



**Request concerning [...],[...] and
[...] (Ref. CCF/[...])**

DECISION OF THE COMMISSION
(102nd session, 24 to 27 October 2017)

The Commission for the Control of INTERPOL's Files (the Commission), sitting as the Requests Chamber, composed of:

Vitalie PIRLOG, Chairperson
Leandro DESPOUY,
Petr GORODOV,
Sanna PALO,
Isaias TRINDADE,
Members,

Having deliberated in camera during its 102nd session, on [...], delivered the following Decision.

I. PROCEDURE

1. On [...], Ms [...] (the Applicant) lodged a complaint addressed to the Commission. Following the submission of all the required documents in accordance with Rule 30 of the Operating Rules of the Commission, the request was found admissible, and the Commission informed her on [...].
2. On [...], the Applicant lodged a complaint concerning her sons, [...] (together the Children) addressed to the Commission. Following submission of all the required documents in accordance with Article 10 of the Operating Rules of the Commission, the request was found admissible, and the Commission informed the Applicant on [...].
3. In accordance with Article 34(1) of the Statute of the Commission (CCF Statute), the National Central Bureau of INTERPOL (NCB) of [...] was consulted on the arguments set forth in the complaint.
4. On [...], the NCB of [...] was reminded to reply to the Commission's queries. The NCB was also informed that without a reply by [...], the Commission might well decide that the information shall be blocked or deleted, as it would not be in a position to ensure that the information concerning these persons was processed in conformity with the rules and regulations applicable to the Organization.
5. In the absence of the confirmation of the validity of suits, and of answers to the questions raised by the Commission within the set deadline, the Commission decided that access by INTERPOL Member Countries to the data concerning the Applicant and the Children shall be blocked pending further study of the files.
6. The INTERPOL General Secretariat was informed of this Decision and blocked access to the data concerning the Applicant and the Children on [...].
7. On the same day, the NCB of [...] was informed of the Commission's decision and that the data would be deleted if no appropriate reply was received to the Commission's queries. It was invited to address the issues raised by the case. On [...], the NCB made communications to the Commission in reply to its queries.
8. The Commission informed the Applicant and her Children that there were data concerning them registered in INTERPOL's files by [...], as described in paragraphs 13 to 16 below. The Applicant was also informed of the Decision of the Commission to block the access to the data concerned, and of its implementation by the INTERPOL General Secretariat

9. Both the Applicant and the NCB source of the data challenged were informed of the fact that the Commission would study the case during its 102nd session.
10. During the study of the Applicant and the Children's cases, in accordance with Article 34(1)/(2) of the CCF Statute, the NCB of [...] and the INTERPOL General Secretariat were consulted on arguments set forth in the complaint.

II. FACTS

11. The Applicant and the Children are nationals of [...].
12. [...]
13. The Applicant is the subject of a red notice issued at the request of [...] for Parental abduction, on the basis of an arrest warrant issued on [...] by the Investigative Judge in [...].
14. The summary of the facts, as recorded in the red notice, is the following: [...]
15. Child 1 is the subject of a yellow notice to be located, issued at the request of [...]. The Circumstances of Disappearance or Discovery, as recorded in the yellow notice, are the following: [...]
16. Child 2 is the subject of a yellow notice to be located, issued at the request of [...]. The Circumstances of Disappearance or Discovery, as recorded in the yellow notice, are the following: [...]

III. THE APPLICANT'S REQUEST

17. The Applicant requested the deletion of the data concerning her and the Children.
18. She contends in essence that:
 - a) [...]
 - b) The case is of a family/private nature,
 - c) The proceedings are unlawful,
 - d) The proceedings do not respect the principles of due process and human rights.

IV. APPLICABLE LEGAL FRAMEWORK

19. General provisions:
 - Article 2(1) of INTERPOL's Constitution states that the Organisation should "ensure and promote the widest possible mutual assistance between all criminal police authorities within the limits of the laws existing in the different countries and in the spirit of the Universal Declaration of Human Rights".
 - Article 11(1) of the Rules on the Processing of Data (RPD) provides that "data processing in the INTERPOL Information System should be authorized with due regard for the law applicable to the NCB, national entity or international entity and should respect the basic rights of the persons who are the subject of the cooperation, in accordance with Article 2 of the Organization's Constitution and the Universal Declaration of Human Rights to which the said Article refers".
20. [...]
21. Field of competence of the Commission:
 - Article 36 of INTERPOL's Constitution provides that the Commission shall ensure that the processing of personal data by the Organization is in compliance with the regulations the Organization establishes in this matter.

- Article 3(1)(a) and Article 33(3) of the Statute of the Commission establish that the powers of the Commission are limited to controlling whether the processing of data in INTERPOL's files meets INTERPOL's applicable legal requirements.

22. Compliance with human rights:

- Article 2(1) of INTERPOL's Constitution states that the Organisation should "ensure and promote the widest possible mutual assistance between all criminal police authorities within the limits of the laws existing in the different countries and in the spirit of the Universal Declaration of Human Rights".
- Article 34(1) of the RPD states that "the National Central Bureau, national entity or international entity shall ensure that the data are in compliance with Article 2 of the Organization's Constitution".
- Article 5 of the Universal Declaration of Human Rights (UDHR) states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Article 10 of the UDHR states that "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him".

23. Extradition issues:

- Article 31 of INTERPOL's Constitution states that a member country shall do all within its power which is compatible with the legislation of its country to participate diligently in INTERPOL's activities.
- Article 84(b) of the RPD further states that the requesting National Central Bureau who has asked for the publication of a Red Notice "shall ensure (...) that extradition will be sought upon arrest of the person, in conformity with national laws and/or the applicable bilateral and multilateral treaties."
- INTERPOL General Assembly Resolution AGN/53/RES/7 of 1984 states that "if certain countries refuse extradition, this is reported to the other NCBs in an addendum to the original notice"

24. Purposes of Yellow notices:

- Article 90.1 of the RPD states "yellow notices are published to locate a missing person or to identify a person unable to identify himself/herself."
- Article 90.2 of the RPD provides the conditions for the publication of such notices: "a) The person's disappearance or discovery has been reported to and recorded by the police; (b) The whereabouts of the missing person or the identity of the discovered person are unknown to the police; (c) If the person is an adult, applicable national privacy laws do not prevent a request being made; (d) Sufficient data on a person or the circumstances surrounding the disappearance or discovery of the person."

25. Quality of the data:

- Article 12 of the RPD states that "data processed [...] must be accurate, relevant, not excessive in relation to their purpose and up to date, to allow them to be used by authorized entities".

26. Family /Private matters:

- Article 83.1(a,i) of the new rules on the processing of data states that "red notices may not be published for offences related to private family matters [...] or deriving from private disputes".
- In its message addressed to NCBs on 25 May 2012, the General Secretariat explained that the list of specific offences that fall within the category of offenses relating to "family/private matters" is not exhaustive and may be updated when so required.

V. FINDINGS

27. In reviewing the issues raised, the Commission based its findings on information provided by the Applicant, the NCBs concerned and INTERPOL's General Secretariat.
28. The Commission treats the Applicant's contentions in the order in which they are described in paragraph 18 above.

A. [...]

B. Family matter and possible of violation of Article 2

29. The Commission decided to study together the question of the nature of the offence and of possible Article 2 violations.

a) The Applicant

30. The Applicant explained that the dispute is primarily a civil and family matter as it raised from a custody dispute between two parents. The Applicant obtained legal custody from a Court in [...], whereas her ex-husband obtained custody from a religious court in [...] that favours fathers. She also described the circumstances surrounding her departure from [...]: 1) she had legal travel permits for the Children that had been issued by the father; 2) she was fleeing to protect herself and the Children who were suffering from abusive behaviour of the ex-husband. She supported her contention by providing several documents documenting the physical and sexual abuse that they endured.
31. She also indicated that the ex-husband was accused on [...] of the felony of child molestation on one of the Children. He had been arrested and released [...] days later when the accusation was overturned under pressure from the [...], whom he is a close associate of. However, this decision was appealed to the [...] and it is still in process.
32. She now legally has the sole custody of the Children. In proof of this, she provided the copy of the divorce judgement handed down [...] by the family court of [...], which pronounces the divorce in her favour and grants the exclusive custody of the Children to the Applicant. The Judgement also orders the plaintiff, i.e. the ex-husband, not to communicate directly or indirectly with the Applicant and the Children. In addition, the Court registry is ordered not to disclose any personal information with regard to the Applicant.
33. This judgement has become final as no appeal or application for revocation was filed.
34. The Applicant also specified that even [...] courts have acknowledged that the nature of this matter does not constitute a kidnapping. A ruling handed down on [...] by the [...] acknowledged that no kidnapping occurred and recognized that the Applicant's offence was that of refusing to comply with the [...] custodial judgments, which were issued in absentia, and without notice.

b) The NCB of [...] (NCB source of the data)

35. In its reply, the NCB of [...] explained that the custody of the Children granted to the Applicant in [...] is in direct contradiction to the dispositions of the [...] legislation. The Applicant obtained the custody of the Children in [...], without notifying the ex-husband, and allow him to present the grounds for his defence.
36. However, the marriage was concluded under [...] law, which grants the father the legitimate guardianship of minor children, and entitles him to custody. [...] Religious Courts specialized in marital and family affairs have ruled in this case, and the Applicant refuses to execute this decision that granted custody to the father.
37. Thus, the custody granted by the [...] legal authorities do not compel the [...] authorities to cancel the international search notice for the Applicant.

38. The NCB confirmed that the Children were registered in a school in [...], and that the address of that school was established via internet. However, the NCB specified that though the Children may be located in [...], they are still considered as missing since they are not under the legitimate guardianship of their father who is requesting the extradition of the Applicant. Thus, the reasons for publishing the yellow notices remain.
39. [...] authorities are making efforts to request the extradition of the Applicant from [...], and they are waiting for [...] authorities to answer their request and approve to hand her over.

c) Findings of the Commission

40. First, the Commission noted the context in which the Applicant and the Children fled, and the decisions of the [...] Courts ordering the ex-husband not to have any contact with the Applicant or the Children. It underlined that proceedings were still ongoing at national level in [...] regarding a possible prosecution of the ex-husband with regard to a felony of child molestation on one of the Children.
41. The Commission highlighted that the information provided by NCB of [...] in this case is conclusive in stating that the Applicant is still wanted by [...] authorities, without addressing the queries concerning the steps taken by [...] authorities to request the extradition of the Applicant from [...]. In addition, the circumstances surrounding the issuance of the red notice in [...], whereas it had previously been cancelled, or the civil nature of the case as it was recognized that the Applicant had not committed an offence of kidnaping, were not clearly addressed by the NCB.
42. Then, the Commission considered the elements of the case and that the Applicant is charged with “parental abduction” of the Children who are her biological sons. In that context, the Applicant submitted documents to support her contention that she has obtained legal and exclusive custody of the Children and that she had not kidnapped them.
43. The Commission recalled that the existing field of application of the exception of family matters in the meaning of Article 83 (1,a,i) of the RPD, i.e. to exclude controversial offences, which is not the case for parental child abduction, even though some countries will not act upon a red notice issued for this offence. It also noted INTERPOL’s policy that it is generally not the appropriate forum for cases, which derive from competing or contradicting national court decisions.
44. In this particular case, the Commission observed a decision of the [...] Courts granted custody of the Children to the Applicant. It also noted that the ex-husband was granted custody by [...] courts.
45. Therefore, the Commission is faced with a case that concerns, in essence, a situation of a dispute between member countries, which derives from competing and contradicting national court decisions, namely where the court in the requesting country granted custody to one parent, while a court in another country granted custody to the other parent.
46. Since INTERPOL is not the appropriate forum to address situations of competing custodial disputes the Commission needs to further assess whether maintaining the red notice would be appropriate. Here, in view of the all of the elements above, the Commission finds that it cannot determine that the retention of the data concerning the Applicant would be compliant with INTERPOL’s rules, particularly with Article 2 of its Constitution, and that a decision concerning custody or to extradite the Applicant should be left to national competent police authorities and national courts.
47. The Commission then decided to examine the purpose for the publication of the Yellow Notice for the Children. It recalled that the purpose for the publication of yellow notices is to locate a missing person. From the information available, the authorities of [...] know of the Children’s location as they have communicate with the NCB of [...] on that question. The mere fact that the Children are not under the guardianship of the father, as stated by the NCB of [...], is not sufficient to consider that they are not located.
48. In view of the information above, the Commission found that there were strong elements to consider that the yellow notices had reached their purpose, i.e. of location of the Children.
49. In view of its above-mentioned findings, the Commission does not consider it necessary to make a determination on the other arguments of the Applicant.

FOR THESE REASONS, THE COMMISSION

Decides that the data challenged concerning the Applicant and the Children are not compliant with INTERPOL's rules applicable to the processing of personal data, and that they shall be deleted from INTERPOL's files.
