



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

[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]th session, on [date], delivered the following Decision.

I. PROCEDURE

1. On [date], Mr [the Applicant] lodged a request for the deletion of the information concerning him registered in INTERPOL's files. Following the submission of all the required documents in accordance with Rule 30 of the Operating Rules of the Commission, the request was found admissible, and the Commission informed the Applicant thereof on [date].
2. During the study of the Applicant's case, the Commission consulted the INTERPOL National Central Bureau (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.
3. 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 05 below.
4. On [date], the NCB of [Country 1] confirmed the validity of the proceedings and provided answers to the questions raised by the Commission.
5. 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.

II. DATA RECORDED IN INTERPOL'S FILES

6. The Applicant, a national of [Country 2], is the subject of a Blue Notice issued on [date], at the request of the NCB of [Country 1], for the purposes of identifying and locating, with the status of wanted, for charges of "[drugs]".
7. The facts of the case state the following: On [date], in [Country 1], "*Los antecedentes sucedieron el [date], la [authority], llevando a cabo la [Operation], toda vez que mantenían información acerca de un ciudadano de nombre [Person 1] a fin de confirmar o descartar la posible vinculación de esta organización dedicada al narcotráfico en [Country 1], luego de dicha diligencia se logra la aprehensión de dicha persona al momento de ser aprehendido se pudo encontrar [xxx] paquetes rectangulares que resultaron ser la sustancia ilícita conocida como [xxx] en la cantidad de [xxx] gramos al momento de manifestar sus descargos señala que es culpable y lo hizo por una deuda porque no recibía dinero por dichos encargos de droga que anteriormente trabajo negocios ilícitos con el señor [the Applicant] años atrás con lo que se reunió y le dijo que si no hacía el encargo de droga su familia estaría en peligro.*

El presente proceso guarda relación por un segundo delito [xxx] del Código Penal. En consecuencia la [authority] luego de realizar las investigaciones correspondientes encuentran elementos suficientes para formular cargos al señor [the Applicant] se abrió causa criminal en su contra varón de nacionalidad [Country 2], con pasaporte N° [xxx], mediante Auto de [Country 1] y se le declaro en rebeldía mediante providencia fechada el [date]."

III. THE APPLICANT'S SUBMISSIONS

8. The Applicant requested the deletion of the data concerning him, contending, in essence, that:
 - a) he is a victim of a problem of homonymy; and

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- b) the registering of data against him in the INTERPOL Information System (IIS) does not respect the principles of human rights.

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. Quality of the data:

- Article 12 of INTERPOL's Rules on the Processing of Data (RPD).

9.3. Compliance with human rights:

- Article 2(1) of INTERPOL's Constitution;
- Article 34(1) of the RPD.

V. ANALYSIS OF THE CASE

A. Homonymy

a) Submissions of the Applicant

10. The Applicant submitted that he has no criminal record in [Country 2], his country of origin, and has never had problems traveling internationally, which he often does, especially since [date], when he started his current employment. However, in [date], he was denied entry to [Country 3] and returned to [Country 2], having been informed by [Country 3] authorities that there were data provided by the NCB of [Country 1] regarding an arrest relating to three kilograms of [xxx] in [date] in [Country 1]. The Applicant argued that this is probably related to a homonym, as he is not connected with drug offences in any way.
11. According to the Applicant, he again encountered problems when entering [Country 1] on [date], but after being held for [xxx] hours while verifications were being carried out, he was informed that the problems concerning the data recorded in the IIS had been resolved. However, when he tried to leave the country two days later, he once again had problems and was almost not allowed to leave [Country 1] because the data remained.

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

12. The case against the Applicant is still valid, since it is pending before [Country 1]. The Applicant was charged on [date] with having allegedly committed drug-related offences, having been declared [status] on [date], with the suspension of the trial and the statute of limitations.
13. The NCB explained that the Applicant did not have any trouble traveling from [date] to [date] because the court was only informed on [date] by the [authorities] that he had continued to enter and exit [Country 1] through the [xxx] Airport. Thereafter a Blue Notice was issued on [date] in order to obtain his location and domicile to inform him of the case against him.
14. The Applicant was singled out by one of the accused in the case, who was arrested within Operation [xxx] on [date], as one of the persons who threatened him to move a car transporting [xxx].

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15. It further confirmed that verifications were carried out with the competent authorities to confirm, through the Applicant's name, nationality and passport information, that he was the one to be charged in the national proceedings.
16. The NCB also indicated that it corrected a typing error that was present in the Blue Notice in reference to the Applicant's date of birth, which previously read as [date] and was corrected to [date]. Additionally, it submitted that the Applicant's defence may, during the relevant procedural stage, prove his argument that the person accused is actually a homonym.
17. The NCB stated that there is no indication in the case file that the Applicant had been detained in [Country 1] for verification; therefore, no ruling was issued by the Court changing his legal status or completing the case against him.

c) Findings of the Commission

18. Under Article 88(1) of the RPD, Blue Notices may be published to obtain information on or the location of a person of interest in a criminal investigation. Additionally, under Article 88(2) of the RPD, Blue Notices may only be issued concerning persons who have been convicted or charged, or are a suspect, a witness or a victim, and the NCB source must provide "*Sufficient data relating to the criminal investigation or the person are provided to allow the cooperation requested to be effective.*"
19. In the present case, the Commission first notes that the NCB indicated its national authorities are interested in obtaining information on the location of the Applicant, which is one of the purposes of a Blue Notice, under the RPD.
20. The NCB of [Country 1] has provided elements (see para. 13) to demonstrate that there is a reasonable need for its national authorities to obtain information about the location and domicile of the Applicant, who has been charged with drug-related offences at the national level (see para. 12), so that he can be notified of the proceedings against him, as well as sufficient information about the Applicant (see para. 15 and 16) to allow international police cooperation, as required by Articles 88(1)(a) and 88(2)(a) and (c) of the RPD. The Commission finds these elements sufficient in the context of its review and the purpose for which the Blue Notice was published, namely to obtain additional information on the case as well as the Applicant's location.
21. The Commission also recalls that under Article 12 of the RPD, that data processed in INTERPOL's files must be "*accurate, relevant, not excessive in relation to its purpose and up to date.*"
22. It further emphasizes that it is not its function, under Articles 3(1)(a) and 33(3) of its Statute and 36 of the INTERPOL Constitution, to consider questions of evidence nor make a determination on the innocence or guilt of an individual subject to national proceedings. It accordingly dismisses the claims of the Applicant that provide a narrative of his innocence, the examination of which require a fact-finding study that is beyond its mandate.
23. Nevertheless, in examining the Applicant's argument that the data against him concern a homonym (see para. 09), the Commission notes that, after having been authorized by the Applicant to consult with the NCB source on the matter, the NCB of [Country 1] verified the information related to the Applicant's identity and confirmed that he is indeed the person to whom the data refer. The NCB further stated that, should the Applicant wish to present claims that the person accused is actually his namesake, he can do so before the competent national authorities. (see para. 15 and 16).
24. The Commission also notes that the NCB of [Country 1] has actively taken steps to rectify a mistake in the Blue Notice regarding the Applicant's date of birth (see para. 16), therefore further demonstrating the accuracy of the data further to Article 12 of the RPD.

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25. As a result, the Commission holds that the information provided by the Applicant is insufficient to demonstrate that the data challenged would not be accurate, relevant and of interest for the purposes of international police cooperation.
26. Therefore, the Commission dismisses this argument presented by the Applicant and decides to continue to study his additional claims.

B. Standards of human rights

a) Submissions of the Applicant

27. The Applicant argued that the data that are wrongly registered against him in the IIS have caused violations of his human rights, in violation of the jurisprudence of the Inter-American Court of Human Rights, as decided in cases such as *Loayza Tamayo v. Peru*, and *Ximenes Lopes v. Brazil*.

b) Submissions of the NCB of [Country 1]

28. The NCB indicated that the court is interested in obtaining the Applicant's location, in order to obtain his address and carry out the corresponding notifications that will allow the continuity in the proceedings against him, as well as ensure guarantees to due process, the right to defence, adversarial proceedings, the presumption of innocence and other rights and guarantees enshrined in the [Country 1] Constitution and rules of procedure, as well as international treaties to which the country is part.
29. It also submitted that the data registered in the IIS are the result of a criminal process, conducted by the [Country 1] prosecutorial authorities in which the Applicant was charged for alleged drug-related crimes. It also explained that the Applicant has been represented by a public defender, who has ensured that his rights and guarantees, such as human rights, rights to defence, due process, presumption of innocence, right to a natural judge, adversarial proceedings, principle of legality, among others, are respected in the criminal proceedings.

c) Findings of the Commission

30. With respect to this issue, Article 10 of the UDHR provides for a fair and public hearing by an independent and impartial tribunal in the determination of an individual's rights and obligations and of any criminal charges against them.
31. At the same time, the Commission's function (see para. 22) is not to conduct an investigation, to weigh evidence, or to make a determination on the merits of a case. Only the competent national authorities may do so.
32. In order to respect the spirit of the UDHR while at the same time respecting the limited role of the Commission, the simple assertion of procedural irregularities cannot rise to the level of an Article 2 violation. Rather, in carrying out an Article 2 analysis, the Commission considers all relevant information to determine whether the Applicant has convincingly demonstrated the likelihood that flagrant denial of a fair trial took place.
33. The Commission also recalls that it is not its role to assess a country's law enforcement or judicial system. Additionally, it underlines that it does not rely on general statements concerning the situation in a country. Instead, it examines the compliance of data with INTERPOL's rules on the basis of specific information related to the person who is the subject of the request.
34. In this regard, the allegations made by the Applicant regarding his assertions are based on general reports, rather than on any specific information regarding this particular prosecution. General criticisms of a country's legal system by outside organizations that do not address the specific situation of an Applicant cannot suffice to establish an Article 2 Violation.

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35. Therefore, the Commission is prevented from finding that the data concerning the Applicant are not compliant with Article 2 of INTERPOL's Constitution.

FOR THESE REASONS, THE COMMISSION

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

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Secretariat to the Commission
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