

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 الـ م د ش ج - انتربول



ANNUAL ACTIVITY REPORT - 2004

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ANNUAL ACTIVITY REPORT - 2004

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 2004.

This document contains no personal information.

1. COMPOSITION OF THE COMMISSION IN 2004

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), which takes up the provisions of the Exchange of Letters concerning organization of the internal control of the archives held by the ICPO-Interpol, states that "the Commission for the Control of Interpol's Files shall be composed of five members of different nationalities (...)"

The terms of office of the current members began in January 2002 for a period of three years. In 2004, following changes in their professional positions, some of the members were unable to continue on the Commission and new members were appointed to serve for the remainder of the three-year period.

In 2004, 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 Josef RAKOVSKY (Czech Republic) Judge at the Supreme Court of the Czech Republic
Member appointed by the French Government	Mr Michel GENTOT Chairman of <i>La Commission Nationale de l'Informatique et des Libertés</i> , (Chairman of the French Commission on EDP and Freedom) <i>Président de section honoraire du Conseil d'Etat</i> (Honorary Section Chairman, Council of State)	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	Ms Elizabeth FRANCE (United Kingdom) Office of the Telecommunications Ombudsman	Ms Kinga SZURDAY (Hungary) Senior Counsellor at the Public Law Department, Hungarian Ministry of Justice

<u>POSITION</u>	<u>MEMBER</u>	<u>ALTERNATE</u>
Executive Committee member	Up to October 2004: Mr Rodolfo DE LA GUARDIA GARCIA (Mexico) <i>Director General de Despliegue Regional Policial</i> (Director General, Regional police deployment)	From 11 February 2004: Mr Juris JASINKEVICS (Latvia) Deputy Chief of the Criminal Police of Latvia
	From October 2004: Mr Juris JASINKEVICS (Latvia) Deputy Chief of the Criminal Police of Latvia	
Information technology expert	Mr Iacovos THEMISTOCLEOUS (Cyprus) Head of the Information Technology Department of the Central Information Service, Cyprus Police	Mr Oleg BLUDOV (Russian Federation) Sub-Division Head, Information and Technical Development Division, Interpol Moscow

2. THE INDEPENDENCE OF THE COMMISSION

By virtue of its composition, and as laid down in Article 1.3 of the Agreement between the Commission for the Control of Interpol's Files and the ICPO-Interpol General Secretariat and in Article 19 of the Rules on International Police Co-operation, the Commission acts entirely independently. Again in 2004, it held four two-day sessions at the Organization's Headquarters in Lyon. Its sessions are held in camera.

3. THE COMMISSION'S ROLE

3.1 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.

Using the resources available to it, the Commission develops all appropriate measures to enable it to carry out its supervisory and advisory roles vis-à-vis the General Secretariat, with a view to helping it develop the most extensive possible mutual assistance for all the authorities permitted to use the Organization's channels to combat international crime.

It attaches particular importance to processing requests, as this gives private individuals right of access to Interpol's files and a right of appeal in the event of any erroneous or improper processing of an item of information concerning them and recorded in the said files.

3.2 Priorities set by the Commission

To enable it to work as efficiently as possible, and given its workload (which notably stems from the number of requests to be processed), the Commission confirmed the list of subjects to be given priority at its forthcoming sessions:

- requests
- spot checks
- developments in the processing of files affected by Article 3 of the Organization's Constitution
- the Organization's new projects relating to information processing

- the preparation of information-processing and control rules.

3.3 Developments in the Commission's activities

In order to be able to take account of current developments, at international level regarding the matter of liability of international organizations and of the increase in the number of requests for access to Interpol's files (see Item 5.1 below), the Commission would have to define its role in the rules governing its activity, in order to ensure there was an effective appeals procedure should any problems arise in the processing of an item of information in Interpol's files.

The Commission emphasized that it remained at the disposal of the Organization to assist it in its reflections on the development of an integrated legal environment aimed at offsetting the lack of a supranational structure.

4. 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 was able to attend the closed session held during the 26th International Conference of Data-Protection Commissioners (Wroclaw, Poland, September 2004), during which the protection of personal data was discussed.

5. PROCESSING OF REQUESTS

5.1 Increase in the number of requests

The total number of requests processed in 2004 was similar to the number in 2003. The number of inadmissible requests fell sharply, probably as a result of the information about the admissibility criteria for requests and the CCF's role made available on the Interpol website.

On the other hand, the Commission noted a significant and continuing increase in the number of admissible requests concerning persons whose names were recorded in the Organization's files. Some of these requests constituted appeals against the Organization and required lengthy and repeated consultation of the NCBs concerned.

The Commission had had to chase up certain National Central Bureaus in order to obtain the necessary information. It had issued reminders on a number of occasions recalling the need for National Central Bureaus to co-operate reasonably promptly, in order not to delay the processing of requests.

The Commission had however been pleased to note that the details required in the requests for authorization or disclosure, or for additional information addressed to the NCBs, had made it possible to obtain replies more quickly and thus to reply more promptly to requesting parties.

The Commission had continued, in collaboration with the General Secretariat, to develop technical solutions and procedures to make the processing of requests as efficient as possible.

- It confirmed the criteria it had laid down in 2003 in order to make the processing of requests which were either admissible, or expected to be admissible, as efficient as possible.

As mentioned under Item 3.3, and in order to be able to take account of current developments at international level regarding the matter of the liability of international organizations, the CCF was expecting an increase in more complex admissible requests from individuals whose names were recorded in Interpol's files. It would thus examine, with the General Secretariat, the measures to be taken in order to ensure efficient processing of requests within a reasonable period.

5.2 Admissibility of requests

The Commission confirmed its admissibility criteria for requests and did not consider it necessary to lay down any further criteria.

5.3 Unreasonable requests

In 2004, 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 Disclosure to requesting parties

The Commission confirmed its previous decisions, as set out in its report for 2003, regarding the disclosure of information to requesting parties. It felt it would have to reconsider the issue, especially when dealing with requests raising the question of the applicability of Article 3 of the Organization's Constitution.

5.5 Updating of information by the sources and quality of the information communicated

- The Commission recommended that the General Secretariat continue to remind information sources in the annual circular it sent them of the need to ensure that information communicated to Interpol, or obtained through Interpol channels should be monitored and updated and, where appropriate, stored in national databases. If the source consulted failed to reply to the Commission, the Commission would have to recommend that the General Secretariat destroy the file in question.
- Examination of several files had shown that some requests for information, or to locate or arrest individuals via Interpol channels, lacked the precision needed for them to be assessed for specific interest and legitimacy.

The Commission suggested that, in the annual circular sent out by the General Secretariat, information sources should be reminded of the importance of supplying detailed information.

5.6 Destruction of information

Once more, when processing certain requests, the Commission recommended the destruction of items of police information which had not been kept up to date by some sources, or which were no longer of international police interest, after exchange of views with the sources of the information. Its recommendations have been put into effect by the General Secretariat.

5.7 Information about persons whose entity files have been deleted

Following the Commission's recommendations, the General Secretariat prepared a staff instruction on the procedures for processing information concerning persons whose nominal files had been destroyed. This instruction stipulates, in particular, that:

- When an entity file is destroyed, all the information relating to the same offences and processed in Interpol's files should be destroyed;
- However, if it is not reasonable to envisage the destruction of all the information concerned because of the volume of work that would be involved, the information could be retained but:
 - the reasons for deleting the entity file,
 - and the fact that the information is to be considered as having been destroyed should be very clearly indicated.

- the information which is to be considered as having been destroyed cannot be communicated; only the fact that the information is to be considered as having been destroyed can be communicated.

5.8 Addenda included on Interpol's public website

On examining a request raising the question of Article 3 of the Organization's Constitution, the Commission wondered whether it was appropriate to include extracts from red notices on Interpol's public website.

In order to be able to assist the General Secretariat efficiently on the subject, the Commission would study the issue again in more depth.

5.9 Right of free access to Interpol's files

The Commission recalled the principle of free access to the Organization's files. However, in practice, it had been found that some of the information communicated by requesting parties in the context of their requests for access to Interpol's files might be communicated to the General Secretariat in order to update the Organization's databases, and thereby guarantee that Interpol's files complied with data-protection principles, or if communicating such information was not prejudicial to the requesting party.

Similarly, the Commission again observed that in order to process the requests, it was bound to communicate some of the items of information contained in the said requests to the General Secretariat and to the NCBs concerned, even though those items of information were not intended for processing in the police files.

The Commission therefore decided to inform requesting parties of that point via its website and to continue to work on those issues.

6. SPOT CHECKS

6.1 Procedure

The Commission continued to apply the procedure for spot checks which it had adopted in 2002. It confirmed the study of a specific question by its secretariat and that it was asking the General Secretariat for explanations and, with the General Secretariat, was seeking solutions for any problems prior to its sessions. This made it possible for the Commission to carry out its advisory role to the full and thereby help the General Secretariat develop the most extensive possible assistance for all the police authorities allowed to use the Organization's channels to combat international crime.

6.2 Arrest warrants and directly accessible information

The Commission was pleased to note that the General Secretariat had followed up its recommendation to the effect that it should be possible to obtain more information by direct access to Interpol's files using the I-24/7 telecommunications system, so that the user would be able to understand the purpose for which a file had been processed and obtain fuller, and therefore more accurate, information.

6.3 File retention period and deadlines for examining the need to retain an item of information

The Commission proceeded to make regular checks to ensure compliance with the deadlines for assessing the need to retain items of information in Interpol's files. In the light of the backlog accumulated at the General Secretariat with regard to the processing of these files, the Commission had stressed the importance of scrupulously observing this aspect of information processing.

The Commission recalled that keeping to the deadlines for examining the need to retain items of information was of fundamental importance in information processing.

The Commission would continue to check on the situation at each session.

6.4 Status indications used in Interpol's files

With regard to the work of the group assisting the General Secretariat in preparing the Implementing Rules for the Rules on the Processing of Information for the purposes of International Police Co-operation, the Commission again considered the relevance of the statuses used in Interpol's files and confirmed the need to draw a clear distinction between the status, as such, of an individual and the action which the requesting country was seeking against him, or in connection with him.

6.5 Particularly sensitive information

- The Commission examined the issue again in connection with the preparation of the draft Implementing Rules for the Rules on the Processing of Information for the purposes of International Police Co-operation. Although a number of clarifications had been included in the draft Rules, the Commission did however agree to continue assisting the General Secretariat in the development of measures designed to guarantee such information was processed in a secure manner which was appropriate to its level of sensitivity.
- The Commission observed that the way Interpol processed particularly sensitive information was very similar to the way such information was processed in certain member countries. The Commission asked the General Secretariat to consider the possibility of authorizing only certain categories of staff to process that information.

The Commission also expressed its wish to consider the issue again.

6.6 Management of access restrictions

- Once more, the Commission pointed out that, by virtue of the principle of national sovereignty, the General Secretariat had to scrupulously observe the restrictions imposed by the NCBs and systematically take all the necessary steps to ensure that those restrictions were observed.
- It noted the technical difficulties involved in managing the restrictions, but stressed the need to hasten the development of technical and practical measures in order to resolve the situation, which was critical.
- The Commission emphasized that the Organization was responsible for ensuring that entities consulting information in direct access mode were aware of the restrictions placed upon that information. It approved the General Secretariat's plan to introduce a warning system indicating that prior to making any use of the information concerned, all users must check with the source, or the General Secretariat, to ascertain whether any restrictions had been imposed on it.

6.7 Appropriateness of warning messages on notice abstracts published on the website

When asked if it was appropriate to indicate on each red notice whether the person who was the subject of the notice might be dangerous, the Commission emphasized that:

- an item of information should only be disclosed if that was necessary and proportional to the aim pursued;
- warning messages should continue to be general and not give any sensitive information, unless there was some specific reason for doing so. In particular, that would be the case if the item of information was divulged in the interests of the person it concerned or to avoid any misunderstanding;

- the General Secretariat should only disclose the warning messages communicated by the information sources, without adding any personal judgment or comments.

The Commission was nevertheless of the opinion that when a warning was given by the information source in the interest of the person concerned (in particular in the case of an illness), that information could be published on the Interpol website.

6.8 New quality-control procedures

In 2003, the Commission expressed a favourable opinion on the new quality-control procedures the General Secretariat had introduced to cope with the increase in the number of messages sent to the General Secretariat, and in particular to cope with the increase in the number of requests by using Microsoft Access, which made it possible to examine apparently incompatible items of information contained in the same file on a case-by-case basis.

In 2004, the Commission carried out spot checks by making queries on the ICIS database using Microsoft Access.

The Commission expressed the following opinions:

- Such routine checks were essential and should be carried out frequently.
- Particular attention should be paid to any links between the "wanted" status and that of "not wanted" and the existence, or otherwise, of a valid arrest warrant. This item should be checked regularly.
- Restriction management should be reconsidered in detail.
- The Access queries, which were not currently being used by the data controllers should be communicated to them so that they could assess the advisability of incorporating them in their own queries.

7. ADVICE AND OPINIONS FOR THE ORGANIZATION

7.1 Article 3

The General Secretariat systematically informed the Commission of the progress made with work being done to define the scope of Article 3 and application of the Article by the General Secretariat, particularly in the meetings of the group responsible for handling this issue.

The Commission appreciated the group's work. It confirmed the need to establish more precise criteria in order to allow methodical study of all files in connection with which Article 3 issues arose.

At the same time, it confirmed that, in the context of the study, its main role was to help the General Secretariat put in place procedures for processing files in connection with which Article 3 issues arose, and to ensure that the General Secretariat actually did put such procedures in place and was following them. Nevertheless, as part of its remit, the Commission could carry out an assessment of the possible political, military, religious or racial nature of any given prosecution proceedings with the aim of providing a helpful and measured response to a requesting party.

The new procedures introduced by the General Secretariat, and the study made by the group reflect an important change in the way the Commission should approach files in connection with which Article 3 issues arise.

7.2 Draft amendments to the Rules on the Processing of Information and the new Implementing Rules for the Rules on the Processing of Information

As the new Rules on the Processing of Police Information adopted in September 2003 by Interpol's General Assembly were further developed, the Commission again gave opinions on the planned amendments to those Rules and on their draft Implementing Rules.

The Commission welcomed the inclusion of three levels of classification of police information in the Implementing Rules for the RPI. It also appreciated the General Secretariat's intention to adopt a uniform approach and apply the same classification system to its administrative information.

The Commission gave a generally favourable opinion on the draft amendments to the Rules on the processing of information (RPI) and their Implementing Rules (IR RPI), provided that the articles relating to the responsibility of the NCBs were relaxed slightly and reference made, on the other hand, to the IR RPI, which also dealt with the subject. It commented on the following three points:

- Given that the obligation to enter into contractual undertakings had been deleted, it would be advisable to make a distinction between authorized public entities and authorized private entities, since that obligation remained applicable for the latter.
- Retaining for 20 years elements which were strictly necessary for identifying a person, with a view to referring a requesting party to the source of the information, was acceptable as long as the purpose for which the information was retained was strictly observed.
- The modifications made to the cases in which the General Secretariat might postpone the deadline for retaining an item of information seemed to be reasonable.

7.3 New rules relating to the control of information and access to Interpol's Files

The Commission expressed a favourable opinion on the document.

7.4 Draft Rules on Interpol's Global Communications System

The Commission took note of this draft and the comments of the *Ad Hoc* Working Group on the Implementing Rules. It approved the fact that those documents remained concise and served as a means of implementing the Rules on the Processing of Information.

7.5 Security

- The Commission stressed the importance of ensuring that security matters be dealt with efficiently at national level.
- The Commission had conducted interviews with certain General Secretariat staff members who were responsible for the security of information processed via Interpol channels.

It described the I-24/7 system as a modern tool capable of ensuring compliance with the rules on security, confidentiality and data protection which applied to the Organization. Control of the various rights of access to information was ensured technically by high standards of security which could be adapted to the needs of each NCB.

A number of improvements are still being developed. They mainly concern training, the operating procedures applicable and the requirements for checking on the use made of the I-24/7 system, at both the General Secretariat and the NCBs, in order to verify the operational effectiveness of the system.

The Commission also welcomed the General Secretariat's awareness of the need to train the Organization's staff - both in member countries and at the General Secretariat - particularly with regard to security matters.

The Commission concluded by saying that the I-24/7 system in itself offered all the security, confidentiality and data-protection guarantees required of an international telecommunications system.

7.6 Database development

The Commission took note of the projects concerning the development of a number of specific databases. It pointed out, however, that those projects required careful monitoring by the General Secretariat to ensure observance of the rules in force on the processing of personal information in the databases. The Commission wished to be consulted on the development of each project.

7.7 Direct access to orange notices by international organizations

The Commission took note of the proposals and observed that the provisions of the framework agreement on access to Interpol's network and databases by international organizations were in conformity with the applicable rules; however, in accordance with those rules, the access rights which had already been granted should have been subject to prior authorization by the General Assembly and the conclusion of an agreement or special arrangement concerning the matter.

7.8 Administrative co-operation

The Commission felt that the plan to extend the 1986 resolution in order to supply information to national administrations and international organizations, in the context of recruitment, for example, constituted - in its current form - a genuine risk for the Organization. It considered that the purpose of the database and the stated objective were incompatible, constituting a violation of privacy and of a fundamental data-protection principle. However, it was aware that the project related to a need which might well be both understandable and legitimate. The Commission therefore considered that it would be advisable to draw up appropriate rules and a procedure for the project, thus limiting the risks of misuse of the system, or indeed legal action against the Organization, particularly by certain staff associations.

7.9 Project which does not concern police information : the Human resources database

The Commission gave a generally favourable opinion about the project, subject to security measures being incorporated so that access to the information concerned was effectively limited to:

- the authorized persons;
- the superiors for whom such information was strictly necessary to ensure the smooth functioning of the various departments.

8. MISCELLANEOUS

8.1 Yaoundé Group

The Commission felt it should recall the importance it attached to the Organization continuing to examine the advisability of drafting an international convention that would be binding upon its Member States.

8.2 Co-operation with the General Secretariat

The Commission again expressed its satisfaction regarding the excellent co-operation with the General Secretariat which enabled the latter to make available a worldwide system that met the requirements of international police co-operation while at the same time abiding by the Organization's rules, and, in particular, human rights and data-protection principles.

The Commission pointed out the need for it to be kept informed of projects concerning the processing of personal information, before they are implemented, and of continuing to work with

the General Secretariat in the most transparent way possible, to enable constructive and efficient co-operation.

8.3 Publications about the Commission

- The General Secretariat made available to the Commission a special section on its own website enabling it to provide information about its origin, role, independence, procedures and procedures for accessing Interpol's files and its annual activity reports.
- The General Secretariat published a media release on its website announcing the Commission's accreditation at the International Conference of Data-Protection Commissioners in 2003, describing the Commission's role and announcing the opening of a special section on the Commission on the Organization's website.
- Similarly, as envisaged in 2003, the Commission produced an article about its activities and sent it to the Secretariat of the International Conference of Data-Protection Commissioners for onward transmission to the Commissioners' countries and for publication in specialist national and international journals.

The Commission considers it important, for the Organization, that the nationals of the Organization's member countries should be aware of its existence and its role.

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 2004 to the processing of personal data by Interpol and to its control:

- The Exchange of Letters between the Government of the French Republic and the ICPO-Interpol concerning the organization of the internal control of Interpol's archives;
- The Rules on the Processing of Information for the Purposes of International Police Co-operation;
- Part 2 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.

APPENDIX

STATISTICS ON INDIVIDUAL REQUESTS

	TOTAL	ARTICLE 3	BEING UPDATED	REGISTERED IN THE ICIS
1st term of office (1986/1989)	85	unknown	7	unknown
2nd term of office (1989/1992)	40	unknown	13	unknown
3rd term of office (1992/1995)	57	unknown	16	unknown
4th term of office (1995/1998)	74	unknown	17	unknown
5th term of office (1998/2001)	120	unknown	33	unknown
6th term of office (2001/2004)	392	25	60	155

