

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
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INTRODUCTION

1. The aim of the present report is to provide a summary of the work of the Commission for the Control of INTERPOL's Files in 2009.

1. COMPOSITION AND INDEPENDENCE OF THE COMMISSION

2. In 2009, the Commission had five members, as follows:
 - Chairman: Mr Hawkes (Ireland), Data Protection Commissioner
 - Member appointed by the French Government: Mr Leclercq, Honorary Adviser to the Court of Cassation
 - Executive Committee Member: Mr El Shafey (Egypt)
 - Data-protection expert: Claudio Grossman (Chile), Dean of the American University Washington College of Law
 - Information technology expert: Ms Snježana Grgic (Croatia), Information Technology Adviser, Personal Data Protection Agency
3. The Commission expressed a favourable opinion on draft amendments to the Rules on the Control of Information and Access to INTERPOL's Files (RCI) adopted by the INTERPOL General Assembly at the end of the year to enhance both the Commission's status as a plenary body of the Organization, and its independence. It stressed that this project could only strengthen the Commission's independence, for the following reasons:
 - In its current composition, the Commission functions in complete independence; the Executive Committee member who is also a member of the Commission does not represent his/her country, or the Executive Committee, or the Organization when acting as a member of the Commission. However, the effectiveness of this independence is regularly questioned by the very fact that an Executive Committee member is present on the Commission.
 - The effectiveness and the relevance of the opinions, recommendations, conclusions and advice given by the Commission are closely linked to the quality of its members. The Commission was of the opinion that, for it to be able to appreciate and take into consideration the requirements, main issues and constraints of international police co-operation, an expert in this particular area should be among its members.
 - The Commission was pleased to note that the General Secretariat's draft provided that the expert in international police co-operation would, like the other three members, be appointed by the General Assembly, and that the Chairperson would continue to be appointed by the other four members appointed by the General Assembly. To avoid compromising the Commission's essential independence, which lay behind the draft amendment to the RCI, the Commission believed that the expert in international police co-operation should not, or should no longer, exercise any functions connected with INTERPOL's activities.

2. SESSIONS OF THE COMMISSION

4. In 2009, the Commission held three two-day meetings at the Organization's Headquarters in Lyon.

3. ROLE AND PRIORITIES OF THE COMMISSION

5. In 2009, the Commission continued to carry out its three functions of supervision, advice and processing of individual requests, as defined by the Organization's rules.

6. Processing requests for access to INTERPOL's files, including complaints, remains a priority. Therefore, the Commission attached special importance to the principle of a fair hearing, a key component of the rights of complainants (see 6.5 below).
7. It attached particular importance to its role of adviser to the General Secretariat in the development of I-link, its new system of processing information through INTERPOL channels, and in the management of special INTERPOL-United Nations notices (see 5.3 below).
8. In addition to the processing of individual requests, the Commission considered the following issues to be priorities for 2010:
 - Requirements for the retention of information, particularly when the purpose for which the information had been recorded had been achieved or when it was linked to a project;
 - Procedures for processing information for INTERPOL-United Nations special notices;
 - Links between files and checks on the content of information recorded directly by countries in the General Secretariat's databases via I-link;
 - Procedures for establishing the principle of a fair hearing with regard to complaints (see 6.5 below).

4. OPERATING RULES OF THE COMMISSION

9. The Commission conducted an initial assessment of its operating rules, in force since 1 November (<http://www.INTERPOL.int/Public/ccf/default.asp>). It considered that these rules effectively offered a certain number of guarantees to people requesting access to INTERPOL's files.
10. It agreed to carry out a further assessment of its operating rules to determine if developments within INTERPOL on the processing of information had had consequences that would require these rules to be amended.
11. To allow the Commission to understand not only the legal and practical aspects of the information processing carried out through INTERPOL channels, but also the technical aspects, its electronic data processing expert met with the General Secretariat's departments responsible for the information-processing items on the Commission's agenda, prior to the Commission's sessions (see 5 below).

5. ONGOING PROJECTS CONCERNING THE PROCESSING OF PERSONAL INFORMATION

12. In accordance with its mandate, the Commission supervised and advised the Organization on its new projects connected with the processing of personal information.

5.1 Technical projects

13. The Commission continued to closely study the new projects connected with the processing of personal information being developed by the Organization to assess their potential impact, focusing on the procedures for systematically assessing the issues at stake at every stage of the project and the need to train operators on the new tools thus made available to them.
14. *Maras*, the first regional database project that allows sources to directly process information on gangs in Central America: The Commission expressed a new favorable opinion of the development of this project which is bound by clear, general implementation conditions which take full account of the operational, technical and legal implications of information processing.

15. *I-link*: The Commission continued to closely follow each stage of development and implementation of Project I-link, the aim of which is to improve the effectiveness of co-operation through INTERPOL's channels and to update its methods. It stressed the importance of:
- Guaranteeing a certain degree of consistency in the processing of information by I-link, so that INTERPOL member countries did not use I-link to mirror their national practices without taking into account the requirements of INTERPOL's regulations (to do so, it proposed drawing up a list of standards which should be as specific as possible);
 - Establishing a procedure for evaluating and monitoring the processing of information through I-link to allow for an in-depth analysis of the legal risks and implications of the system, and to prevent any potential deficiencies at each stage of its development and before extending its implementation;
 - Rapidly defining and developing immediate automatic checks or subsequent manual checks, given that the development of control mechanisms was a key issue of the project;
 - Reducing the time between a country recording information in the INTERPOL system and its validation by the General Secretariat.

5.2 Information-security principles and policy at the General Secretariat

16. The Commission examined the latest developments at the General Secretariat on information security policy, which aimed to meet international information security standards (ISO). To help the General Secretariat prioritize its work, the Commission would continue to examine the issue at future sessions.

5.3 Processing of information related to special INTERPOL-United Nations notices

17. The Commission studied the issue of INTERPOL-United Nations Special Notices concerning information provided by the United Nations or by INTERPOL member countries. It stressed the complexity of the subject.
18. The Commission noted with satisfaction that when there were doubts as to the compliance of information processed in this context with INTERPOL's rules, INTERPOL quite rightly:
- Undertook a certain number of actions to ascertain from the United Nations, as the source of the information, whether the information still met the criteria for processing in INTERPOL's files; and
 - took all appropriate interim protection measures to avoid any adverse consequences, whether direct or indirect, that could be caused by processing the information in question in its current state in INTERPOL's files.
19. The Commission stressed the following:
- None of the provisions in the agreements between INTERPOL and the United Nations could dispense INTERPOL from its obligation to respect the rules it had adopted with respect to the processing of personal information and be interpreted as forbidding INTERPOL, as owner of its website and of the notices issued, from deciding unilaterally - in the context of interim protection measures - to withdraw an extract of a notice from its website when it considered that there were doubts about whether INTERPOL had observed its own rules;
 - No interim protection measures taken by INTERPOL could be interpreted as the General Secretariat's calling into question the advisability of including the requesting party's name on the Security Council list.

6. INDIVIDUAL REQUESTS AND SPOT CHECKS

6.1 General Points

20. **Individual requests** are requests received from private individuals seeking access to any information about them processed in INTERPOL's files, or calling into question the recording of information about them in those files.
21. The **spot checks** that the Commission performs at each of its sessions are intended to identify the areas where it could help the Organization maintain an information-processing system which guarantees compliance with data-protection principles, in order to protect the Organization against possible complaints concerning the violation of basic human rights as a result of the processing of information about the individuals concerned.
22. These spot checks essentially focus on two areas:
 - The practical aspects of processing certain categories of information for recurring questions raised by the management of individual requests;
 - The technical arrangements for processing information through INTERPOL channels. In this context, the information technology expert met with the departments concerned at the General Secretariat.
23. The points below reflect the findings of the Commission in the context of these individual requests and spot checks.

6.2 Statistics on Individual Requests

24. During 2009, the Commission received 215 new individual requests.

requests for simple access	83
complaints (requests for the destruction or correction of information)	132
requests from persons who are the subject of information in INTERPOL's files	125
requests from persons whose names appeared on INTERPOL's public website	48
requests raising the question of the application of Article 3 ^(*) of INTERPOL's Constitution	21

(*) This Article states that: "It is strictly forbidden for the Organization to undertake any intervention or activities of a political, military, religious or racial character."

25. The year 2009 also saw an increase in the number of complaints from people wanted for dowry harassment. These complaints raised substantive questions that were still being studied by the Commission.
26. The Commission adapted its procedures to minimize the time limits for processing individual requests. The number of individual requests archived had progressed over the last three years, as follows:
 - 2007: 139 requests archived, 44 (32%) of which concerned people whose names were recorded in INTERPOL's files
 - 2008: 167 requests archived, 68 (41%) of which concerned people whose names were recorded in INTERPOL's files
 - 2009: 213 requests archived, 110 (52%) of which concerned people whose names were recorded in INTERPOL's files.

27. The processing of individual requests revealed the following points:

- It often resulted in an update of INTERPOL's files, and occasionally in blocking access to or destroying information (73 withdrawals from the public website and 21 entities deleted);
- Updates of INTERPOL's files and the blocking of access to or destruction of information were often linked, not to processing errors by the General Secretariat, but to the lack of follow-up by the NCBs, the information they provided or the failure to answer questions they were asked following the receipt of a complaint (see 6.13 below);
- Certain information was also destroyed after it was realized that there were no longer any elements to justify retaining the information concerned in INTERPOL's databases (for example, following a cancellation of the search for a person); others resulted from the observation that retaining information may not have been in compliance with rules on the processing of information through INTERPOL channels;
- Several times, the attention of INTERPOL's member countries was drawn to the need to update their national databases to bring them into conformity with those of INTERPOL, if these national databases were supplied with information obtained through INTERPOL channels.

6.3 Members' right to decline to give an opinion

28. The Commission pointed out that members of the Commission must be able to decline to give an opinion when they considered themselves unable to process an individual application because of their activities outside the Commission. This option guaranteed the independence of the Commission and was used in connection with certain files.

6.4 Processing of information in individual requests for the purposes of international police co-operation

29. At the General Secretariat's request, the Commission had begun an in-depth study on the types of cases and procedures where information in individual requests concerning people recorded in INTERPOL's files, and sent directly by e-mail or telephone to INTERPOL police departments, could be used for the purposes of international police co-operation.

30. It pointed out that INTERPOL's rules stipulated that access to INTERPOL's files was free and confidential. Individual requests could therefore not be used for the purposes of international police co-operation and recorded in INTERPOL's files.

31. It nevertheless stressed the need to consider the issue with a certain degree of flexibility and realism, while taking into consideration the main principles that guarantee INTERPOL's respect for basic human rights, and by making a distinction between the complaints themselves and the information included in them (identification of the requesting party, substantive arguments, etc.).

32. The Commission was of the opinion that the principle of free access to INTERPOL's files could be waived only after examining the requests concerned on a case-by-case basis, in light of the following:

- The nature of the information that is intended to be used (information in the request that reflects the requesting party's substantive arguments in support of the complaint may not be used for the purposes of police co-operation, unless it could serve the interests of the person concerned);

- The introduction of a certain number of measures to provide information to requesting parties:
 - Greater visibility on the Organization's website of procedures for exercising the right of access to INTERPOL files (the Commission was finalizing the revised version of its web pages to that effect);
 - Creation of a caveat warning Internet users preparing to send an individual request to a police department of the General Secretariat that, if they wished to freely exercise their right of access to INTERPOL files, they must apply directly to the Commission (the Commission already informs Internet users that its "*is unable to guarantee that information communicated by requesting parties will remain confidential unless the information is sent to it directly by post*").
33. Lastly, the Commission stressed the following points:
- No rule could be interpreted in such a way as to prevent the General Secretariat from taking any measure in the interest of a requesting party that it deemed necessary and appropriate;
 - This issue was also closely linked to the effective exercise of the right of direct access by requesting parties to any information concerning them processed in INTERPOL's files, and thus to the guarantee of a fair hearing (see 6.5 below).
34. To ensure the best possible response to the requests and the rights of requesting parties, the Commission agreed to continue studying this matter.

6.5 Prevention of complaints

35. The Commission attached particular importance to identifying and implementing ways of avoiding legitimate complaints about INTERPOL. It therefore established certain guidelines.
- While it was necessary to guarantee the Commission's independence by ensuring a proper operating structure, particularly with procedures which were clear, transparent and effective, and by simplifying its relations with the General Secretariat, it was also essential to ensure enhanced visibility of the Commission's role by pursuing the matter of the division of responsibilities of those involved in the processing of personal information.
 - The Commission aimed its work and recommendations at a systemic approach to similar types of file. It therefore welcomed the General Secretariat's development of certain guidelines based on its recommendations.
 - However, the Commission believed that the approach should be in line with the work of the General Assembly on adapting the existing rules to the new features offered by I-link and revising the operating standards for NCBs.
 - The Commission believed that it also was a priority that this work be combined with more work on the question of the necessary balance between the principle of national sovereignty, which underpinned INTERPOL's rules, and the procedures for exercising the principle of a fair hearing.
 - The right of access to INTERPOL's files is, by principle, indirect, due to the principle of national sovereignty, which underpinned INTERPOL's rules (and according to which the sources of the information processed in INTERPOL's files remain the owners of this information and therefore "masters" to decide on their disclosure to requesting parties).

- In order to allow complainants to effectively exercise their right of access to INTERPOL's files, the Commission informed the NCBs concerned by complaints about notices from which extracts appeared on INTERPOL's website that it would disclose to complainants the information on red notices, and copies of the relevant arrest warrants or court decisions, unless the NCBs could provide convincing arguments in support of refusing disclosure. Given the success of the approach, the Commission had agreed to extend the practice to all cases where the requesting party had provided proof that he knew of the existence of information about him in INTERPOL's files.

6.6 Persons recorded for the information of INTERPOL's members

36. The Commission continued receiving requests from individuals who had been arrested at borders on the basis merely by of information about them recorded in INTERPOL's files, even though the source of the information had not requested that any action be taken against them. To avoid pointless, restrictive measures from being taken against these individuals, it encouraged the General Secretariat to remind the NCBs of the importance of observing the purpose of processing information in INTERPOL's files.

6.7 Cases where extradition is not requested by countries requesting a red notice

37. When processing individual requests, the Commission found that some countries did not appear to seek the extradition of the subjects of red notices issued at their request, although there was significant evidence to show that the countries concerned knew in which countries concerned the requesting party was residing.
38. The Commission consulted the countries concerned with a view to finding out why they were not requesting the extradition of the requesting party, in order to determine whether the reason for issuing the notice was no longer valid, or whether their attitude could be explained by political or administrative considerations (e.g. the country where the applicant lived might routinely refuse extradition to the requesting country). In certain cases, the Commission recommended issuing addenda to the notices concerned.

6.8 Creation of caveats indicating that a case is being examined by the Commission

39. The Commission approved the addition of a caveat in INTERPOL's files stating that a file was being examined by the Commission, it being understood that only the Commission could decide whether to add or remove the caveat.
40. However, the Commission confirmed that it was not always appropriate to state that a file was the subject of a complaint. Whether or not information to that effect was to be added should be determined on a case-by-case basis in light of the files of the Commission and the General Secretariat.

6.9 Persons sentenced or liable to be sentenced to death

41. In connection with the processing of an individual request, the Commission asked about the processing of information relating to persons sentenced to death, or liable to be sentenced to death.
42. The Commission approved the General Secretariat's practice of identifying the cases concerned and presenting that information in a transparent way to INTERPOL members.

43. It also endorsed the General Secretariat's position whereby, for cases involving minors, the source of the information be contacted to ensure that capital punishment could be commuted to a lesser penalty, before processing the information concerning the minors. However, it recommended that the General Secretariat extend the current practice for minors to pregnant women and the mentally retarded.

6.10 Managing addenda

44. The effectiveness of police co-operation through INTERPOL channels relies primarily on the quality and accuracy of the information processed. However, the General Secretariat, which is responsible for ensuring compliance with INTERPOL's rules, may receive information which could either call into question the requesting country's compliance with the rules or else usefully complement the information provided without the General Secretariat being able to conclude that the processing of information already received breaks these rules.
45. Addenda are often an effective way of bringing information which is as full and accurate as possible to the attention of countries whose co-operation is required, to enable them to take informed decisions as to whether or not to co-operate with requesting countries. However, care should be taken to ensure that addenda remain relevant with respect to the Organization's aims.
46. Always anxious to support INTERPOL in its attempts to strengthen guarantees of respect for fundamental rights of individuals in the context of its activities, the Commission engaged in substantive discussions with the General Secretariat on the role of addenda and the cases in which it seemed appropriate to issue them.

6.11 Information published on INTERPOL's website

47. The Commission and the General Secretariat also undertook an in-depth study into the implications of publishing personal information on INTERPOL's website in light of INTERPOL's aims and the rules it has adopted concerning the processing of this personal information.

6.12 Examining the need to retain an item of information

48. *Deadlines for examining the need to retain an item of information:* The Commission continued its spot checks on files for which the deadline for examining the need to retain an item of information had expired, i.e. a maximum of five years after it had been recorded. It again highlighted the General Secretariat's efforts to improve the management of these files.
49. *Project management:* The Commission considered that the advisability of retaining information in INTERPOL's files was more complex when this information was linked to projects. Spot checks revealed a number of constraints and needs inherent to these projects. The Commission requested the General Secretariat to improve procedures to manage this information.
50. *Cancellations:* Regarding the handling of information after the cancellation of searches for individuals, the Commission welcomed the procedure established by the General Secretariat in such cases i.e., to **query the information sources** as to whether they wanted the information to be retained, in which case they should specify for what purposes and give reasons. The Commission added that a decision as to whether or not to retain the information in this situation could only be taken on a case-by-case basis. It also encouraged the General Secretariat to establish a system for monitoring information retained following cancellation requests.

51. Persons deprived of freedom: The Commission had asked about the scope and procedures for applying Article 14(b) of the Rules on the Processing of Information (RPI), which provided for the postponement of the deadline for examining the need to retain an item of information concerning someone who was wanted or the subject of an international request for information "during such time as the person concerned [was] deprived of his freedom". It recommended that the General Secretariat not make the practice systematic, but carefully assess on a case-by-case basis whether or not to retain an item of information in this situation.

6.13 Co-operation by the National Central Bureaus

52. The Commission again noted the efforts made by the National Central Bureaus to provide the information needed to assess whether the information had been processed in INTERPOL's files in conformity with the applicable rules, mainly when the processing had been questioned by those who were the subject of the information.
53. When the Commission did not obtain satisfactory responses to its questions from the National Central Bureaus consulted, it considered that it was not in a position to determine whether the processing of information was in conformity with INTERPOL's rules. In light of the evidence provided by the requesting parties in support of their complaints, the Commission recommended destroying or blocking access to the information in certain files. Its recommendations were generally put into effect by the General Secretariat. When the General Secretariat had data that could justify retaining information in its current state in INTERPOL's files, it asked the Commission to re-examine the file. At the end of this procedure, the Commission and the General Secretariat reached an agreement on all the files.
54. As the issues raised by the complainants were increasingly precise, the questions that the Commission had to ask the National Central Bureaus were increasingly complex. At the request of the NCBs, the Commission decided to grant any further time as necessary on a case-by-case basis to allow them to provide satisfactory answers. The Commission however ensured that the files were processed within a reasonable period of time.

7. THE COMMISSION'S REFERENCE TEXTS

55. The following texts comprised the main regulations applicable in 2009 for the processing of information by INTERPOL and for the monitoring of such processing:
- The Commission's new Operating Rules
 - Rules on the Processing of Information for the Purposes of International Police Co-operation
 - Implementing Rules for the Rules on the Processing of Information for the Purposes of International Police Co-operation
 - Rules relating to the Control of Information and Access to INTERPOL's Files
 - Part Two of the Rules on International Police Co-operation and on the Internal Control of INTERPOL's Files
 - Rules Governing Access by an Intergovernmental Organization to the INTERPOL Telecommunications Network and Databases
 - The ICPO-INTERPOL Constitution
 - Rules of Procedure of the Commission for the Control of INTERPOL's Files.
