



Commission de Contrôle des Fichiers de l'O.I.P.C. - INTERPOL

Commission for the Control of INTERPOL's Files

Comisión de Control de los Ficheros de la OIPC-INTERPOL

لجنة الرقابة على محفوظات المنظمة الدولية للشرطة الجنائية (الإنتربول)

INTERPOL's Independent Authority for the Control and Protection of Personal Data

DECISION OF THE COMMISSION

REQUESTS CHAMBER

Request concerning [the Applicant] & [the Child]

(Ref. CCF/[xxx]/[XXX])

[xxx]th session

[date]



DECISION CONCERNING [THE APPLICANT] & [THE CHILD]

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

Members,

Having deliberated during its [xxx]th session, on [date], delivered the following Decision.

I. PROCEDURE

1. On [date], [the Applicant] presented a request for access to the information concerning her registered in INTERPOL's files. On [date], the Commission found the request admissible as per Rule 30 of its Operating Rules and informed the Applicant thereof. After being authorized by the INTERPOL National Central Bureau (NCB) source of data, the Commission informed the Applicant on [date] that she is subject to data registered in INTERPOL's channels by the [Country 1] and provided the information described in paragraph 06 below.
2. On [date], the Applicant lodged a request for the deletion of the information concerning her and her son, [the Child] registered in INTERPOL's files. On [date], the Commission informed the Applicant of the admissibility of the new requests.
3. During the study of the Applicant's case, the Commission consulted the NCB of the [Country 1] and the INTERPOL General Secretariat (IPSG) in accordance with Article 34(1) of the Statute of the Commission, on the arguments set forth in the request.
4. Both the Applicant and the NCB source of the challenged data were informed of the fact that the Commission would study the case during its [xxx]th session.
5. Further to Article 35(3) of the Statute of the Commission, restrictions were applied to certain information in the Decision.

II. DATA RECORDED IN INTERPOL'S FILES

6. The Applicant, a national of [Country 2], is the subject of a Blue Notice issued on [date], at the request of the NCB of the [Country 1] with the status of [...] for "*crime against family/abduction*."
7. The facts of the case state the following: "[the Applicant] is wanted for taking [the Child] (...)"
8. The Child, a national of the [Country 1], is the subject of a Yellow Notice issued on [date], at the request of the NCB of the [Country 1] with the status of "*missing*."
9. The facts of the case state the following: "[the Applicant] is wanted for taking [the Child] (...)."

III. THE APPLICANT'S SUBMISSIONS

10. The Applicant requested the deletion of the data concerning her and the Child, contending, in essence, that:
 - a) the data currently do not have a purpose;
 - b) the case is of a family nature;
 - c) the requirement of interest and seriousness of the data for international police cooperation is not met; and
 - d) the proceedings do not respect the principles of due process.

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IV. APPLICABLE LEGAL FRAMEWORK

11. The Commission considers the following applicable legal framework.

- 11.1. Field of competence of the Commission:
 - Article 36 of INTERPOL's Constitution;
 - Articles 3(1)(a) and 33(3) of the Statute of the Commission.
- 11.2. Purposes of international police cooperation:
 - Article 10(1) of INTERPOL's Rules on the Processing of Data (RPD).
- 11.3. Provisions specific to blue notices:
 - Article 88 of the RPD.
- 11.4. Provisions specific to yellow notices:
 - Article 90 of the RPD.
- 11.5. Interest or seriousness for international police cooperation:
 - Article 35(1) of the RPD.
- 11.6. Compliance with human rights:
 - Article 2(1) of INTERPOL's Constitution;
 - Article 34(1) of the RPD;
 - Article 10 of the Universal Declaration of Human Rights (UDHR).

V. ANALYSIS OF THE CASE

12. The Commission assessed the Applicant's most relevant contentions described in Section III above.
13. For an appropriate study of the case, the Commission decided to study together under point B below the related issues of whether case concerns a family case and whether the requirement of seriousness and interest of the data have been met.

A. Purpose of the data

a) Submissions of the Applicant

14. The Applicant claimed that she was and is in constant communication with [Country 1] law enforcement agencies, so she is not hiding from or obstructing justice. According to her, she only left the [Country 1] with the Child to protect him, after she was made aware, of suspicions of abuse by [Parent 2], which were raised by the Child's doctor who reported it to [authorities].
15. She also contended that the Yellow Notice does not serve a purpose, as the Child's location is known to [Country 1] authorities and he is not missing. According to her, it represents an undue restriction on his right to free movement, as well as to his right to privacy.

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

16. The NCB confirmed that a criminal investigation against the Applicant is currently ongoing, that the Child is still considered to be missing and that both Notices maintain a valid purpose.
17. It indicated that the Applicant has not been in constant communication with [Country 1] authorities and they are unaware of her being in any communication with any other law enforcement partner associated with this case. According to the NCB, this suggests she is hiding and avoiding detection

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and/or capture. The NCB also clarified that the [Country 1] authorities have been informed that all suspicions of abuse reported by the Applicant were false.

18. It further confirmed that [Country 1] authorities and its law enforcement partners do not specifically know where the Child is located and only have information that he is somewhere in [Country 2].

c) Findings of the Commission

19. Under Article 10 of the RPD, *“the processing of data in the INTERPOL Information System may only be carried out for a given, explicit purpose which is in conformity with the Organization’s aims and activities.”*
20. In this case, the Applicant is subject to a Blue Notice, to trace and locate her, which is a valid ground to request a blue notice, according to Article 88(1) and (2) of the RPD.
21. Meanwhile the Child is the subject of a Yellow Notice, which, per Article 90(3) of the RPD, may only be issued when *“the whereabouts of the missing person [...] are unknown to the police.”*
22. Although the Applicant claims that the Child’s location is known to the [Country 1] authorities, the NCB states that even though they have information the Child is somewhere in [Country 2], his exact location has not been established (see para. 18 above) and the Applicant could wish to travel outside of the country with him.
23. Given that the current location of the Child is unknown to [Country 1] authorities, the Commission considers that, in the present case, the Yellow Notice would allow for the Child to be located in case he travels outside of his current place of residence.
24. Based on the information submitted, the Commission determines that both Notices still have valid purposes.
25. Therefore, the Commission dismisses this argument presented by the Applicant and decides to continue to study her additional claims.

B. Private character of the case and interest of the data for police cooperation

a) Submissions of the Applicant

26. The Applicant argued that, following her divorce from [Parent 2] in [date], she had custody and [Parent 2] had visitation rights, with which she always complied, until the suspicion of abuse by [Parent 2]. She indicated that, although initial actions were taken by the competent authorities to protect the Child and suspend [Parent 2]’s visitation until an investigation had taken place, there were procedural violations in said investigation which raised concerns. She explained that during a hearing on [date], the Court granted 50/50 custody of the Child without any change in circumstances that would warrant this (...).
27. The Applicant contended that upon leaving [Country 1], she was not acting maliciously, nor did she deprive [Parent 2] of custody, as it was still in dispute. She argued that she was merely and always acting in the Child’s best interest, in an effort to protect him from further abuse.
28. She also claimed that the crime of which she is accused is not serious to justify the issuance of data against her and that it is no interest to police cooperation, as it refers to a private, family matter. She submitted that her actions in protecting the Child are not an ongoing criminal activity.

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29. She argued that should [Parent 2] request his return under The Hague Convention, the [Country 2] courts would in any case likely refuse it, based on how well the Child has adapted and is developing in [Country 2].

b) Submissions of the NCB of the [Country 1]

30. The NCB indicated that the Applicant knowingly fled the [Country 1] with the Child while child custody proceedings were still undergoing and refused to return when she was requested to. Additionally, the NCB indicated that the Applicant has not provided any evidence of alleged abuse by [Parent 2].

c) Findings of the Commission

31. In continuing its review, the Commission notes that there are several elements pointing to the Applicant's involvement in a criminal case even though the investigation against her in the case described in the summary of facts of the Blue Notice is still ongoing. The Commission considers that, while INTERPOL's rules do require that the requesting NCB provide a sufficient set of facts that link the wanted individual to the charges against her, and a clear description of the criminal activities of which she is accused in the framework of the publication of a red notice, the standard of requirement of this type is lower for the publication of a blue notice. Indeed, as per Article 83(2)(b)(i) of the RPD red notices require the provision of a succinct and clear description of the criminal activities of the wanted person, for a person who is wanted for his/her arrest in view of extradition, in the framework of an investigation that has been finalized and where there is already sufficient evidence of the person's possible implication in the offences. Blue notices are different as their purpose is not the person's arrest or extradition, but their location and to obtain additional information in an ongoing investigation. That is why Article 88(2)(c) of the RPD provides that Blue Notices require only that: *"Sufficient data relating to the criminal investigation or the person are provided to allow the cooperation requested to be effective."*
32. The Commission resolves that the Applicant's arguments linked to the requirement of provision of sufficient facts that link a wanted individual to the charges against them, and a clear description of the criminal activities of which they are accused which would be essential in the case of a red notice, do not have the same relevance in the case of a blue notice because of its different purpose.
33. Here, the NCB of the [Country 1] has provided elements (see para. 07, 09 and 17 above) to demonstrate that there is a reasonable need for [Country 1] authorities to obtain additional information about the case to continue their investigation, as well as the necessary data related to the criminal investigation and the Applicant to allow international police cooperation, as required by Articles 88(1)(a), 88(2)(c) and 35(1) of the RPD. The Commission finds these elements sufficient in the context of its review.
34. The Commission also notes that the Applicant argued that the data should be deleted as they refer to a case relating to private matters, per Article 83(1)(a)(i) of the RPD.
35. In this case, however, the Commission first highlights that the Applicant is subject to a Blue Notice. Moreover, the Commission underscores that, in any case, the NCB provided sufficient elements to indicate the Applicant's possible involvement in the facts for which she is investigated and the [selected INTERPOL offence code] of *"crime against family/abduction"*, which form the basis of the Blue Notice, can be considered as a criminal matter, and are coherent with the underlying facts provided in the case summary and further information submitted by the NCB of the [Country 1] (see para. 07, 09 and 17 above).
36. Therefore, the Commission dismisses this argument presented by the Applicant and decides to continue to study her additional claims.

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C. Standards of human rights

a) Submissions of the Applicant

37. The Applicant claimed that the data do not comply with Article 2 of INTERPOL's Constitution, as she was not officially served any notice of an investigation or proceedings against her, either personally, through the contacts she has had with the competent [Country 1] agencies, nor through cooperation with [Country 2] authorities. According to her, her basic rights have already been violated and she would not be subject to a fair trial if she were to return to the [Country 1], as demonstrated by the sudden reversal of the custody situation in early [date] without any obvious reasons.

b) Submissions of the NCB of the [Country 1]

38. The NCB argued that the Applicant's basic rights were and are not being violated. Both the Applicant and [Parent 2] of the Child had their own counsel during child custody proceedings. When the Applicant attended the last court hearing regarding child custody, she was present virtually and had already fled the [Country 1] and did not mention this to the Court.

c) Findings of the Commission

39. With respect to this issue, Article 10 of the UDHR provides for "*a fair and public hearing by an independent and impartial tribunal in the determination of [an individual's] rights and obligations and of any criminal charges against him.*"
40. At the same time, the Commission's function is not to conduct an investigation, to weigh evidence, or to make a determination on the merits of a case. Only the competent national authorities may do so.
41. In order to respect the spirit of the UDHR while at the same time respecting the limited role of the Commission, the simple assertion of procedural irregularities cannot rise to the level of an Article 2 violation. Rather, in carrying out an Article 2 analysis, the Commission considers all relevant information to determine whether the Applicant has convincingly demonstrated the likelihood that flagrant denial of due process took place.
42. Turning to the *in casu* assessment of the data's compliance with Article 2 of INTERPOL's Constitution, the Commission notes the Applicant's claim that she never received notification in the case against her (see para. 37 above). It recalls that right to be promptly informed in detail of criminal charges is a prerequisite for the accused to be able to effectively practice his rights of the defence, as enshrined in Article 14(3)(a) of the International Covenant on Civil and Political Rights (ICCPR). While there are limits to the efforts which may be expected from a prosecuting State for the notification of an accused, it must demonstrate that it has diligently attempted to establish contact with the accused regarding his proceedings and particularly in cases where a trial may be held in their absence.
43. Nevertheless, the Commission recalls that if the situation complained of is attributable to the accused's own conduct, the latter is not in a position to allege a violation of the rights of the defence. In this case, according to the NCB, when the Applicant last appeared in the court proceedings referring to the child custody case, she did so remotely and did not inform the court that she had already left the [Country 1]. The Commission also observes that the data that presently exist in the INTERPOL Information System against the Applicant are aimed at locating - not arresting - her.
44. In view of the above, the Commission considers that the Applicant did not provide information which may indicate that any additional measures could have been reasonably expected from the [Country 1] authorities toward her due notification, at this point. It underlines how the data registered at the request of the NCB may be reasonably understood to also include notification and ensure her presence before the competent court that may in the future adjudicate on her case, are sufficient to meet the standard stipulated in the aforementioned provision of the ICCPR.

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FOR THESE REASONS, THE COMMISSION

Decides that the data challenged are compliant with INTERPOL's rules applicable to the processing of personal data.

Commission for the Control
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Secretariat to the Commission
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