

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 الم د ش ج - انتربول



**ANNUAL ACTIVITY REPORT OF THE COMMISSION  
FOR THE CONTROL OF INTERPOL'S FILES  
2005**

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## ANNUAL ACTIVITY REPORT - 2005

### INTRODUCTION

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 2005.

This document contains no personal information. It is intended for circulation to the general public, by publication in the Commission's section of the Interpol website, once it has been submitted to the General Assembly at its 75th session, which is to be held in September 2006.

### 1. COMPOSITION OF THE COMMISSION IN 2005

Article 16 of the Rules on International Police Co-operation and on the Internal Control of Interpol's Archives (henceforth referred to as the Rules on Police Co-operation) takes up the provisions of the Exchange of Letters concerning organization of the internal control of the archives held by the ICPO-Interpol and states that "the Commission for the Control of Interpol's Files shall be composed of five members of different nationalities (...)"

The Members of the Commission are appointed not only for their qualifications and their independence, but also with the aim of achieving equal representation from the various regions represented in the Organization.

The terms of office of the current members began in January 2005 for a period of three years. In 2005, the composition of the Commission was as follows.

<u>POSITION</u>	<u>MEMBER</u>	<u>ALTERNATE</u>
Chairman	Mr Peter Hustinx (Netherlands) European Data Protection Supervisor (Brussels)	Mr Kevin O'Connor (Australia) President, Administrative Decisions Tribunal
Member appointed by the French Government	Mr Pierre Leclercq (France) <i>Conseiller honoraire à la Cour de Cassation</i> (Honorary Adviser to the Court of Appeal)	Ms Pascale Compagnie <i>Chef du Bureau des Libertés publiques au Ministère de l'Intérieur, de la Sécurité intérieure et des Libertés locales</i> (Head of the department for public freedoms at the Ministry of the Interior, internal security and local freedoms)
Data-protection expert	Claudio Grossman (Chile) Dean of the American University Washington College of Law	Mr Bart De Schutter (Belgium) Chairman, Institute for European Studies - Free University of Brussels
Executive Committee member	Up to October 2005: Mr Juris Jasinkevics (Latvia) Deputy Chief of the Criminal Police of Latvia	Up to October 2005: Ms Agathe Florence Lele (Cameroon) <i>Commissaire Divisionnaire Directrice de la Police des Frontières</i> (Chief Superintendent, Director of Border Police)

<u>POSITION</u>	<u>MEMBER</u>	<u>ALTERNATE</u>
Executive Committee member	From October 2005: Ms Agathe Florence Lele (Cameroon) <i>Commissaire Divisionnaire Directrice de la Police des Frontières</i> (Chief Superintendent, Director of Border Police)	From October 2005: Général Georges Boustani (Lebanon) Executive Committee Delegate
Information technology expert	Mr Iacovos Themistocleous (Cyprus) Head of the Information Technology Department of the Central Information Service, Cyprus Police	Captain Mohammad Sameh Fasha (Jordan)

The Commission considered the role of its alternates and concluded that it was important for them to be able to carry out their role fully and effectively on the occasions when they were called upon to stand in for a member, so as not to affect the work of the Commission.

The Commission therefore agreed not only to provide alternates with regular updates on its work, but also that the alternate chairman should be able to attend one session a year of the Commission in the presence of the Chairman. The aim of this was to enable him to familiarize himself with the format of the Commission's sessions and thereby be in a position to carry out the important task of chairing a session in the absence of the Chairman.

In 2005, therefore, the alternate chairman of the Commission attended a session of the Commission alongside the Chairman.

## 2. THE INDEPENDENCE OF THE COMMISSION

By virtue of its composition, and as laid down in Article 1.3 of the Agreement between the French Government and the ICPO-Interpol General Secretariat and in Article 19 of the Rules on International Police Co-operation, the Commission acts entirely independently. Its sessions are held in camera.

The Commission recalled that its credibility was closely linked to its independence, and that it would endeavour to express this more clearly, particularly via its Website.

## 3. ACCREDITATION OF THE COMMISSION

As the Commission's accreditation had been granted during the 25th International Conference of Data-Protection Commissioners, held in Sydney, Australia, in September 2003, it had once again attended the closed session held during the 27th International Conference of Data-Protection Commissioners (Montreux, Switzerland, September 2005), during which the protection of personal data had been discussed.

## **4. THE COMMISSION'S ROLE**

### **4.1 General dispositions**

The Commission has a threefold supervisory role, checking that the Organization complies with the rules applicable to processing personal information, advising the Organization on any project, operation, set of rules, or any other issue involving the processing of personal information and processing requests for access to Interpol's files (see Article 1 of the Rules relating to the Control of Information and Access to Interpol's Files and Access to Interpol's files).

### **4.2 Priorities set by the Commission**

The Commission revises its list of priorities annually. In view of the broad scope of its work, the Commission has drawn up a detailed list of the various specific questions to be addressed and divided them into three categories in light of the following:

- The interests of individuals, whose basic rights must be monitored by the Commission,
- Interpol's requirements in terms of advice,
- The degree of urgency for dealing with certain matters.

Requests for access by individuals to Interpol's files will therefore remain a priority. However, in the light of its workload and the increase in the number of requests, the Commission would continue to carry out spot checks on any information processed by the Organization concerning requesting parties only for admissible requests, unless there was some specific problem.

Requests for advice from the General Secretariat to the Commission would continue to be processed as they were received.

Lastly, the Commission prepared a list of subjects to be dealt with in the context of its spot checks, in order to be able to assist the Organization with any operations or procedures to ensure the protection of individuals' basic rights when processing personal information.

The list of priorities could be modified if necessary with regard to the protection of personal data and the Organization's activities.

## **5. PROCESSING OF REQUESTS**

The Commission has prepared a report on the considerable changes which have taken place with regard to individual requests, emphasizing the constant increase and growing complexity of these, with an increasing number of requesting parties recorded in the Organization's files.

### **5.1 General principles for processing individual requests**

Requests for access to Interpol's files are received either by the Commission for the Control of Interpol's Files, particularly in the case of request forms from the Commission's website, or by the General Secretariat.

In such cases, the General Secretariat can take all the necessary steps to check that any information about the requesting party which may be recorded in Interpol's files complies with the regulations in force. However, in accordance with the applicable rules, it must forward all requests to the Commission for the Control of Interpol's Files.

The Commission examines all requests independently, initially with regard to their admissibility.

### *Admissibility of requests*

To be admissible, requests for access to personal information must:

- Come from individuals who are the subject of the information concerned, or from their legal representatives, subject to submission of an original copy of a power of attorney,
- Be accompanied by an identity document for the person who is the subject of the request,
- Be sent by post.

When a request is admissible, the Commission takes all the necessary steps to ascertain that any information about the requesting party which is recorded in Interpol's files complies with the rules in force and to send a reply to the requesting parties. The Commission will then notify the requesting party that it has carried out the necessary checks and may be able to communicate information held by the Organization, if it obtains the agreement of the source(s) of the information requested.

#### **5.2 The principle of free access to the Organization's files**

By virtue of the principle of free access to Interpol's files, anybody may ask to access the Organization's files without fear that the request may be used for international police and judicial co-operation. The Commission's files are confidential and requests are not recorded in Interpol's files. The Commission may however be called upon to communicate certain information contained in a request either to the Interpol General Secretariat or to the National Central Bureaus, to make it possible to process the request and reply to the requesting party.

However, the Commission did not consider that there was any problem with the General Secretariat communicating the lawyer's contact details to a National Central Bureau of a requesting party's country as this was in the requesting party's interests.

#### **5.3 Unreasonable requests for access to files**

In 2005, the Commission did not have occasion to invoke Article 9.5 of its Rules of Procedure regarding the abusive nature of certain repeated requests which contained no new information.

#### **5.4 Deletion of information**

When processing individual requests, the Commission frequently recommended that police information be updated or deleted in the light of fresh information communicated by the requesting parties and consultation of the information sources concerned. Its recommendations have been put into effect by the General Secretariat.

#### **5.5 Limitations on the role of the CCF**

The Commission continued to inform requesting parties that its scope for action was limited to supervision and access to Interpol's files, and that it was therefore not empowered to:

- Process requests for access to files in individual countries,
- Deliberate on cases, assess the validity or the circumstances connected with the issuing of an arrest warrant by the judicial authorities in an Interpol member country, or to request the cancellation of an arrest warrant.

Only the competent national authorities are authorized to do this.

## 5.6 Co-operation by NCBs

The Commission had noted a significant general improvement in co-operation by the National Central Bureaus it had contacted in connection with the processing of requests.

However, in view of the lack of co-operation on the part of certain NCBs, which did not reply to the Commission's requests, thereby preventing it from carrying out its duties properly and completing the processing of requests, the Commission had been obliged to adopt a firmer stance and inform them that, when they failed to reply within a given period, the Commission:

- Could recommend that the General Secretariat destroy the information concerned, if it had asked for additional information on an item of information which had been processed in Interpol's files, since the accuracy of the information could no longer be guaranteed,
- Would presume that the National Central Bureau consulted was not opposed to disclosing to a requesting party the existence or absence of information concerning him in Interpol's files, if that was the subject of his request.

The Commission therefore asked the General Secretariat to continue to draw the attention of the National Central Bureaus on a regular basis to the need for co-operation with the Commission to enable it to process individual requests appropriately, particularly with regard to the time limits for replying.

## 6. SPOT CHECKS

### 6.1 Procedure

In order to be able to advise the Organization effectively with regard to the processing of personal information, particularly for complex matters, given the number of parties concerned, the communication systems used or any connections between cases or individuals, the Commission had worked closely with the various departments (operational, technical, legal, etc.) at the General Secretariat.

Such co-operation has enabled the Commission and the General Secretariat to grasp the significant aspects of police information processing, both to identify any problems to be dealt with and to find appropriate solutions for police co-operation, which are suited to the needs of international police and judicial co-operation, with due respect for basic human rights.

In 2005, the Commission's spot checks had mainly related to the cases and conditions in which an item of information was retained in Interpol's files, issues relating to homonyms, training for staff responsible for information processing and controlled access to information.

### 6.2 Examination of the need to retain items of information for which the review date has been reached

- The Commission stressed the absolute necessity of examining the need to retain an item of information by the deadline.
- The Commission stressed the relevance of the new system for the virtually automatic destruction, after five years, of all files not connected to any other cases or nominal files, in which the information had been communicated to the General Secretariat for information purposes only.
  - The Commission had carried out an initial study on what happened to information at the end of the five-year period provided for in the rules to examine the need to retain the information.
  - The Commission recommended that the General Secretariat should not automatically postpone deadlines without first carrying out a proper assessment as to whether the

information was of specific international interest to the police even though a person's file was linked to a police project. The notion of project seemed vague and could not by itself guarantee that information about persons whose names appeared in the projects was sufficiently accurate and up to date. Retention of personal information should only be based on recent, specific information, and not on presumptions.

- The Commission recalled that if an information source did not request that the item concerned be retained in Interpol's files:
  - ▶ Retention of the information at the General Secretariat's initiative must be systematically assessed in the light of the relevance of the information, in other words, whether it was still of specific international interest to the police;
  - ▶ The General Secretariat should give well-founded reasons for retaining the information in Interpol's files and allow users access to these reasons; the same applied in the event of requests for cancellation by the source of the information.

The Commission would continue to assist the General Secretariat with the matter, to enable it to deal with the cases concerned by this issue, particularly the most problematic, in a smooth and transparent way and in accordance with the applicable rules.

### **6.3 Retention of an item of information when a search request is cancelled**

In accordance with the applicable rules, when a search request (with or without a notice) was cancelled, the information on which the request had been based could be kept for a maximum of five years. The Commission recalled that this was a possibility which was only available in exceptional circumstances, i.e. if:

- The information was still of specific international police interest,
- The reasons or facts justifying the postponement in each file concerned were indicated.

### **6.4 Homonym problem**

The Commission examined a complaint from someone who had probably been arrested because he had the same name as another person whose name was recorded in Interpol's databases.

The Commission considered that the request was not a request for access to the Organization's files, as defined in the Rules relating to the Control of Information and Access to Interpol's Files. On the other hand, as the complaint was likely to raise the matter of data protection, the Commission had begun an in-depth study of the homonym problem in the context of its spot checks, in order to assess the accuracy of the identity particulars of persons with a "common" name.

The Commission nonetheless drew the attention of the General Secretariat to the fact that homonym problems needed to be handled with the greatest caution, as much in the interests of international police co-operation as in the interest of people who suffered as a result of homonyms.



## **6.5 Training for staff responsible for information processing**

The Commission also urged the General Secretariat to continue to provide staff responsible for information processing with simple, specific rules and regular training appropriate for their specific needs, with the aim of ensuring that information processing is of uniform quality and is in conformity with the rules in force.

## **6.6 Controlled access to information**

The Commission carried out a comparative study of access to Interpol's databases by authorized entities.

It welcomed all the projects aimed at controlling the circulation of information more thoroughly by targeting the information really relevant to all types of users, according to their individual needs.

It stressed that if the General Secretariat could not provide users with access to the same information via all the media used, it should systematically inform them that additional information was available, so that they could take the necessary steps to obtain that information.

# **7. ADVICE AND OPINIONS FOR THE ORGANIZATION**

## **7.1 General provisions**

The General Secretariat recalled that it hoped the Commission would play a considerable role in guiding and advising the Organization on fundamental issues relating to the processing of personal information. The Commission had frequently emphasized the need for it to be consulted early enough to enable it to fully play its role of adviser to the General Secretariat.

The General Secretariat informed the Commission of a certain number of projects connected, on the one hand, with the development of new tools (whether technical, practical, operational or legal) to facilitate or manage information processing, and, on the other hand, with international police co-operation, as was the case with the draft amendment to the Rules on the processing of information for the purposes of international police co-operation, adopted by the Interpol General Assembly in September 2005.

The Commission had drawn the attention of the General Secretariat to the aspects which needed to be handled especially carefully, to ensure compliance with quality criteria before any item of information was processed via Interpol channels.

## **7.2 Processing information about a Head of State or Head of Government**

The Commission expressed a general opinion, whereby:

- An item of police information concerning a Head of State or a Head of Government in office could not, at first sight, systematically be considered to be in contravention of Article 3 of Interpol's Constitution which prevents the Organization from intervening in any activity which is political, military, religious or racial in character.
- The advisability of processing such information must be assessed in the light of a number of criteria, such as:
  - Any immunities enjoyed by the person concerned or attached to the person's office, at the time when police co-operation is requested,
  - The entity which had issued the arrest warrant, it being understood that, even in the case of a military tribunal, this fact alone could not, at first sight, systematically be considered to be in contravention of Article 3 of Interpol's Constitution, even if it tended to support the idea that the information should not be processed,

- The type and seriousness of the crime concerned; fraud, for example, was not considered to be aggravated crime with regard to the risks of damage to property or persons.

Therefore, in the case of a specific item of information based on an arrest warrant which could not be executed because of the immunity enjoyed by a Head of State or a Head of Government in the execution of his duties, the Commission considered that the General Secretariat had quite rightly destroyed the notice issued for the person. The Commission considered that the information should not be processed as the proceedings could not be brought to a conclusion.

However, the Commission added that, in such cases, if the General Secretariat wished to retain information from the case in question, for example, in order to defend the Organization's interests or for historical interest, it should be filed in an administrative file, outside Interpol's databases.

### 7.3 Article 3 of Interpol's Constitution

- The Commission continued to examine certain matters connected with Article 3 of Interpol's Constitution with regard to the processing of requests, during spot checks or in the course of monitoring the General Secretariat's projects.
- The Commission was extremely interested in **all the work** carried out by the General Secretariat, in collaboration with the National Central Bureaus, on matters related to Article 3 of the Organization's Constitution, such as its project on bringing together specific examples to define a framework for interpreting and applying Article 3 of Interpol's Constitution, particularly in the case of red notices which came under Article 3. It stressed the importance of this for the uniformity and transparency of the processing of information by the General Secretariat.

The Commission would follow developments regarding this work and would give an opinion on the revised version of the project, further to consultation currently under way with the National Central Bureaus by the General Secretariat.

- The Commission also stressed the importance of **keeping the information up to date**. It therefore urged the General Secretariat to put in place computer tools which would allow effective monitoring of cases in connection with which Article 3 issues arose. It was pleased to note that initial progress on the matter was already contributing to facilitating management of these cases.
- The Commission endorsed the **withdrawal from the public Website** of all information being examined by the General Secretariat in the light of Article 3 and the systematic addition of a warning in Interpol's files stating that the case concerned was **subject to legal examination**.

### 7.4 Follow-up by the General Secretariat of the Commission's recommendations

The Commission welcomed the steps the General Secretariat had taken to further to the Commission's recommendations regarding:

- Compliance with the principle of not processing in Interpol's files personal information communicated by requesting parties exercising their right to access the files;
- The creation of new categories in ICIS to make a very clear distinction between witnesses or persons strongly suspected of being able to help locate criminals, and fugitives;
- The withdrawal from the Interpol public website of any extracts from notices each time addenda to the notices were issued, and the addenda contained information related to the main content of the notices, otherwise the principle regarding the accuracy of the information would not be respected;
- The deletion of information related to blue notices, issued with a view to obtain information about a person, which have been cancelled.

## **8. MISCELLANEOUS**

### **8.1 Audit of the Organization's standards with regard to people's basic rights**

In collaboration with the Interpol General Secretariat, the Commission began an in-depth study on its role and the quality of the Organization's standards with regard to respect for people's basic rights, from the point of view of international standards.

The aim of this is to ensure that the Organization offers and can continue to offer individuals concerned by the processing of information on them in Interpol's files, the best guarantees of respect for their basic rights.

The Commission emphasized that the study should also be geared towards increasing the efficiency of its work. In that respect, it should also take into consideration all three of its current functions (processing of requests, supervision and advice) and ensure that they are compatible.

The study will bring out both the substantive issues and those relating to the quality of procedures. It will discuss the role and the responsibility of each body concerned, with the aim of reaching the fairest outcome in the cases to be dealt with.

Any option which might improve the functions and procedures currently in place will be examined carefully from both these perspectives in terms of its advantages and disadvantages.

### **8.2 Checks on information processing at national level**

The Commission began a study on how checks could be carried out at national level, on the processing of information through Interpol channels, with regard to measures on information, training and security previously developed by the General Secretariat. The Commission will carry out an assessment of the initial steps to be taken via the National Central Bureaus and the feasibility of involving national supervisory bodies in certain cases.

## **9. BASIC TEXTS OF INTERPOL AND THE CCF CONCERNING THE CONTROL OF THE ORGANIZATION'S FILES**

The following texts contain the main rules applicable in 2005 to the processing of personal data by Interpol and to its control:

- The Rules on the control of information and access to Interpol's files,
- The Exchange of Letters between Interpol and the French Government, concerning organization of the internal control of the archives held by the ICPO-Interpol,
- The Rules on the Processing of Information for the Purposes of International Police Co-operation,
- The 2nd part of the Rules on International Police Co-operation and on the Internal Control of Interpol's Archives,
- The Rules Governing Access by an Intergovernmental Organization to the Interpol Telecommunications Network and Databases,
- Interpol's Constitution,
- The Rules of Procedure of the Commission for the Control of Interpol's Files,
- The Agreement between the Commission for the Control of Interpol's Files and the ICPO-Interpol General Secretariat.

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