



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”) addressed a preemptive request 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. As no data concerning the RP was registered in INTERPOL's files at the time, the Commission coordinated with INTERPOL General Secretariat for purposes of addressing the preemptive nature of the complaint.
3. On ..., the INTERPOL National Central Bureau (NCB) of Country A. sent a Red Notice request concerning the RP, for his arrest in view of extradition. The data concerning the RP was not unblocked by the INTERPOL General Secretariat upon receipt.
4. On ..., the General Secretariat provided the Commission with its preliminary assessment of the case and referred the matter for the Commission's attention.
5. On ... the Commission informed the RP of NCB of Country A's request for publication of a Red Notice, as described in paragraphs 8 and 9 below. The RP was also invited to share with the Commission any other information or document he would consider necessary for the study of his file.
6. In accordance with article 5(e,4) of the Rules on the Control of Information and Access to INTERPOL's files (RCI), the NCB of Country A. was consulted on the arguments set forth in the complaint.

II. FACTS

7. The RP is a national of Country A. He is residing in Country B.
8. He is wanted by Country A for ..., on the basis of an arrest warrant issued on ... by the judicial authorities of Country A.
9. The summary of the facts, as recorded in the request for Red Notice, is the following: “...”

III. THE RP'S REQUEST

10. The RP previously sent a preemptive request concerning the data processed in INTERPOL's files. He now seeks deletion of the data concerning him.
11. He contends in essence that 1) there is no evidentiary basis; 2) there is no offence; 3) no extradition has been yet requested by country A; 4) there are procedural issues.

IV. APPLICABLE LEGAL FRAMEWORK

12. Concrete elements characterizing effective participation of an individual to the acts he is accused of:

- Article 83.2(b) of the Rules on the Processing of Data (RPD) states: “Red notices may be published only when sufficient judicial data has been provided. Sufficient judicial data will be considered to include at least: (i) summary of facts of the case, which shall provide a succinct and clear description of the criminal activities of the wanted person, including the time and location of the alleged criminal activity; and (ii) the charges (...).”

13. Extradition issues

- Article 82 of the RPD states: “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(2) of the RPD 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): “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.”
- 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

14. In reviewing the issues raised, the Commission based its findings on elements provided by the RP, the NCBs concerned and INTERPOL’s General Secretariat.

Stage of investigations and extradition request

a) The RP

15. The RP argues there is no offence, in that
16. The RP further asserts that ..., which explains why ...
17. He also underlines that
18. In addition to the above, RP asserts that the facts he is accused of are of a commercial nature since there is no criminal intent, ...
19. Finally, the RP argued that despite knowing his whereabouts, no extradition has been yet requested from Country B

b) The NCB of Country A

20. The NCB of Country A answered that ...
21. The NCB provided that the RP played an active role in ...
22. The RP is involved in ... The NCB emphasized that the RP is required for the purpose of investigation ...
23. The NCB also indicated that the RP could not be represented by a lawyer in court or interrogated at his place of residence abroad because ...

24. Concerning the measures to be taken with Country B, the NCB of Country A specified the issue of transfer under the relevant provisions of Mutual Legal Assistance Treaty (MLAT) in force between the two countries. The NCB added that ...

c) Findings of the Commission

25. Article 83(2)(b) of the RPD provides: “Red Notices may be published only when sufficient judicial data has been provided. Sufficient judicial data will be considered to include at least: (i) summary of the facts of the case, which shall provide a succinct and clear description of the criminal activities of the wanted person (...) (ii) charges (...)”.

26. Article 84(2) of the RPD: “the red notice request has been coordinated with the relevant authorities responsible for extradition, and assurances have been given that extradition will be sought upon arrest of the person, in conformity with national laws and/or the applicable bilateral and multilateral treaties”.

27. On the basis of the information it has received, there appears to be no dispute that:

- Enquiries by Country A ... against the accused are in progress, and ...;
- Extradition proceedings under the provision of the extradition treaty ... have not been undertaken, rather an application is in the process of being sent to Country B under the relevant provisions of the MLAT between the countries to obtain the RP’s transfer for a purpose other than extradition.

28. The Commission holds that in light of the current status of the proceedings relating to the RP in Country A, a Red Notice appears to be premature. The information provided by the NCB of Country A demonstrates that enquiries are still in progress concerning existence of direct evidence regarding the.... Accordingly, the investigation has not progressed to a point at which the investigating authorities can yet identify ...

29. Also, Country A is apparently not yet able to seek extradition from Country B. Rather than seek the RP’s extradition, Country A appears to be in the process of invoking the MLAT between the countries, for the purpose of transferring the RP to country A in order that he may assist in investigations or giving evidence in proceedings. The Commission takes no view as to whether or not it would be possible to invoke this treaty in this situation, for this is a matter for the governments of both countries to determine. The Commission notes, however, that the purpose of a Red Notice is not to obtain the transfer of a person in order to assist in an investigation or give evidence in proceedings. Its purpose rather is to facilitate the seeking of a person’s extradition. That Country A is proceeding under the MLAT at this stage is further indication that the investigation has not progressed to the point at which extradition can be sought.

30. On balance, the overall situation causes the Commission to find that, at this stage, the investigation has not yet progressed to the point of Country A authorities having charged the RP within the meaning of Article 83(2)(b) of the RPD or seeking extradition as required by Article 84(2) of the RPD.

FOR THESE REASONS, THE COMMISSION

1. Concludes that the data challenged are not compliant with INTERPOL’s rules applicable to the processing of personal data;
2. Recommends that the data provided by the NCB of Country A concerning the RP be deleted from INTERPOL’s files.
