



Request concerning [...]
(Ref. CCF/[...])

DECISION OF THE COMMISSION
(106th session, 16 - 19 October 2018)

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 106th session, on [...], delivered the following Decision.

I. PROCEDURE

1. On [...], [...] (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 the Applicant thereof on 5 June 2018.
2. In accordance with Article 34(1) of the Statute of the Commission (CCF Statute), the National Central Bureau of INTERPOL (NCB) of [...] and INTERPOL General Secretariat (IPSG) were consulted on the arguments set forth in the complaint.
3. On 4 July 2018, the NCB of [...] confirmed the validity of the proceedings and of the arrest warrant, and provided answers to some of the questions raised by the Commission. On [...], the Commission further consulted the NCB of [...], which provided answers regarding a number of questions that had been posed.
4. The Commission informed the Applicant on [...] that he is wanted through INTERPOL's channels by [...], for the charges of [...], and provided the information described in paragraph 9 below.
5. During the study of the Applicant's case, the Commission consulted the NCB of [...], in accordance with Article 34(2) of the CCF Statute, on arguments set forth in the complaint.
6. 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 106th session and invited to share any other information or document with the Commission before [...].

II. FACTS

7. The Applicant is a national of [...].
8. He is the subject of a Red Notice issued at the request of the NCB of [...] Illegal entrepreneurial activity [...] on the basis of an arrest warrant issued [...]. The Red Notice was issued [...] against the Applicant on the basis of this arrest warrant.
9. The summary of the facts, as recorded in the Red Notice, is the following: [...].

III. THE APPLICANT'S REQUEST

10. The Applicant requested the deletion of the data concerning him.

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11. He contends in essence that:

- a) the purpose of the Notice was achieved, as his location is known to [...] authorities;
- b) [...] authorities failed to request his extradition from [...];
- c) the proceedings do not respect the principles of due process and human rights / Article 2 of INTERPOL's Constitution.

IV. APPLICABLE LEGAL FRAMEWORK

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. Purpose of a red notice:

- Article 82 of INTERPOL's Rules on the Processing of Data (RPD) states that: "Red notices are published at the request of a National Central Bureau or an international entity with powers of investigation and prosecution in criminal matters in order to seek the location of a wanted person and his/her detention, arrest or restriction of movement for the purpose of extradition, surrender or similar lawful action".

14. Extradition:

- 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 10 of the Rules on the Processing of Data (RPD) states that data shall be processed in the INTERPOL Information System for a specific purpose.
- Article 34(1) requires that processing of data is authorized "pursuant to applicable national laws and international conventions".
- Article 82 of the RPD states that "Red Notices are published (...) in order to seek the location of a wanted person and his/her detention, arrest or restriction of movement for the purpose of extradition, surrender, or similar lawful action."
- 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."
- Article 87(b) also states that "The requesting National Central Bureau shall act immediately once it has been informed that the person has been located in another country and, in particular, shall ensure the swift transmission - within the time limits defined for the case in question - of data and supporting documents requested by the country where the person was located or by the General Secretariat."

V. FINDINGS

15. In reviewing the issues raised, the Commission based its findings on information provided by the Applicant, the NCBs concerned and INTERPOL's General Secretariat.
16. The Commission assesses the Applicant's contentions in the order in which they are described in paragraph 9 above.

17. For an appropriate study of the case, the Commission decided to study together under point A below the related issues of whether the purpose of the Red Notice was achieved and the lack of an extradition request, since they are interdependent and rely on the same factual allegations.

A. The purpose of the Red Notice and the lack of extradition request

a) The Applicant

18. The Applicant claims that his location has been known to the [...] authorities since he left the country in [...]. He states that he has not received any communications concerning the criminal proceedings against him, either from the [...] or the [...] authorities.
19. According to the Applicant, a red notice needed not have been issued against him - and, in fact, had no basis to be, as he did not abscond and was not escaping justice. He claims that the investigative authorities in [...] did not take any measures to establish his location, as his permanent place of residence and registered address in [...] was known to them.
20. In support of his claim, he provided decisions issued by the [...] judicial authorities against him; in two of such decisions, dated [...], his address of registration was mentioned.
21. Moreover, the Applicant states that his extradition from [...] is not possible because, pursuant to its Constitution, [...] does not extradite its own nationals. In fact, according to a document from the [...] Prosecutor's Office of the [...] submitted by the Applicant in support of his claims, the searches concerning him were terminated in [...].
22. The Applicant also submitted a decision issued by the [...] Prosecutor's Office of the Republic of [...] on [...], in which it is stated that [...] has not presented a request for his extradition to the [...] authorities.

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

23. The NCB of [...] confirmed that the criminal prosecution and searches declared against the Applicant remain valid and in place.
24. The NCB also provided the Commission with extensive details concerning the Applicant's possible participation in the crimes of which he is accused.
25. Moreover, the NCB stated that the Applicant has not yet been informed of the criminal prosecution against him as he fled [...] in [...] and his concrete whereabouts are unknown. Nevertheless, a lawyer appointed by the Applicant has been following the proceedings and participating in them; this proves, according to the NCB, that the Applicant is informed of the proceedings but has not yet appeared before the [...] authorities.
26. In response to the Applicant's argument that he cannot be extradited from [...], his country of nationality and of permanent residency, the NCB of [...] claims that that alone cannot be grounds for the cancellation of international searches, otherwise a vast majority of requests for cooperation would have to be cancelled.
27. The NCB did not confirm whether a request for the Applicant's extradition has been presented to the authorities of the [...].

c) The NCB of [...]

28. The Commission invited the NCB of [...] to confirm whether the Applicant had been arrested on the basis of the Red Notice, whether [...] authorities had received and processed a request for his extradition to [...], if so, what the current status or outcome of the request had been, and to present any further information they deemed important for the study of the file.
29. Despite reminders, the NCB did not respond to the Commission's queries.

d) Findings of the Commission

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30. The Commission highlighted that the Applicant is the subject of a red notice, whose purpose is, in accordance with Article 82 of the RPD, not only to seek the location of a person but also his/her arrest for the purpose of extradition, surrender, or similar lawful action.
31. The fact that the Applicant's location is known to [...] authorities does not undermine as such the lawfulness of the Red Notice.
32. The Commission also recalled that INTERPOL's rules require that the requesting NCB takes appropriate step to achieve the purpose for which the red notice was issued, i.e. to seek the arrest in view of extradition of the individual concerned, or provides reasonable grounds for the lack of action of its country.
33. Concerning the fact that the extradition of the Applicant was not requested despite the fact that his location in [...] was known to [...] authorities, the Commission recalled that it has no impact on the willingness of the authorities of [...] to respect their obligations under applicable laws and to request the extradition or the surrender of the Applicant from [...], if possible. Indeed, the Applicant is a national of [...], where he also resides, which does not extradite its citizens.

B. Violations to human rights standards: the refusal of transfer of proceedings

a) The Applicant

34. The Applicant argues that the existence of the Red Notice in his name represented a violation of his right to free movement and amounts to an interference in his private life.
35. He explains that he has requested the proceedings against him be transferred to [...], in application of the [...], of [...], to which both [...] and [...] are parties, and of articles of the Criminal Procedure Code of [...].
36. His request was dismissed by the [...] Prosecutor's Office of [...] on [...], on the grounds that the transfer of a case to another State is not imperative and must be analysed on a case by case basis. In support of this, the Applicant provided the Commission with a copy of the aforementioned decision.

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

37. In its reply, the NCB of [...] explained that the Red Notice and the international searches deriving from it fully comply with Article 2 of INTERPOL's Constitution and Article 19 of the RPD.

c) The NCB of [...]

38. As previously stated in paragraphs 28 and 29, the NCB of [...] did not answer the Commission's queries.

d) Findings of the Commission

39. Concerning the fact that [...] denied the Applicant's request relating to the transfer to [...] of the [...] criminal proceedings against the Applicant, the Commission recalled that [...] and [...] are two separate sovereign states and that the refusal of a country to transfer proceedings to another country is not, per se, contrary to applicable rules and international standards.
40. Therefore, the Commission held that the fact that [...] refused to transfer the proceedings to [...] was not contrary to INTERPOL's rules and to international standards.

FOR THESE REASONS, THE COMMISSION

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

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