



DECISION OF THE COMMISSION

The Commission for the Control of INTERPOL's Files (the Commission)...

Having deliberated in camera, delivered the following Decision. ...

I. PROCEDURE

1. On ..., the Requesting Party (hereafter “the RP”) lodged a complaint 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 him on
2. In accordance with article 5(e,4) of the Rules on the Control of Information and Access to INTERPOL's files, the National Central Bureau of INTERPOL of Country A was consulted on the arguments set forth in the complaint.
3. On ..., the NCB of Country A confirmed the validity of the proceedings and of the arrest warrant, and provided answers to the questions raised by the Commission.
4. The Commission informed the RP that his file should be presented and studied during the ... session of the Commission, and invited him to provide any further information he would consider necessary for the study of his file before
5. The NCB of Country B was also consulted by the Commission on specific issues raised by the RP's request.

II. FACTS

6. The RP is a national of Country A and Country B.
7. He is the subject of a Red Notice issued at the request of the NCB of Country A for ..., on the basis of an arrest warrant issued by the ..., on
8. The summary of the facts, as recorded in the Red Notice, is the following: “...”
9. On ..., the RP was arrested upon arrival at ... airport in Country B, on the basis of the Red Notice. On ..., the Country B authorities received a request for extradition from Country A, through diplomatic channels. Country B authorities denied the extradition on ..., due to the Country B nationality of the RP, and decided to prosecute him before national jurisdictions for the acts listed in the extradition request. On ... Country B jurisdictions dismissed all the charges concerning the RP, and released him from custody.

III. THE RP'S REQUEST

10. The RP requested the deletion of the data concerning him.
11. He contends in essence that the issuance of the Red Notice violates the principle of *non bis in idem*.

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".
- 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".

13. 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 10(a) of the Rules on the Control of Information establishes 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.

14. 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 12(7) of the International Covenant on Civil and Political Rights, adopted in 1966 and which entered into force on 23 March 1976 provides that "no one shall be subjected to a new trial for a new punishment for an offense for which he has already been acquitted or convicted by final judgement in accordance with the law and penal procedure of each country."

15. 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.
- 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".

V. FINDINGS

16. The Commission makes the following findings on the basis of the elements presented by the RP, the NCBs concerned and INTERPOL General Secretariat.

A. Violation of the principle of *non bis in idem*

a) *The RP*

17. The RP claims that after being arrested in Country B, he managed to demonstrate that he was also a Country B citizen. The Country B authorities, who do not extradite nationals, decided to prosecute him before a national Court. He contends that he has been discharged by a Country B Court on ... of all the ... offences referred to in the Red Notice concerning him.
18. The RP added that the Country B authorities have informed the authorities of Country A of their decision to prosecute him instead of extraditing him, in accordance with the “aut dedere aut judicare” principle.
19. Consequently, he asserts that Country A has to recognize the Country A decision and to cancel the searches against him, on the basis of the principle of protection against double jeopardy or *non bis in idem*. Indeed, he further explains that various international human-right treaties contain provisions protecting individuals from being tried or punished again for an offence after a final decision of conviction or acquittal of the same offence has been issued.
20. This claim raises the question of the application of the *non bis in idem* principle in this case.

b) *The NCB of the Country A (source of the data)*

21. In its reply, the NCB of Country A explained that Country B authorities, after determining that the RP was a Country B national, informed them on ... that his extradition was denied because Country B’s law precluded the extradition of nationals. On ..., the Country B Embassy formally advised Country A of this denial of extradition on the basis of nationality in a diplomatic note.
22. Regarding the RP’s claim that all charges against him were dismissed by a Country B Court, the NCB of Country A stressed that it did not seek, request, or acquiesce in transferring proceedings to Country B.
23. The NCB of Country A also underlined that under its law, decisions to prosecute generally rest with the prosecuting authorities. In this case, the competent prosecutorial officials of ... were consulted and expressed their desire to prosecute the subject in the appropriate Country A court for the crimes committed in the Country A. This decision was made after a careful examination of the evidence in the case and a determination that the interests of justice would best be served by trying the subject in the jurisdiction in which the alleged crimes were committed.
24. The NCB of Country A explained that as the Country B prosecution and court decision were not based on any request from, or evidence provided by the Country A, the subject’s *non bis in idem* claim was therefore without merit. It reasserted that respect for national decisions to investigate and charge criminal violations in the jurisdiction where crimes were committed was paramount, and that any other course of action could potentially allow fugitives to benefit by choosing the venue for their prosecution.

c) *The NCB of Country B*

25. In its reply to the Commission’s queries, the NCB of Country B confirmed that that the Court of Appeal of ... ruled against the RP’s extradition to Country A, due to his nationality.
26. As a result, the relevant extradition file was transmitted to the ... Court, which exercised criminal prosecution and issued an arrest warrant against the RP.

27. At the end of his trial, the Court ... issued the Decision ..., ordering the dismissal of all charges against the RP due to statutory limitation and his immediate release from custody.

d) Findings of the Commission

28. Concerning the application the principle of *non bis in idem*, the Commission considered the following elements:

- The RP has been prosecuted in Country B for the charges, and on the basis of the facts appearing in the extradition request sent by the Country A;
- The Country B Court decision has dismissed all the charges, due to statutory limitations existing in the national law;
- The Country B Court decision concerning the RP has become final;
- The Country A authorities have never forwarded the criminal proceedings to the Country B authorities nor otherwise agreed to the prosecution by the Country B authorities and they have not transmitted them all relevant information (evidence, witness statements, etc.);

29. The Commission recalled that the Red Notice is an international instrument that is not linked to the applicability of the principle of *non bis in idem* by one country or by a group of countries.

30. The provisions cited by the RP in its submissions (such as Article 12(7) of the International Covenant on Civil and Political Rights) relate to the application of *non bis in idem* within the same State or otherwise determined by agreement between States. There is no international legal basis for the application of the principle of *non bis in idem* in this case, nor is there a bilateral agreement between Country B and Country A on this matter.

31. The Commission decided that under these circumstances, the determination on the application of the principle of *non bis in idem* should be left to the competent national courts to be decided at trial or during extradition proceedings.

B. Remaining contentions

32. The Commission reminded that in studying a request it reviews all of the RP's arguments, except when irrelevant.

33. Relying on Article 13 of the UDHR, the RP states that he has a right to travel, which is infringed by the issuance of the Red Notice. The Commission recalled that UDHR Article 13 addresses two separate situations: paragraph 1 establishes a right with respect to movement and residence within a state, while paragraph 2 establishes a right to leave a country, and to return to one's own country.

34. These are general principles, which can be subject to lawful, necessary, and proportionate limitations as envisioned in UDHR Article 29. Sovereign states are therefore not prevented for instance from enacting legal requirements regarding access to their territory or from issuing an order to request the arrest of an individual suspected or convicted of having committed a crime.

35. The purpose of an INTERPOL Red Notice is to facilitate appropriate law enforcement action, based on such an order. Therefore, the Commission finds that the UDHR Article 13 is not infringed by the mere issuance of a valid Red Notice and that the RP's contention is without merit.

FOR THESE REASONS, THE COMMISSION

Concludes that the data challenged is compliant with INTERPOL's rules applicable to the processing of personal data
