be possible that his company was fraudulently associated with a smuggling scheme, or that the products which the company lawfully exported were then used for illegal purposes; however, there is no information or a factual basis to attribute fraudulent conduct to him personally.

16. He further submitted that the Red Notice fails to provide accurate, coherent information on the facts of the case. For instance, there is a lack of coherence between the information in the casefile at national level, which states the criminal activity was initiated in [Date], and the Red Notice, which provides [Date] as the starting date of the activity. The starting date of [Date] is featured in a court decision issued against his co-defendants by the [Court] dated [Date], a copy of which he provided to the Commission. He explained that in the decision, he is referred by the name of [Alias 1]. He also provided a copy of the appellate decision issued in the case against his co-defendants by the [Appeals Court] on [Date].

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

17. The NCB confirmed the validity of the criminal proceedings against the Applicant and provided a copy of the underlying arrest warrant.

18. The NCB stated that he remains wanted in the case smuggling goods under Article [xxx] of the Penal Code on [Date] and established that he used his [Country 1]-based company to smuggle frozen goods into [Country 1] between [Date] and [Date]. During this period, he instructed his employees to smuggle [xxx] tons of frozen goods valuing [xxx], allowing them to accumulate profits from these operations in the amount of [xxx]. In response to his contentions, the NCB affirmed that he is the principal offender in the case, as he was responsible for instructing and directing his employees to carry out these smuggling activities. It also clarified that since the criminal activities were continuous in nature, the information recorded in the Red Notice on the time period of the crime is accurate.

19. The NCB further submitted that the case has been subject to a final judgment by the [Appeals Court], and it provided a copy of an earlier judgment issued by the [Court] on [Date]. The NCB added that the Applicant retains the right to file an appeal or seek a retrial in those proceedings.

c) Findings of the Commission

20. The Commission recalls that data in INTERPOL's files and in particular a Red Notice must be supported with accurate, clear, and relevant information on the facts of the case, concretely linking the subject to the conduct for which they are wanted, in accordance with Articles 12 and 83(2)(b)(i) of the RPD. As outlined in IPSG's standards for the implementation of this rule, it is insufficient to state that the wanted individual was involved in the underlying crime and rather information on his actual conduct is required to meet the criterion.

21. The Commission preliminarily observes that despite several exchanges, it did not receive the information as requested from the NCB on the status of the underlying criminal proceedings. Specifically, the NCB stated that a final judgment was made in the case and provided a copy of a court decision issued by the [Court] on [Date]. In response to a request for clarification from the Commission, the NCB also submitted that the Applicant nonetheless retains the right to appeal the court decision or request a retrial in the case. However, the Commission notes that based on its examination of the copy provided by the NCB, the court decision does not pertain to the Applicant and rather only concerns several of his co-defendants. The Applicant is briefly mentioned in the text of the decision, which indicates that he was tried separately. Despite the repeated requests and reminders of the Commission, the NCB refrained from clarifying whether he was indeed subject to a judgment in his own proceedings, and if yes, whether that judgment was deemed final.

22. The Commission further notes that, although it received a copy of the arrest warrant of [Date] recorded in the Notice, this judicial information appears to be outdated given that he was tried and convicted following the issuance of the warrant, as per the NCB. Therefore, the Commission expresses doubts regarding the accuracy of the information in the Notice that he is wanted for prosecution on the basis of this warrant, rather than to serve a sentence pursuant to a court decision.

23. The Commission thus emphasizes that it did not obtain clear and coherent information from NCB on the status of the criminal proceedings underlying the Red Notice, and accordingly it is prevented from ensuring that the challenged data comply with Article 12 of the RPD.

24. The Commission proceeds to examine whether the available information provides a sufficient description of the criminal activity for which the Applicant is wanted, including the concrete acts attributed to him in a personal capacity, in a manner that fulfils the requirement stipulated in Article 83(2)(b)(i) of the RPD and meets IPSG's standard for the implementation of this rule.

25. The Commission underlines that the facts of the case recorded in the Red Notice and confirmed by the NCB (see para. 18) indicate large-scale operations of smuggling frozen goods were carried out between [Date] and [Date] by the employees of the Applicant's company and at his instruction. These facts also provide coherent numbers on the amount and the value of the smuggled goods, and the profit gained from evading customs.

26. The Commission takes into account that according to the court decision of [Date] in the case of the co-accused, the facts of the case are that between [Year] and [Year], a cargo-soliciting ring purchased prohibited frozen products overseas that were then allegedly smuggled into [Country 1] through the Applicant's [Country 1]-based smuggling ring. The members of the smuggling ring led by the Applicant would allegedly unpack containers and consolidate cargo to bypass customs checkpoints. The decision describes this criminal activity as being taken by the smuggling ring as a whole, at times referring to the roles of some specific co-defendants and to "*the staff*" of the Applicant's [Country 1] company; however, no information was identified from the decision on concrete acts attributed to the Applicant.

27. While the available information on the facts of the case contains some detail on the general criminal activity underpinning the proceedings, they only provide a conclusory and imprecise assertion regarding his alleged involvement or role, absent of any concrete information that may tie him to these underlying facts. The Commission emphasizes that he is said to have "*instructed others*" to commit this crime, without any detail or indication as to which action he instructed whom to carry out. Short of an individualized or precise description, the mere assertion that he instructed the commission of the crime is alone insufficient to constitute concrete information linking him to the activity in question.

28. The Commission also recalls that in its processing of this case, the NCB was queried and reminded on several occasions to provide additional information on the alleged individual role of the Applicant. The submission made by the NCB, however, merely mirrors the basic information already available in the Red Notice rather than serves to supplement it.

29. Considering all the above, the Commission determines that the available information does not adequately describe the alleged criminal involvement of the Applicant, which prevents it from concluding that the Red Notice is compliant with Article 83(2)(b)(i) of the RPD. This is compounded by its doubts concerning the lack of adherence of the data with Article 12 (see para. 22). Since the Commission could conclusively dispose of the matter in favor of the Applicant on the above basis, it decides not to examine the Applicant's other contentions.

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.

Commission for the Control
of INTERPOL's Files

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