



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 [Applicant 1],  
[Applicant 2], and [Applicant 3]**

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

**[xxx]<sup>th</sup> session**

**[date]**



## DECISION CONCERNING [APPLICANT 1] ET AL.

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

Members,

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

### I. PROCEDURE

1. On [date], Mr [Applicant 1] lodged a request for the deletion of the information concerning him, registered in INTERPOL's files. 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 the Applicant thereof on [date].
2. On [date], Ms [Applicant 2] and Ms [Applicant 3] lodged a request for the deletion of the information concerning them, registered in INTERPOL's files, represented by their father, [Applicant 1] (together, the Applicants). 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 the Applicants thereof on [date].
3. During the study of the Applicants' case, the Commission consulted the INTERPOL National Central Bureaus (NCBs) of [Country 1] and [Country 2] and the INTERPOL General Secretariat (IPSG) in accordance with Article 34 of the Statute of the Commission on the arguments set forth in the request.
4. Both the Applicants and the NCB source of the challenged data were informed of the fact that the Commission would study the case during its [xxx]<sup>th</sup> session.
5. Further to Article 40(3) of its Statute, the Commission also decided that the circumstances of the present request, which called for the joint study of the two requests of [date] and [date], warranted an extension of the standard time limit to decide on a request for deletion established in Article 40(2) of the said Statute.
6. 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

7. [Applicant 1], a national of [Country 2] is the subject of a Red Notice issued on [date] at the request of the NCB of [Country 1] for "*abduction of children, gross offence*" on the basis of an arrest warrant issued on [date] by the District Court in [xxx]. The Notice is also based on a [xxx] Arrest Warrant issued on [date] by the [xxx] Prosecution Authority.
8. The facts of the case relating to [Applicant 1] state the following: "*From [date], in [Country 1]: [Applicant 1] and the complainant [Person 1] have the following children together; [Applicant 3] (born [date]) and [Applicant 2] (born [date]) and they have joint custody of their children, who are under the age of 15 years old. Sometime during the time period from [date] and forward in time (an ongoing offence) without any reason worthy of consideration, [Applicant 1] arbitrarily abducted the children from the other custodian by not returning these children to [Person 1] after spending time with them. He abducted the children to an unknown place in [Country 1] or he transported the children abroad.*

*"A/m person is suspected of Abduction of children, gross offence. The abducted children are reported missing and Yellow notices are issued [xxx]. If the person is found and is together with the*

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*abducted children, we kindly ask that your authorities take care of the children and contact us immediately.”*

9. [Applicant 2] and [Applicant 3], nationals of [Country 2] are each the subject of a Yellow Notice for their location, issued on [date] at the request of the NCB of [Country 1].
10. The facts of the case relating to [Applicant 2] and [Applicant 3] state the following: “*From [date], in [xxx], [Country 1]: The child is reported missing together with her sister [Applicant 2], DOB [xxx]. There are suspicions that the father [Applicant 1] has taken the children abroad, and separated them from the mother without her consent. There is an ongoing police investigation where the father is in suspicion of child abduction, gross offence and an International Arrest Warrant (Red notice and [xxx] AW) is issued for the father [Applicant 1], DOB [xxx]. If located, please contact NCB [Country 1] immediately. If possible, consider whether there are grounds for the child to be taken into care by your national authorities until it can be handed over to the mother or [xxx] authorities.*”

### III. THE APPLICANTS’ SUBMISSIONS

11. The Applicants requested the deletion of the data concerning them, contending, in essence that:
  - a) the data are derived from a jurisdictional dispute concerning [Applicant 1]’s parental custody;
  - b) the proceedings do not respect the principle of *ne bis in idem*; and
  - c) the Yellow Notices concerning [Applicant 2] and C lack purpose since their location is known.

### IV. APPLICABLE LEGAL FRAMEWORK

12. The Commission considers the following applicable legal framework.
  - 12.1. 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.
  - 12.2. Criterion of serious ordinary-law crime for the publication of a Red Notice:
    - Article 83(1)(a)(i) of INTERPOL’s Rules on the Processing of Data (RPD);
    - IPSTG’s standards for the implementation of this criterion in parental abduction cases.
  - 12.3. Respect for the principle of *ne bis in idem*:
    - Article 2 of INTERPOL’s Constitution.
  - 12.4. Purpose of a Yellow Notice:
    - Articles 10 and 90 of the RPD.

### V. ANALYSIS OF THE CASE

13. The Commission assessed the Applicants’ most relevant contentions described in Section III above. It noted the contention made by [Applicant 1] that the proceedings are contrary to the principle of *ne bis in idem* is subsidiary to his primary argument that there is a jurisdictional dispute between [Country 1] and [Country 2] over their conflicting adjudications on whether he or the mother of [Applicant 2] and [Applicant 3] have parental custody. Therefore, for an appropriate study of the case, the

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Commission decided to consider his arguments as one main issue relating to the nature of the dispute under point A below.

### A. Nature of the dispute

#### *a) Submissions of [Applicant 1]*

14. [Applicant 1] explained that he had filed a claim for parental custody over [Applicant 2] and [Applicant 3] in [Country 2] following marital disputes with Ms [Person 1], his then-spouse and the mother of the two children. During that same period, Ms [Person 1] pursued the underlying criminal complaint against him and a claim for parental custody in [Country 1], her country of residence. Ms [Person 1] was notified of the custody proceedings in [Country 2] yet failed to attend, and [Applicant 1] was granted custody by virtue of a judicial decision taken on [date]. His subsequent request for a judicial order barring the travel of [Applicant 2] and [Applicant 3] out of the country without his consent was granted by a [Country 2] court on [date]. Ms [Person 1] then filed a lawsuit in [Country 2] to dispute his custody on [date], and he filed a counter-lawsuit requesting to revoke her right to custody completely.
15. Ms [Person 1], on the other hand, was granted custody by a [xxx] court on [date]. There was no possibility for him to attend these proceedings in [Country 1] because he was arrested in the meantime on [date] and subject to extradition proceedings in [Country 2] on the basis of the Red Notice. While he was released on bail on [date], the [Country 2] authorities only denied a request for his extradition on [date] in view of how the extradition of nationals is barred by law.
16. On the conflicting lawsuits that were filed by Ms [Person 1] and [Applicant 1] in [Country 2] in [date], a [Country 2] court ordered the revocation of her custody and transferred full custody to him on [date]. This decision has been deemed final. On [date], the two settled their marital dispute before a [Country 2] court after Ms [Person 1] relinquished all her legal rights in order to obtain a divorce.
17. Following the aforementioned extradition denial based on his nationality, the [Country 2] authorities transferred the casefile underlying the extradition request for his criminal prosecution before a [Country 2] court. On [date], the second investigating judge of [Country 2]'s Criminal Court in [xxx] dismissed the case against him in view of how he had been granted custody of [Applicant 2] and [Applicant 3] in the country, thus invalidating the accusation of parental abduction.
18. In support of his submission, [Applicant 1] provided copies of the [Country 2] court decisions of [date] and [date]. According to the decision of [date], which granted sole custody to [Applicant 1], the proceedings are based on the lawsuit filed by Ms [Person 1] on [date] and a counter-lawsuit filed subsequently by [Applicant 1]. Ms [Person 1] failed to attend these proceedings following her notification of the court hearings, which accordingly proceeded in her absence.

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

19. The NCB confirmed the validity of the proceedings against [Applicant 1] and submitted copies of the following documents in response to the Commission's queries: the [xxx] Arrest Warrant issued for [Applicant 1] on [date] by the [xxx] Prosecution Authority, a police report on the facts of the case, dated [date], and an arrest warrant issued for [Applicant 1] on [date] by the District Court in [xxx].
20. The arrest warrant summarizes information and facts gathered through investigations in the police report of [date]. This report recounts that, having joint custody after a marital separation in [Country 1], [Applicant 1] failed to return [Applicant 2] and [Applicant 3] to Ms [Person 1] on [date] as agreed upon prior between the two parents. Police investigations traced [Applicant 1]'s movement with the two children through [Country 1], and later to [Country 2] via [Country 3]. Starting [date], [Applicant 1] communicated on several occasions with the [xxx] police, including in that he stated at some point that he would consider handing himself over to the [xxx] authorities yet refused to return [Applicant 2] and [Applicant 3] to [Country 1]. The [xxx] police further communicated with the Applicant via Mr

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[Person 2]. According to the arrest warrant, [Applicant 1] was represented by his defense counsel, Mr [Person 2], who highlighted that he had been granted sole custody of [Applicant 2] and [Applicant 3] in [Country 2].

21. The NCB explained that on [date], [Applicant 1] was arrested in [Country 2] based on the Red Notice and only released the following month. During this time and specifically on [date], the District Court in [xxx] issued an interim decision granting custody to Ms [Person 1]. The Court later granted her sole custody on [date]. In [Country 2] [Applicant 1] was granted custody on [date] and, following an unsuccessful appeal by Ms [Person 1] before [Country 2] courts on [date], the [Country 2] judicial authorities issued a decision granting sole custody to [Applicant 1] on [date]. Based on this development, the NCB indicated that the underlying crime of parental abduction is considered to have been committed between [date] and [date]. In response to the Applicant's contentions, the NCB highlighted that the final [xxx] court decision of [date] preceded that issued in [Country 2] on [date].

### *c) Information from the NCB of [Country 2]*

22. Despite invitation, the NCB of [Country 2] did not respond to the queries of the Commission by the present date.

### *d) Findings of the Commission*

23. Article 83(1)(a)(i) of the RPD expressly prohibits the publication of Red Notices for offences relating to family matters. With regards to the offence of parental abduction, the Commission recalls that INTERPOL is generally not the appropriate forum for situations derived from competing or contradicting national court decisions on parental custody, and IPSPG's standards in its IPCQ of [date] clarifies that the criterion of Article 83(1)(a)(i) is not met where both parents participated in the proceedings of the two countries.
24. In the present instance, the Commission observes that [Applicant 1] and Ms [Person 1] had joint custody under [Country 1] law and he is wanted in this context for having travelled and failed to return [Applicant 2] and [Applicant 3] to Ms [Person 1] starting [date]. In [Country 2], [Applicant 1] was granted custody by judicial order on [date] and Ms [Person 1] participated in these proceedings by filing a lawsuit disputing his right to custody on [date]. The [Country 2] proceedings ultimately confirmed that he has sole custody of [Applicant 2] and [Applicant 3] on [date]. In [Country 1], during the same period of [Applicant 1]'s extradition proceedings in [Country 2] ([date]), Ms [Person 1] was granted sole custody pursuant to judicial orders issued on [date] in his absence. It appears from the information submitted by the NCB of [Country 1] that the Applicant subsequently participated in the proceedings relating to the latest arrest warrant issued for him on [date], having a defense counsel (Mr [Person 2]) who presented his argument before the [Country 1] court that he was granted custody of the children in [Country 2]
25. The Commission underlines that based on the above elements, the case derives from a parental custody dispute before the courts of several INTERPOL member countries, which have issued contradicting national court decisions. Ms [Person 1] was able to participate in the proceedings in [Country 2] insofar as she filed her challenge against [Applicant 1]'s right to custody on [date] and received notification of the court hearings held over her lawsuit. There is no information to confirm that [Applicant 1] participated in the custody proceedings in [Country 1] which led to the decisions of [date]; however, the Commission takes into account that he was subject to extradition proceedings in [Country 2] at the time, and he has participated and presented the [Country 1] judicial authorities with his defense concerning his custody rights in the context of the criminal proceedings.
26. The Commission determines that it accordingly appears both parents have at varying stages participated in the proceedings in [Country 2] and [Country 1] relating to the underlying dispute and presented their arguments on their right to custody versus that of the other parent.

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27. In view of this particular situation, the Commission expresses concern that the nature of the underlying offence is derived from a family matter in the meaning of Article 83(1)(a)(i) of the RPD, one that has been subject to a custody dispute in two jurisdictions where both parents have engaged in the proceedings and received conflicting decisions.
28. The Commission thus finds that the retention of the Red Notice would not comply with this Article.

### B. Purpose of the Yellow Notices

#### *a) Submissions of [Applicant 1]*

29. [Applicant 1] challenged the purpose of the Yellow Notices concerning [Applicant 2] and [Applicant 3] on the grounds that their location is known, and they lawfully remain with him as their sole legal custodian pursuant to the [Country 2] custody decisions of [date] and [date].

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

30. According to the copy of the police report submitted by the NCB of [Country 1], mentioned in paragraph 20 above, there has been cooperation between the [Country 1] and the [Country 2] authorities on the location and status of [Applicant 2] and [Applicant 3]. During the course of [Applicant 1]'s extradition proceedings in [Country 2] the national authorities informed their [Country 1] counterparts that welfare checks were conducted, and [Applicant 2] and [Applicant 3] were found well and under the care of the mother and brother of [Applicant 1]. The NCB stated that no recent or new information on their whereabouts has been provided by the [Country 2] authorities to their [Country 1] counterparts.

#### *c) Findings of the Commission*

31. Under Article 90(1) and (2) of the RPD, Yellow Notices are published to locate a person reported missing and whose whereabouts are unknown to the police.
32. The Commission recalls that as observed in point A above, the underlying dispute is derived from competing custody claims that have been adjudicated on in two INTERPOL member countries, principally [Country 2] where [Applicant 1] was granted custody of [Applicant 2] and [Applicant 3], and [Country 1] where their mother, Ms [Person 1], was granted custody of them. The Commission hence discerns that, by taking into account the decisions of the [Country 2] courts granting him custody in the country, there are no factual grounds to consider [Applicant 2] and [Applicant 3] as missing given that they are in the lawful custody of [Applicant 1].
33. Furthermore, the available information indicates that the [Country 2] authorities have confirmed to their [Country 1] counterparts the location and the status of [Applicant 2] and [Applicant 3] under the guardianship of [Applicant 1] as well as their family members in the country. The NCB of [Country 1], on the other hand, did not provide any concrete response to the Commission on the possible continued purpose of the Yellow Notices in view of its knowledge that [Applicant 1] has legal custody of them in [Country 2] and this cooperation with the [Country 2] authorities that had confirmed their location.
34. The Commission accordingly underlines that it is prevented from concluding the Yellow Notices have a purpose under Article 90 of the RPD since their whereabouts and situation, principally with [Applicant 1] as their parental custodian, is known to the relevant authorities.

**FOR THESE REASONS, THE COMMISSION**

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

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Secretariat to the Commission  
for the Control of INTERPOL's Files

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