



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*

Lyon, 10 May 2021

[REDACTED]  
Our ref: CCF/117/R787.20

Subject: Request concerning Mr. [REDACTED]

Dear Sir,

As provided in our message dated 19 March 2021, the Commission studied your request during its 116<sup>th</sup> session, which took place from 12 to 16 April 2021, in accordance with the procedure described in our letter dated 15 September 2021.

After a thorough examination of the elements before it, the Commission found that the data challenged raised questions as to compliance with applicable rules. As a result, it considered that the retention of these data in the INTERPOL Information System was not compliant with INTERPOL's rules and decided that they should be deleted.

This decision was forwarded to the INTERPOL General Secretariat, which deleted the data challenged from INTERPOL's files, on 04 May 2021.

Additionally please be advised that the INTERPOL General Secretariat has informed all INTERPOL National Central Bureaus (NCBs) that:

- in application of the decision made by the Commission for the Control of INTERPOL's Files, the General Secretariat has deleted the data relating to your client;
- all international police cooperation via INTERPOL's channels in this case would not be in conformity with INTERPOL's Constitution and Rules.

The INTERPOL General Secretariat also urged all NCBs to update their national databases accordingly, as well as to verify that the same is done by all national entities that have access to INTERPOL information.

You will find enclosed the Decision of the Commission concerning your client and an official letter from the INTERPOL General Secretariat, certifying that, as of 07 May 2021, he is not subject to an INTERPOL notice or diffusion.

To undertake any measure you deem appropriate for the follow up of your client's case at national level, we invite you to contact the relevant national authorities

Yours faithfully,

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

Encl. (02)  
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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** [REDACTED]

*(Ref. CCF/116/R787.20)*

**116<sup>th</sup> session**

**12 to 16 April 2021**



## DECISION CONCERNING [REDACTED]

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

Vitalie PÎRLOG, Chairperson  
Isaias TRINDADE,  
Teresa McHENRY,  
Sanna PALO,

Members,

Petr GORODOV, withdrawing based on Article 2.1(d) of the Operating Rules of the Commission,

Having deliberated during its 115<sup>th</sup> session, on 14 April 2021, delivered the following Decision.

### I. PROCEDURE

1. On 25 August 2020, [REDACTED] (the Applicant) lodged a request for access to the information concerning her registered in INTERPOL's files, and its subsequent deletion. 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 15 September 2020.
2. During the study of the Applicant's case, the Commission consulted the INTERPOL National Central Bureaus (NCB) of Russia, Serbia and Sweden, and the INTERPOL General Secretariat (IPSG) in accordance with Articles 34(1) and (2) of the Statute of the Commission, on the arguments set forth in the complaint.
3. On 25 September 2020, the NCB of Russia confirmed the validity of the proceedings and of the arrest warrant, and provided answers to the questions raised by the Commission. On 03 March 2021, the NCB provided further information in reply to the Commission's queries.
4. The Commission informed the Applicant on 29 September 2020 that he is wanted through INTERPOL's channels by Russia, and provided the information described in paragraphs 7 and 8 below.
5. 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 116<sup>th</sup> session.

### II. FACTS

6. The Applicant is an Israeli national who was born in Russia.
7. He is the subject of a Diffusion circulated by Russia for "*robbery*" on the basis of an arrest warrant issued on 09 February 2007 by Volzhskiy district court of Saratov town. A Diffusion was circulated against the Applicant on the basis of this arrest warrant on 01 August 2017.
8. The summary of the facts, as recorded in the Diffusion, is the following: "*On 29.09.2006 the subject threatening with violence stole the cell phone Nokia from minor [X].*"
9. On 21 September 2017, the Applicant was arrested upon arrival in Belgrade, Serbia, based on Diffusion. On 09 March 2018, following a decision by the High Court in Belgrade denying a motion for a provisional extradition arrest warrant, the Applicant was released and returned to Israel.

### III. THE APPLICANT'S REQUEST

10. The Applicant requested the deletion of the data concerning him, contending, in essence, that:

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## DECISION CONCERNING [REDACTED]

- a) Serbian authorities denied his extradition;
- b) the requirement of interest/seriousness of the data for international police cooperation is not met;
- c) INTERPOL's channels are misused by Russia;
- d) there is a lack of proportionality between data processed and the purpose for which it was processed;
- e) there are some irregularities in the proceedings;
- f) there is a lack of description of his alleged criminal activities.

### IV. APPLICABLE LEGAL FRAMEWORK

#### 11. Field of competence of the Commission:

- Article 36 of INTERPOL's Constitution states 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 (CCF Statute) 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.

#### 12. 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.*"

#### 13. Quality of the data:

- Article 12 of the INTERPOL Rules on the Processing of Data (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 authorised entities.*"

#### 14. Interest for police cooperation:

- Article 35(1) of the RPD states that "*in conformity with Article 5(3) of the present Rules, prior to any recording of data in a police database, the National Central Bureau, national entity or international entity shall ensure that the data are of interest for the purposes of international police cooperation.*"
- Article 35(2)(b) of the RPD states that "*compliance with this condition for recording data shall be assessed in relation to [...] the international nature of the data and, in particular, the extent to which the data may be used by National Central Bureaus, national entities or international entities other than the source.*"

#### 15. Purpose of the data:

- Article 10 of the RPD states that data shall be processed in the INTERPOL Information System for a specific purpose.

#### 16. Provisions relating to diffusions:

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## DECISION CONCERNING [REDACTED]

- Article 97(2) of the RPD states that *“The conditions for sending a diffusion are the same as the general conditions for recording data in the Organization’s police databases.”*
- Article 99(2) of the RPD states that *“Before circulating a diffusion, the National Central Bureau or international entity shall ensure:*
  - (a) the quality and lawfulness of the data it provides in support of its diffusion;*
  - (b) that its diffusion complies with the general conditions for recording data;*
  - (c) that the data are of interest for the purposes of international police cooperation;*
  - (d) that its request complies with INTERPOL’s rules, specifically with Articles 2(1) and 3 of the Constitution, as well as with the obligations imposed on the requesting entity under international law.”*
- IPSG standards for the application of the RPD confirm that: *“for red notice requests and diffusions seeking the arrest of a person, it is important to provide sufficient facts that link the wanted individual to the charges against him/her. Providing such facts is crucial for facilitating international police cooperation.”*

## V. FINDINGS

17. For an appropriate study of the case, the Commission decided to study together the claims related to the extradition denial by Serbia and the lack of interest of the data.

### **Purpose of the data and their interest for international police cooperation**

#### ***a) The Applicant***

18. The Applicant argued that he was arrested in Serbia on the basis of the data registered against him on 21 September 2017. According to him, after having been detained for six months, the High Court in Belgrade denied his extradition because the threshold for it, according to Serbian and European law had not been met. The Applicant underlined that the decision denying his extradition described the crime of which he is accused as a petty theft, which did not involve physical injury to the alleged victim; the Serbian judicial authorities concluded, therefore, that the statute of limitations had been reached.
19. According to the Applicant, the continued existence of data against him is an injustice against him and represents a misuse of INTERPOL channels. The Applicant contended that the issuance of an international arrest warrant against him and the registering of data 10 years after the facts of the case, which does not represent a serious crime, as it pertains to the theft of a Nokia 7610 cellphone, which is worth around USD 200, without any allegation of violence or physical harm to the alleged victim reveals a more severe treatment than other instances in which serious crimes are committed in Russia.

#### ***b) The NCB of Russia (NCB source of the data)***

20. The NCB of Russia confirmed that the Russian General Prosecutor’s Office sent an official request for the Applicant’s extradition to the Ministry of Justice of Republic of Serbia on 16 October 2017 after having been informed by Serbian authorities about his arrest. Moreover, according to the NCB, on 09 March 2018, the Court of Appeals in Belgrade rejected said request due to the expiration of the time limit for prosecution according to Serbian legislation.
21. The NCB confirmed, however, that the proceedings against him are still valid at national level, that there are no ground for releasing him from criminal liability and that the statute of limitations according to Article 78 of the Criminal Code of the Russian Federation has not been reached.

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## DECISION CONCERNING [REDACTED]

22. The NCB explained that the Applicant is accused of having, on 29 September 2006, along with another person, stolen a cell phone Nokia 7610 (worth 9960 rubles<sup>1</sup>) from a minor. The NCB also clarified that the Applicant fled the investigation and, on 11 May 2016, he was declared as internationally wanted. Moreover, on 09 September 2018, the preliminary investigation was suspended in connection with the search for the Applicant, on the ground of Article 208, paragraph 2, part I of the country's Criminal Procedure Code.

### *c) Findings of the Commission*

23. The Commission recalls that data can only be registered in INTERPOL's files for an explicit purpose which is in conformity with the Organization's aims and activities.
24. The Commission highlights that, in this case, the Applicant is the subject of a Diffusion with the purpose of locating and arresting with a view of extradition. As such, in accordance with Articles 82 and 97(2) of the RPD, the purpose of the data issued against him are not only to seek the location of a person but also his arrest for the purpose of extradition, surrender, or similar lawful action.
25. In this regard, the request for extradition placed by the authorities of Russia to Serbian authorities indicated the willingness of the authorities of Russia to respect their obligations under applicable laws and to request the extradition or the surrender of the Applicant, if possible.
26. The Commission observes that, while the Serbian authorities rejected the Applicant's extradition, this was based on the fact that its own legislation establishes that the statute of limitation had been reached and that, in the terms of the European Convention on Extradition, extradition shall not be granted when this has occurred.
27. Nevertheless, the Commission also notes that, according to the NCB of Russia, the statute of limitations according to the country's legislation has not been reached and the prosecution is therefore not time barred.
28. Therefore, the Commission underlines that the rejection by Serbia of the extradition request from Russia would, on its own, be insufficient reason for the revocation of the Diffusion.
29. The Commission notes, however, that, according to the Applicant, in denying his extradition, the Serbian judicial authorities also characterized the crime of which he is accused as a petty theft. The Commission also takes note of the Applicant's argument that the treatment reserved by Russian authorities to the case against him, in issuing an arrest warrant and registering data in the INTERPOL Information System (IIS) ten years after the facts, which do not amount to a serious crime, is much more severe than other instances in which serious crimes are committed in the country.
30. On the basis of these allegations, the Commission analyzes whether the data are compliant with Article 35 of the RPD, which states that the data processed in INTERPOL's files must be of international interest for police cooperation.
31. In the present case, the Commission preliminarily notes that the summary of facts in the Diffusion specifies that the Applicant had stolen a mobile phone from the victim, by threatening him with violence.
32. While on the one hand, the Commission highlights that the offence of theft is universally recognized as an ordinary-law crime, it also pays particular consideration to the specific elements available to it in the case at hand. Most notably, the Commission observes that, in its communications with the

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<sup>1</sup> Approximately 130 US dollars.

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Commission, the NCB specified that the threat of violence under which the crime would have been committed was "*not dangerous to life and health*". The Commission further considers that the relatively small sums associated to the crime at stake, which involves the theft of a cell phone whose value is less than 150 US dollars that would have been committed over ten years ago in partnership with another person, could raise issues as to the interest of the crime for the purposes of international police cooperation, as intended by article 35(1) of the RPD.

33. Furthermore, the purpose and penalty threshold for which the Applicant is subject to the data in INTERPOL's files compared to the gravity of the acts and the purpose of which the data are processed seems to be disproportionate in this case, as the Applicant is the subject of a Diffusion (sent to all member States) with the purpose to seek his location and his arrest in view of extradition, surrender, or similar lawful action, and the maximum penalty possible for this offense which appears to have resulted in an economic loss of approximately 130 US dollars, is seven years imprisonment.
34. The Commission underlines that, although the offence as described in the Diffusion is a criminal offence under Russian national law, it is not likely that such an offence in this context would be recognized as an extraditable offence in many other national systems, which would therefore prevent national authorities to act upon requests for police cooperation, thus it is unlikely that the purpose for which the data were registered, according to Article 10 of the RPD, would be achieved.
35. The Commission also notes that the data registered in the IIS show that the facts occurred in 2006 and the arrest warrant against the Applicant was issued in 2007, however the Diffusion against him was only circulated in 2017, thus over eleven years later. The Commission considers that this also questions the interest of the data for police cooperation and the purpose for which the Diffusion was requested. For instance, according to information provided by the NCB of Sweden, the Applicant was arrested by border police on the basis of the Diffusion upon arrival in Stockholm International Airport, on 07 August 2017, therefore prior to his arrest in Serbia. The NCB clarified that the Applicant was immediately released, after contacts with the office of the public prosecutor revealed that the crime for which he is wanted was time barred, according to Swedish legislation; he left Sweden shortly after that.
36. Therefore, the Commission finds that, for the purposes of INTERPOL and in light of the interest of the data to international police cooperation, the case of the Applicant concerns a petty crime that does not meet the requirements of Articles 35, 97(2) and 99(2) of the RPD, for the circulation of a Diffusion.

### FOR THESE REASONS, THE COMMISSION

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

  
Vitalie Pîrlog  
Chairman of the Commission  
for the Control of INTERPOL's Files

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

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## TO WHOM IT MAY CONCERN

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Ref: LA/88732-751

The General Secretariat of the International Criminal Police Organization-INTERPOL hereby certifies that, as of today, Mr [REDACTED] born on [REDACTED], is not subject to an INTERPOL Notice or diffusion.

Done in Lyon, on 07 May 2021.



Office of Legal Affairs  
General Secretariat  
INTERPOL