



## **DECISION OF THE COMMISSION**

The Commission for the Control of INTERPOL's Files (the Commission), ...

Having deliberated in camera during its ... session, on..., delivered the following Decision.

### **I. PROCEDURE**

1. On..., the Applicant lodged a request for access and for the deletion of the data concerning him registered in INTERPOL's files, addressed to the Commission. Following the submission of all the required documents in accordance with Article 10 of the Operating Rules of the Commission, the request was found admissible, and the Commission informed him on ....
2. The National Central Bureau of INTERPOL (NCB) of Country A was consulted on the possibility to disclose information to the Applicant and on arguments set forth in the complaint, as well as on other issues raised by the Commission on its own motion, in accordance with Article 5(e,4) of the Rules on the Control of Information and Access to INTERPOL's files (RCI). ...
3. As of 11 March 2017, the Commission continued the study of the Applicant's request under the Statute of the Commission (CCF Statute) which abrogated and replaced the RCI on that date.
4. In accordance with Article 34(1) of the Statute of the Commission (CCF Statute), the National Central Bureau of INTERPOL (NCB) of Country A was consulted on arguments set forth in the complaint and made additional submissions.
5. On ..., the Commission informed the Applicant and the NCB of Country A that it should study the case during its ... session.

### **II. FACTS**

6. The Applicant is a national of Country B, and he used to work as a businessperson in Country A.
7. He is the subject of five different red notices issued at the request of the NCB of Country A, all of them for the same charges of "*Uttering unfunded cheques*". The summary of facts, as recorded in the Red Notices, are the following: ...

### **III. THE APPLICANT'S REQUEST**

8. The Applicant requested access to the data concerning him registered in INTERPOL's files, as well as its deletion.
9. In both his original complaint and his subsequent submissions, presented by different lawyers, he contends in essence that:

- a) the purpose of the red notices has already been achieved as his location is known,
- b) the case is not of a criminal but rather of a civil nature,
- c) the proceedings do not respect the principles of due process and human rights ;

#### **IV. APPLICABLE LEGAL FRAMEWORK**

##### 10. 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.

##### 11. Purpose of a red notice:

- Article 82 of the RPD states that "Red Notices are published (...) in order to seek the location of a wanted person and his/her detention, arrest or restriction of movement for the purpose of extradition, surrender, or similar lawful action."
- Article 10 of the Rules on the Processing of Data (RPD) states that data shall be processed in the INTERPOL Information System for a specific purpose. Article 34(1) requires that processing of data is authorized "pursuant to applicable national laws and international conventions".

##### 12. Offenses for which a red notice may not be published:

- Article 83.1(a,i) of INTERPOL's Rules on the Processing of Data (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".

##### 13. Compliance with human rights:

- Article 2(1) of INTERPOL's Constitution states that the Organisation 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".
- Article 34 of the RPD requires that "the National Central Bureau (...) shall ensure that the data are in compliance with Article 2 of the Organization's Constitution, and also that it is authorized to record such data pursuant to applicable national laws and international conventions and to the fundamental human rights enshrined in the Universal Declaration of Human Rights".

#### **V. FINDINGS**

14. In reviewing the issues raised, the Commission based its findings on information provided by the RP, the NCBs concerned and INTERPOL's General Secretariat.
15. The Commission decided to address the Applicant's contentions in the order in which they are described in paragraph 9 above.

## **A. Lack of purpose :**

### ***a) The Applicant***

16. The Applicant states that the publication of the notices against him was not justified, as his location in Country B was already known to the prosecution authorities of Country A. He argues that the data concerning him should be cancelled, as the purpose for which they had been registered has been already achieved.

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

17. In reply to the Applicant's claim, the NCB of Country A indicated that it has never been notified of the Applicant's arrest by any INTERPOL Member States since the publication of the red notices. Moreover, the NCB of Country A indicated that it contacted the NCB of Country B to inquire about the possible whereabouts of the Applicant, but that Country B's authorities declined all cooperation requests.

18. The NCB of Country A insisted that it was willing to seek the Applicant's extradition from any country where the Applicant would be arrested and where that avenue would be legally available.

### ***c) Findings of the Commission***

19. The Commission recalled that the purpose of a red notice is not only to locate a person, but also to request his/her provisional arrest in view of extradition. The fact that the Applicant's location is known to Country A's authorities does not undermine as such the lawfulness of the Red Notice.

20. However, INTERPOL's rules require that the requesting NCB takes appropriate step to achieve the purpose for which the red notice was issued, i.e. to seek the arrest in view of extradition of the individual concerned, or provides reasonable grounds for the lack of action of its country. In this regard, the information provided by the NCB of Country A and the information registered in INTERPOL's files highlight that the authorities in Country A have taken steps to respect their obligations under applicable law, and to request cooperation from Country B's authorities.

21. After consideration of the argument of the NCB of Country A that to date, no member state has sent notification of the Applicant's detention, the Commission finds that the Applicant's argument was not sufficient to consider that there is no genuine willingness of Country A's authorities to respect their obligations under applicable law. The Commission therefore concludes that the red notices issued at the request of the NCB of Country A against the Applicant still have a valid purpose.

## **B. Lack of criminal nature :**

### ***a) The Applicant***

22. The Applicant claims that the offence is linked to a private dispute resulting from his ..., which should be resolved before civil courts and not through criminal suits against him.

23. He claims that he attempted to obtain a private resolution with ..., and that no evidence of his alleged fraudulent intention has ever been presented by the prosecution.

24. He therefore argues that the red notices published against him on the basis of the offence of "*Uttering unfunded cheques*" contradict the provisions of Article 83.a(i) of the RPD in so far as they concern offences deriving from private disputes.

**b) The NCB of Country A**

25. In its reply, the NCB of Country A confirmed the validity of the proceedings and of the court decision. It further explained that the charge “*Uttering an unfunded cheque*” is a criminal offence according to their national legislation.
26. Moreover, the NCB of Country A underlined that the Applicant is wanted in connection with a large number of unfunded cheques, in different criminal cases registered in Country A, and that the Commission should take into account the repetition of the criminal activities concerned in its assessment.

**c) Findings of the Commission**

27. Concerning the publication of red notices for charges of “*unfunded cheques*”, the Commission recalled the General Secretariat’s implementing rules in this type of cases, as expressed in its diffusion ... .
28. The Commission determined that in the present case, the minimum threshold envisioned by the General Secretariat has been reached by far, as the amount of the cheques concerned are above ... for each of the five criminal cases involving the Applicant.
29. However, the Commission recalled that under Article 35 of the RPD any data recorded in INTERPOL’s files must be “of interest for the purposes of international police cooperation”, and that this interest shall be assessed, inter alia, in relation to the international nature of the data and the extent to which the data may be used by NCBs other than the source.
30. The Commission found that although the offence of “*uttering unfunded cheque*” is clearly a criminal offence under Country A’s national laws, such acts would probably not be recognized as an extraditable offence in many other national systems, where the lack of dual criminality would prevent national authorities to act upon requests for police cooperation based on this offence.
31. The Commission held that as a large number of INTERPOL’s Member countries consider the inability to pay a debt or to fulfil a contractual obligation as civil matters by opposition to criminal offences, the publication of Red Notices for the charges of “*uttering unfunded cheques*” may not, in most instances, lead in practice to actual international police cooperation.
32. The Commission found that this issue may raise reservations as to the compliance of the data challenged with INTERPOL’s Rules, and required a case-by-case analysis in each instance. Yet, in this specific instance, the Commission held that the fact that the Applicant has been convicted for the same criminal acts on five different cases involving important amounts may illustrate a fraudulent scheme of fraud, which may give rise to different charges under various domestic laws and, *in fine*, allow for international police cooperation. The Commission therefore held that the reservations raised earlier were not sufficient, by themselves, to conclude that the case lacked criminal nature.

**C. Compliance with due process and human rights :**

**a) The Applicant**

33. The Applicant claims that the proceedings against him violated his right to a fair trial, as he has never been notified of the proceedings, and as he has been judged *in absentia*, without the possibility to present his defence.

**b) The NCB of Country A**

34. In response to the Applicant's claim, the NCB of Country A stated that he has fled abroad and absconded before he could be brought to justice, and that he was provided with sufficient notice of the proceedings. It also explained that the judgement was issued *in absentia* in accordance with the national legislation.
35. Moreover, it stressed that the Applicant will have the right to appeal the judgements handed down *in absentia* upon his surrender to the Country A, and to obtain a fresh determination of the merits of the cases. Moreover, he will have the right to present his defence and to appoint lawyer(s) of his own choosing.

**c) Findings of the Commission**

36. The Commission examined the Applicant's claims that the proceedings against him lacked due process. The Commission first recalled that its powers are limited to controlling whether the processing of data in INTERPOL's files meets applicable legal requirements in accordance with Article 36 of INTERPOL's Constitution and Article 3 of the Statute of the Commission.
37. In addition, it is not appropriate for the Commission to take decisions on application of national procedural law in a manner akin to that in which a domestic appellate court re-examines the actions of a domestic court of first instance. Rather, in order to respect the spirit of the Universal Declaration of Human Rights while at the same time respecting the limited fact-finding role of the Commission, it considers all relevant information to determine whether the Applicant has convincingly demonstrated the likelihood that a flagrant denial of due process took place.
38. In this case, as a result of its review of the above mentioned elements, the Commission finds that the information provided by the NCB of Country A, through the provision of copies of all the court decisions, is sufficient to indicate :
- the possible effective and personal participation of the Applicant to the acts for which he has been accused in all five cases,
  - the appropriate implementation of national procedures, which led to the Applicant's conviction *in absentia* in all five cases,
  - the possibility for the Applicant to be tried again in his presence, with the assistance of a lawyer of his choosing, for all five cases.
39. Therefore, for the purpose of this review, the Commission finds that the Applicant's claims concerning the lack of due process of the criminal proceedings against him cannot be upheld.

**FOR THESE REASONS, THE COMMISSION**

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

-----