



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]<sup>th</sup> session**

**[date]**



## DECISION CONCERNING [THE APPLICANT]

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

Members,

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

### I. PROCEDURE

1. On [date], Mr [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 [Country 1], and provided the information described in paragraphs 5 and 6 below.
2. On [date], the Applicant lodged a request for the deletion of the information concerning him, registered in INTERPOL's files. On [date], the Commission informed the Applicant 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(1) 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]<sup>th</sup> session.

### II. DATA RECORDED IN INTERPOL'S FILES

5. The Applicant, a national of [Country 3], is the subject of a Red Notice issued on [date], at the request of the NCB of [Country 1] for "*tax evasion while taking profit in a large amount and illegal entrepreneurship*" on the basis of an arrest warrant issued on [date] by the [Country 1] district court, in [Country 1].
6. The facts of the case state the following: "*From [date] to [date], [Country 1]: The a/m person was a director of [Company 1]'s branch in the Republic of [Country 1] registered in [Country 1] Taxes Department as a taxpayer. The declaration of the period from [date] to [date], presented to the tax authority showed that a/m person evaded paying taxes to the government budget in an amount of [xxx]. In the period from [date] to [date] he was involved in an illegal entrepreneurship without a special license while it was needed. He took a profit in amount of [xxx] from construction and installation works*".
7. The Applicant is also subject to data registered in the INTERPOL Information System within a Criminal Analysis File (CAF) concerning the prevention and fight against financial crime with a transnational dimension. His status specified in the CAF is that of a person of interest.

### III. THE APPLICANT'S SUBMISSIONS

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

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- a) there is a lack of due process;
- b) the case is of an administrative nature; and
- c) there are some irregularities in the proceedings.

### 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(3) of the Statute of the Commission.

9.2. Lawfulness of proceedings:

- Article 2(1) of INTERPOL's Constitution,
- Articles 5(2), 11(1), 34(1), 34(3), and 86 of INTERPOL's Rules on the Processing of Data (RPD).

9.3. Clear description of the criminal activities and nature of the charges:

- Articles 10(2)(a), 35(1) and 83(2)(b)(i) of the RPD,
- IPSG standards for the application of the RPD.

### V. ANALYSIS OF THE CASE

10. The Commission assessed the Applicant's most relevant contentions described in Section III above.

11. For an appropriate study of the case, the Commission decided to study together under point B below the related issues of whether there are sufficient elements of criminal involvement and the nature of the offence, since they are interdependent and rely on the same factual allegations.

#### A. Lack of due process

##### *a) Submissions of the Applicant*

12. The Applicant complained of several procedural irregularities in his case, starting with the fact that he was not informed of the proceedings against him while he was still in [Country 1] after the investigation started on [date]. He argued that as he was never officially charged by a judge or prosecutor in this case, he could only be considered a suspect, and not an accused. While a public defender was designated by the court to defend him, he was never in contact with him, and thus did not have the possibility of effectively defending his rights in the case, therefore infringing on his rights to a fair trial.

13. He submitted that he was only informed in [date] of the existence of the [date] [Country 1] arrest warrant, when his entry to [Country 2] was denied. Following this, he petitioned the General Prosecutor of [Country 1] on [date] for the termination of the criminal proceedings. This request was rejected on [date], and it was confirmed on [date] that the proceedings against the Applicant would not be terminated. His letters addressed to a deputy of [Country 1] and the Office of the [authority] of [Country 1] were left without answers.

14. Even after he notified [Country 1] authorities of his address, he was never notified of the following decisions including a new arrest warrant that was issued on [date] against him on another charge.

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### *b) Submissions of the NCB of [Country 1]*

15. The NCB of [Country 1] confirmed the validity of the proceedings and the arrest warrant dated [date] of which it provided a copy. It explained that since the Applicant had left [Country 1] on [date], it was no longer possible to interrogate him, start the preliminary investigation and announce the charge against him.
16. It reported that on [date] the Applicant was declared as a wanted person and on [date] the [Country 1] District Court issued the arrest warrant. The Applicant was charged in the criminal case no. [xxx] for offences punishable under Articles [xxx] of the Penal Code of [Country 1] by the decision dated [date]. However, since the Applicant continued to hide from the investigation, it was impossible to announce the new charge to him. To ensure the announcement of the new charge, on [date] he was declared as a wanted person by the investigation and the arrest warrant was issued by the decision of the [Country 1] District Court on the same day.

### *c) Findings of the Commission*

17. The Commission reviews the Applicant's claims of the existence of several procedural irregularities in his case in [Country 1], which raise the question of compliance of the data with Article 2 of INTERPOL's Constitution and Article 11 of the RPD. It recalls that the simple assertion of possible procedural irregularities cannot rise to the level of an Article 2 violation.
18. Here, the NCB provided answers to the issues raised by the Applicant regarding the lack of his notification (see para.15). It did not address the fact that the Applicant has been in contact with [Country 1] authorities regarding his case, whereas the Applicant provided a copy of the letters sent to various [Country 1] authorities (see para.14).
19. While there are elements to support the fact that the Red Notice's underlying arrest warrant, of which the NCB provided a copy, is valid, there remain doubts on the existence of procedural irregularities in particular after the Applicant informed the authorities of his address. However, in view of the complexity of the case and the interdependence of arguments raised in relation to other legal issues, the Commission decides not to make a final pronouncement on the compliance of the data challenged at this stage, and to continue to study the Applicant's additional arguments.

## **B. Criminal involvement and nature of the offence**

### *a) Submissions of the Applicant*

20. The Applicant explained that in [date], he was appointed as the commercial director of the [Country 1] branch of [Company 1], a [Country 3] construction company. In that capacity, he was not in charge of determining any fiscal liabilities, manage contracts with fiscal authorities or decide what amount of taxes should be paid. Mr [Person 1], the actual director of the branch, was responsible for such tasks. According to the extract from the Registration Office of Commercial Legal Entities, Mr [Person 1] is [Company 1]'s legal representative, he was appointed manager of the [Country 1] branch on [date], and his name was used for the [xxx] signature that controls all of activities of the companies in [Country 1].
21. While the Applicant admitted that he ordered the transfer of sums between the branches' accounts and tax authorities, he did so under the instructions of his hierarchy, in particular under the orders of members of the [Company 1]'s Board of Directors in [Country 3]. [Country 1] authorities should have investigated the directors of the [Country 3] company itself, who are legally responsible for the branches' activities in [Country 1], and the only persons receiving benefit from the branches' entrepreneurial activities.

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22. With regards to the construction of cement plants, which [Country 1] considers as illegal entrepreneurship because of the lack of license, he submitted that contrary to what is alleged, the Company had obtained the license from the [Country 1] authorities on [date], of which he provided a copy. Additionally, this was also outside of the remit of his responsibilities.
23. He opposed the calculations of [Company 1]'s branch tax obligations as described by the authorities and denied having made any direct benefits from the tax evasions. According to the Supreme Court of [Country 1] case law, only the person receiving income from an entrepreneurial activity can be subjected to tax obligations, and therefore liable to commit the offence of tax evasion. In his case, he received no benefit from the branches' entrepreneurial activities, only his salary which cannot be considered as deriving from an entrepreneurial activity.
24. He argued that the offence is not criminal, but of a purely financial nature, as he was told that should he repay the amounts due, the charges would be dropped. Additionally, on [date] when issuing the arrest warrant, the Court found that the offences are "a less serious crime". Moreover, they resulted from an alleged violation of laws and regulations of an administrative nature, thereby questioning the validity of using INTERPOL's channels in this case. The Applicant submitted that this was clear from the decisions issued on [date] by the Chief investigator at the Department of Initial Investigation of Tax Crimes at the Ministry of Taxes of [Country 1] that the offences originated from violations of administrative provisions, *i.e.*, tax law and presidential decrees.

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

25. The NCB advised the Commission that the Applicant's direct participation in the criminal acts committed in relation to the charges brought forward was clearly described in the decision dated [date]. It confirmed that it is alleged he personally benefited from the criminal acts.
26. In the decisions dated [date], one charging the Applicant, and the other announcing his search, the Applicant is mentioned as being the director of the [Company 1]'s branch in [Country 1]. As such, he is accused of having entered false information in the tax declarations, or not submitting the necessary declarations, and thus committing tax fraud.
27. The NCB further explained that based on the results of the tax inspection conducted by the [Country 1] tax authority, it was determined that the Applicant evaded payment of [xxx] [Country 1 currency] in taxes to the state budget between [date] and [date].
28. Moreover, some payments were obtained whereas [Company 1] did not possess the required license to work, which resulted in illegal entrepreneurial activity for the construction works of buildings and equipment with the responsibility level of I and II degrees in accordance with state standards. As a result, the income ([xxx]) obtained between [date] and [date] was illegal.
29. It was further determined that the [Country 1] branch of [Company 1] did not pay the compulsory state social insurance contribution of [xxx] from the third quarter of [date] to the first quarter of [date], including [xxx] in profit tax, taxes and compulsory state social insurance contributions in the total amount of [xxx] for [date]. On this basis, a new criminal case was opened against the Applicant on [date] and a preliminary investigation conducted. A new arrest warrant was issued on this basis on [date].

### *c) Findings of the Commission*

30. The Applicant alleged that he committed no wrongdoing and was only an employee of the company following instructions (see paras. 20 to 21). In any case, he claimed that there is no offence (see para. 23) and that should there be any issues in the calculation of the taxes owed by the company, or not obtaining the necessary permits, it would be of an administrative nature (see para. 24). The

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NCB answered that there are elements to demonstrate that the Applicant committed the criminal acts, *i.e.*, tax fraud (see paras. 25 to 28) and illegal entrepreneurial activity because of lack of obtention of the necessary permits (see para. 29).

31. Under Articles 35 and 83 of the RPD, and other IPSP standards, the publication of the present Notice requires the provision of facts that link the wanted individual to the charges against him, and a clear description of the criminal activities of which he is accused.
32. Article 83(1)(a)(i) requires that the wanted person has committed “*a serious ordinary-law crime*” and specifically prevents the publication red notices for offences “*originating from a violation of laws or regulations of an administrative nature or deriving from private disputes, unless the criminal activity is aimed at facilitating a serious crime or is suspected of being connected to organized crime.*” In its standards for the application of the RPD, IPSP provided NCBs with clarifications on the list of offences for which Red Notices may not be published. With regards to this particular category of offences it listed: “*Violations of licensing regulations related to buildings/constructions*” and “*Offences related to causing damage to public funds, for example contracts concluded in violation of internal procedures or negligence in the performance of duties where there is no personal gain - whether direct or indirect - and/or no physical harm to individuals, and there is no gross negligence or evidence of corruption or fraud*” which could be applied both to the non-payment of taxes and the lack of obtention of the construction license.
33. The Commission further reviews the documents provided by the parties. It notes that the [date] decision to initiate a criminal case was issued by the Chief investigator at the Department of Initial Investigation of Tax Crimes at the Ministry of Taxes of [Country 1]. It does not specifically mention the Applicant’s name but rather the name of the [Country 3] construction company.
34. The Commission however continues to study the documents provided by the NCB of [Country 1]. Having in mind the Applicant’s argument that he did not have the capacity to decide on the amounts to declare to the tax office, but was rather following orders from his hierarchy, the Commission notices that the arrest warrant specifies that the Applicant acted as the “*the director of the [Company 1]’s branch in [Country 1].*” While the NCB stated that the Applicant personally gained from the alleged acts (see para. 25), it did not provide supporting elements but rather general statements as to the existence of evidence against the Applicant (see paras. 25 and 26), nor are there clear elements provided by the NCB that ascertain the Applicant was aware of the falsification of tax declarations, and that he received funds beyond his salary. The NCB did not address the Applicant’s arguments that he was not the Director of the company and cannot be held responsible for the tax filing (see paras. 20 and 21) and that the said license was actually obtained by the company (see para. 22).
35. In view of the above, the Commission finds that the information available to is not sufficient to demonstrate the Applicant’s involvement in a criminal act, criminal intent, or personal benefit, and consequently that the data are not compliant with the Articles mentioned under paragraph 9.3.

### 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.

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

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