



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") initially addressed the Commission a simple request for access to INTERPOL's files. Following submission of all the documents for admissibility, the RP was informed of the admissibility of his request on....
2. In accordance with Article 5(e,4) of the Rules on the Control of Information and Access to INTERPOL's files, the NCB of Country A was consulted on the arguments of the RP.
3. The RP was informed on ... that he is wanted through INTERPOL's channels by Country A, for the charges of.... He was informed of the details of the arrest warrant and the summary of facts as it appears on the Red Notice.
4. On..., he subsequently lodged a complaint. The RP was informed of the admissibility of his complaint on
5. This case was considered by the Commission during its ... session. The Commission concluded that doubts regarding compliance with INTERPOL's rules prevented it from concluding, at that stage, that the data challenged met the criteria outlined in INTERPOL's rules. Therefore, the Commission recommended that access to the data concerning the RP be blocked pending further study of the RP's file.
6. On ..., the access to the data was blocked by the General Secretariat. On the same day the NCB of Country A was informed of the Commission's decision and that the data would be deleted if no reply was received to the Commission's queries. It was invited to address the issues raised by the case.
7. On the same day, the RP was informed of the conclusion of the Commission and of its implementation by the General Secretariat. After an additional exchange of messages with the NCB of Country A which required additional clarifications concerning the Commission's request, the NCB provided additional information on ...
8. The Commission examined this case during its ... session. The Commission found that additional information from NCB of Country A was necessary to address the issue of the nature of the offence, and therefore compliance with Article 83(1)(a)(i) of the RPD.
9. The Commission recommended that access to the data concerning the RP remains blocked pending further study of the file. The NCB made an additional communication to the Commission in support of the Red Notice between its ... and ... sessions, which the Commission considered at its ... session.

II. FACTS

10. The RP is a national of Country B. He has been residing in Country C.
11. He is the subject of a Red Notice issued at the request of the NCB of Country A on ... for ..., on the basis of the arrest warrant issued on ... by the judicial authorities in

12. The summary of the facts, as recorded in the Red Notice, is the following: "..."

III. THE RP'S REQUEST

13. The RP first requested access to the data concerning him in INTERPOL's files, then its deletion.
14. He contends in essence that 1) the case is of a commercial nature; 2) the prosecution lacks any evidentiary basis; 3) the requirement of interest/seriousness of the data for international police cooperation (articles 35 and 83 of RPD) is not met; 4) procedural requirements of Country A law were violated; 5) Country A authorities failed to request his extradition.

IV. APPLICABLE LEGAL FRAMEWORK

15. Offences for which a Red Notice may not be published:
- Article 83.1(a,i) of the RPD 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"
16. Effective participation of an individual to 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."

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.
18. The Commission had studied this case during its ... and ... sessions and had expressed concern that the description of the conduct forming the basis for the red notice did not appear to constitute a criminal offence. Therefore, the Commission addresses this issue first.

a) The RP

19. The RP argues that the arrest warrant and subsequent Red Notice relate to a dispute arising under a private commercial contract between the Company A and Company B entered into on ... (hereafter "the Contract").
20. The RP stated that As a result, Company B ... was no longer able to perform the services agreed under the Contract. Accordingly, the Contract was terminated.
21. The RP further stated that both Company B and the notifying authorities admitted this, and that Company B was given due contractual notice and paid in full all monies owed to it under the Contract. The RP therefore argues that the Red Notice related to a private commercial dispute.

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

22. In its initial reply the NCB of Country A explained that the Red Notice was published in accordance with ...

23. In its message of ..., the NCB of Country A further explained that...
24. Following the ... session of the Commission the NCB was asked to provide ...
25. In its reply of ..., the NCB of Country A replied that ...

c) Findings of the Commission

26. Under RPD Article 83.1(a.1): “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”. Under RPD Article 83.2(b,i), sufficient information must be provided that demonstrates 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 not a private matter, or an administrative violation, unless it facilitates serious criminality or organized crime.
27. From the information provided, the Commission finds that:
 - The RP is charged with a criminal offense in Country A on the basis of having signed several contracts in the name of Company A. That the RP signed the contracts is established via documents submitted to the Commission.
 - However, the responses of the NCB of Country A do not resolve the prior concerns of the Commission that insufficient information has been provided to demonstrate that a criminal offense has been committed, rather than that the matter constitutes a private, commercial dispute. It appears from the Red Notice and the submissions of the parties that The conduct forming the basis for the charges against the RP appears to be based on the RP’s failure to notify Company B after
 - Based on the information submitted, including the two most recent submissions of the NCB of Country A, the Commission concludes that insufficient justification has been provided for the issuance of a red notice, rather than that the conduct the RP is accused of either constitutes a private, commercial dispute (that is, a claim of breach of contract). The Commission also concludes that insufficient facts demonstrating his possible effective personal participation in a criminal offense as head of the Company A has been provided. Country A authorities state that the RP is also charged with However, no facts in support of this charge have been provided.
28. 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. In view of this finding, the Commission does not address the other claims of the RP.

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 be deleted from INTERPOL’s files.
