



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], [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 him.
2. On [date], the Applicant lodged a request for the deletion of these information concerning in INTERPOL's files. Following the submission of all the required documents in accordance with Rule 30 of the Operating Rules, the request was found admissible and the Commission informed him thereof on [date].
3. 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, in accordance with Article 34 of the Statute of the Commission on the arguments set forth in the request.
4. After being authorized by the NCB source of data ([Country 1]), the Commission informed the Applicant on [date] that he is wanted through INTERPOL's channels at the request of the NCB of [Country 1], and provided the information described in paragraphs 06 and 07 below.
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 1], is the subject of a Red Notice issued on [date] at the request of the NCB of [Country 1] for "*dilapidating*" on the basis of a court decision handed down on [date] by the Court of First Instance in [Country 1], sentencing him to six months of imprisonment.
7. The facts of the case state the following: "*On [date], [the Applicant] of [Country 1] dilapidated money with which he was entrusted. In fact, [the Applicant] managed to misappropriate money and properties from the two plaintiffs in order to cause them damage. [xxx].*"

III. THE APPLICANT'S SUBMISSIONS

8. The Applicant requested the deletion of the data concerning him, contending, in essence that:
 - a) the criteria for the publication of the Red Notice are not met;
 - b) there are serious inaccuracies in the Red Notice; and
 - c) the proceedings do not respect the principles of fair trial.

IV. APPLICABLE LEGAL FRAMEWORK

9. The Commission considers the following applicable legal framework.

9.1. Field of competence of the Commission:

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- Article 36 of INTERPOL's Constitution,
 - Articles 3(1)(a) and 33(3) of the Statute of the Commission.
- 9.2. Criteria for the publication of a Red Notice:
- Article 83 of INTERPOL's Rules on the Processing of Data (RPD).
- 9.3. Criterion for data accuracy:
- Article 12 of the RPD.
- 9.4. Respect for the principles of fair trial:
- Article 2 of INTERPOL's Constitution.

V. ANALYSIS OF THE CASE

10. The Commission assessed the Applicant's most relevant contentions described in Section III above. In view of his interlinked arguments, it decided to consider together, under point A below, whether the Red Notice fails to meet the criteria for its publication and/or contains inaccurate information.

A. Criteria for the publication of a Red Notice and data accuracy

a) Submissions of the Applicant

11. The Applicant argued the Red Notice does not comply with the criteria stipulated in Article 83(1)(a)(i) of the RPD because the offence does not constitute a serious crime, and the case is derived from a family dispute. With reference to both Articles 12 and 83(2) of the RPD, he further contended that the data recorded in the Red Notice suffer from inaccuracies and incoherencies on the underlying offence, the applied penal provision, the facts of the case, and his alleged criminal involvement.
12. In the first place, the Applicant indicated that the underlying charges and facts amount to a misdemeanour rather than a serious ordinary-law crime in the meaning of Article 83(1)(a)(i) of the RPD. This is apparent in how the sentence given to him of six months' imprisonment only marginally meets the penalty threshold under sub-provision (ii) of the aforementioned Article, which requires that the convicted person must be wanted to serve a sentence of "at least six months of imprisonment." He also claimed that the crime mentioned in the Red Notice, "dilapidation," carries a notation of negligent rather than fraudulent behaviour and hence it is not an act that is ordinarily understood to amount to a crime.
13. The Applicant's second and main argument is that the court decision issued against him on [date] relates to a family inheritance dispute, resulting in that the Red Notice contravenes Article 83(1)(a)(i). He explained that his father passed away and left a will for nine beneficiaries of his estate, which [included] [Person 1] and [Person 2]. He was legally assigned that same year "the guardian of the legacy" and, as acknowledged in the aforementioned court decision, he was granted a power of attorney by all beneficiaries for the management of the estate, on the basis of which he was barred from disposing of any part of the estate without the approval of all beneficiaries.
14. On [date], [Person 1] and [Person 2] filed a police complaint with the [family matters authorities] of [Country 1], accusing him of the embezzlement of funds and proceeds from the sale of part of the estate's assets, which is in breach of both the power of attorney granted to him and his duties as guardian. (...) No other family member supported this complaint. On [date], the court relied on a single expert report and the underlying complaint to convict him of the crime of "breach of trust," sentencing him to six months of imprisonment and referring the case to civil court for a financial settlement.
15. Based on the above recount of events, he highlighted that the case clearly relates to a family/private matter. This is evidenced in how [Country 1] judicial authority in charge of the proceedings (...)

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specializes in family- and juvenile- related misdemeanours, and both the wording and civil claim referral of the court decision indicates that the matter at hand concerns “damages” and “a statement of claim.”

16. The Applicant lastly highlighted that the minimum requirements specified under Articles 12 and 83(2) of the RPD for accurate and sufficient judicial data are unmet in this case. There is an incoherence on the penal provision applied in his case: while the court decision of [date] refers to Article [xxx] (...) of the Criminal Law on dilapidation, the domestic arrest warrant cites Article [xxx] on embezzlement.
17. As for the facts of the case, and in connection with his earlier point mentioned in paragraph 12 on the serious criminal nature of the act of dilapidation, he emphasized that the facts recorded in the Red Notice refer to misappropriation/embezzlement yet they are not supported by any element that would describe his dishonest or fraudulent conduct. He added that these underlying facts, as presented in the Red Notice, trace his alleged conduct to [date], which signifies the absence of any concrete description as to how he would have conducted [all illegal] transactions (...) in a single day.

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

18. The NCB confirmed that the Applicant was convicted of the dilapidation of funds and assets entrusted in his care, as a guardian of legacy, by misusing the complainants’ power of attorney that was granted to him. He was convicted of this crime and sentenced to six months of imprisonment by court order on [date]. In support of its submission, it provided a copy of the International Arrest Warrant issued by [authorities] on [date].
19. According to the court decision of [date], which was made available by the NCB on the INTERPOL Criminal Information System: on [date] and earlier, the Applicant dilapidated the funds and properties owned by [Person 1] and [Person 2] that were under his management by power of attorney granted to him on [date], in contravention to Article [xxx] of the Criminal Law. (...) This information was confirmed by an expert report, prepared on [date], at the request of [Person 1]. Prior to referring the case to civil court, the decision concluded that the complainants are owed monies (...).
20. The International Arrest Warrant dated [date] similarly records that he was convicted of dilapidation and sentenced to six months of imprisonment under Article [xxx] on [date].

c) Findings of the Commission

21. Under Article 83(1)(a)(i) of the RPD, the publication of a Red Notice is reserved for serious ordinary law crimes and excludes those derived from family or private disputes. This is complemented under Article 83(1)(a)(ii) specifying the penalty threshold is at least six months of imprisonment.
22. The Commission preliminarily dismisses the Applicant’s claims that there is no clarity on the applied penal provision and the Red Notice does not meet the aforementioned penalty threshold. The Red Notice, the underlying court decision of [date], the International Arrest Warrant of [date], and the NCB of [Country 1] all repeat that the underlying offence is penalized under Article [xxx] (...) of the Criminal Code, which is sufficient to reassure the Commission of the accuracy and coherence of this data. These sources as well confirm that he was sentenced to six months of imprisonment, which meets the criterion under Article 83(1)(a)(ii) if even marginally.
23. The Commission proceeds to examine the Applicant’s main arguments in light of how he was convicted of violating the power of attorney and his duties as a legacy guardian in order to misappropriate funds owed to [Person 1] and [Person 2], based on their inheritance rights. (...)
24. In analyzing these facts, the Commission observes that the dispute between the Applicant and the complainants relate to their inheritance rights and monies owed to them on this basis. It initially takes into account that the financial amounts in question are substantial, and it does not rule out

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that serious ordinary-law crimes may be committed within familial contexts. Notwithstanding this, it takes note of the following facts: the decision calculated the monies owed to them and referred the case to a civil court, the underlying Article [xxx] (...) of the Code relates to a misdemeanour punishable by either imprisonment or fine, and the Applicant was sentenced to the minimum penalty threshold of six months of imprisonment under Article 83(1)(a)(ii) of the RPD. While the Commission does not question the criminal nature of the conduct and that the sentence indeed meets the required minimum penalty threshold, it considers that these circumstances cumulatively raise some doubts on the level of seriousness of the underlying act in the meaning of Article 83(1)(a).

25. The Commission proceeds to note that in reading the facts of the case provided in the Red Notice and the court decision, it remains unclear whether the Applicant is convicted specifically of acting in a fraudulent manner for his personal benefit, or rather of failing to respect his obligations as a legacy guardian and adhere to the division of inheritance amongst the beneficiaries. It here discerns that additional information would have been welcomed from the NCB of [Country 1] on the precise scope of the conduct attributed to the Applicant in order to adequately highlight its serious nature with regard to the requirement of Article 83(1)(a) of the RPD. Indeed, despite its repeated request, the NCB failed to provide additional information on the general facts of the case and the concrete acts carried out by the Applicant amounting to his crime.
26. Further to the above, the Commission recalls that Articles 12 and 83(2)(b)(i) of the RPD require accurate and clear information on the judicial data and facts underlying the case. It emphasizes that in addition to the aforementioned issue raised in paragraph 25, there is an absence of clarity on the time period of the underlying crime. (...).
27. The Commission thus determines that part of the submission of the Applicant adequately points to the qualified seriousness of the underlying act and an absence of precision in the facts of the case, which raises some doubts on the adherence of the Red Notice to Articles 12 and 83 of the RPD. It nonetheless decides not to make a final pronouncement on the compliance of the challenged data at this stage, and to continue to study the Applicant's additional arguments.

B. Respect for fair trial principles

a) Submissions of the Applicant

28. The Applicant referred to Articles 10 and 11 of the Universal Declaration of Human Rights (UDHR), which is entrenched in Article 2 of INTERPOL's Constitution, in arguing that he has been denied his rights to be notified of the case, and consequently to prepare and present a defense, and cross-examine witnesses, in the proceedings.
29. He stated that he was not notified of the charges against him, and there is no evidence to indicate that any effort was made by [Country 1] authorities to notify or summon him. The proceedings culminating in his conviction and sentence on [date] were hence conducted in his absence, and in which all the material relied by the court to reach its findings, including the expert report, were prepared by lawyers and accountants instructed by the complainants.

b) Submissions of the NCB of [Country 1]

30. The NCB confirmed that the Applicant was tried in his absence on [date]. It did not provide the requested information on how he was notified of these proceedings. It added that he had requested a retrial in the case following the aforementioned decision, which was denied. He also subsequently filed an appeal and a cassation appeal, which were also denied.

c) Findings of the Commission

31. The Commission refers to Articles 2(1) of INTERPOL's Constitution, and 11(1) of the RPD, which stipulate that data processed in INTERPOL's files must respect the basic rights of the data subjects,

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in the spirit of the UDHR. The crux of the Applicant's argument is that his rights to due notification, prepare and present a defense, and cross-examine witnesses – as they are protected under Article 14(3) of the International Covenant on Civil and Political Rights (ICCPR) – have been violated.

32. The Commission recalls that the right to be promptly informed in detail of criminal charges is a prerequisite for the accused to be able to effectively practice his rights of the defense, as enshrined in Article 14(3)(a) of the ICCPR. While there are limits to the efforts which may be expected from a prosecuting State for the notification of an accused, it must demonstrate that it has diligently attempted to establish contact with the accused regarding his proceedings and particularly in cases where a trial may be held in their absence.
33. Taking the above standard into account, the Commission notes that no information was provided by the NCB of [Country 1] on any efforts exerted to notify the Applicant of the underlying charges or summon him for the proceedings that ended with his *in absentia* conviction and sentence. It identifies from the court decision of [date] that the Applicant is said to have been notified; however, no information is available on how or when he was summoned.
34. The Commission underlines that information on the measures taken to serve notification to the Applicant would have been particularly important in this case in order to provide assurance that the he had the means to prepare and present his defense and engage in his proceedings at first instance, given that he was judged *in absentia*, and the absence of confirmation from the NCB that he would be able to obtain a retrial or file an appeal in his proceedings.
35. Indeed, the Commission recalls that a lack of due notification may generally be remedied if the individual is given the opportunity to obtain a retrial, and in all cases, they have the additional right to a secondary review of their conviction and sentence before a higher tribunal in the meaning of Article 14(5) of the ICCPR.
36. The Commission gathers in this instance from the submission of the NCB of [Country 1] that the Applicant's requests for a retrial, and appeals, have all been rejected in his physical absence before the court. This raises the question as to whether he retains any right to obtain a retrial or file an appeal in his proceedings if he were extradited or surrendered to [Country 1], particularly given that despite its request, the NCB of [Country 1] did not answer to the Commission's request for a confirmation on this matter.
37. Therefore, the Commission finds that the absence of a reply from the NCB on these questions relating to his defense rights, coupled with the doubts identified earlier on the seriousness of the offence, cumulatively raise concern over the compliance of the data with Articles 2 of INTERPOL's Constitution, and 12 and 83 of the RPD.

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

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