



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 INTERPOL General Secretariat, and forwarded to the Commission on the same day.
2. In accordance with article 5(e,4) of the Rules on the Control of Information and Access to INTERPOL's files (RCI), the National Central Bureau of INTERPOL (NCB) of Country A was consulted on the arguments set forth in the complaint.
3. This request was studied by the Commission during its ... session at which time the Commission decided that, on the basis of the available elements, it was not able to determine that the processing of the data challenged would not be compliant with INTERPOL's Rules. The Commission recommended should Country B confirm the extradition denial of the RP to Country A that an addendum be added to the RP's file.
4. On ..., the RP and the NCB of Country A were informed of this outcome.
5. On ..., the RP lodged a new complaint addressed to the Commission. On ... he was informed of the conditions for re-examination of a file.

II. FACTS

6. The RP is a national of Country C.
7. He is the subject of a Red Notice issued at the request of the NCB of Country A on ...for..., on the basis of an arrest warrant issued on ...in Country A..
8. The summary of the facts, as recorded in the Red Notice, is the following: “...”

III. THE RP'S REQUEST

9. In both his original complaint and the request for reexamination the RP requested the deletion of the data concerning him, contending, in essence that 1) Country A has no jurisdiction over any dispute, and the Red Notice is unlawful; 2) Country B courts have ruled in his favour, therefore there is a violation of the principle of *non bis idem*; 3) political element in the publication of the Red notices, as the plaintiff, has connections in the government of Country A; 4) Country B has denied his extradition to Country A.

IV. APPLICABLE LEGAL FRAMEWORK

10. Re-examination

- Article 19(1) of the Operating Rules of the Commission for the Control of INTERPOL's Files (Re-examination) provides: "An application for reexamination of a request by the Commission may be made by the requesting party only when it is based on the discovery of a fact which would probably have led to a different conclusion if that fact had been known at the time the request was processed."

V. FINDINGS

11. The findings of the Commission were based on the elements before it, as presented by the RP, the NCBs concerned and INTERPOL General Secretariat.

a) The RP

12. In his letter requesting a new consideration of the case by the Commission, the RP provided in essence, the following information:

- Country A has no jurisdiction over any dispute, and the red notice is unlawful;
- Country B courts have ruled in his favour, therefore there is a violation of the principle of *non bis idem*;
- there is a political element in the publication of the red notice, as the plaintiff has connections in the government of Country A;
- Country B has denied his extradition to Country A.

13. To support his claim he provided the copy of a document dated ... issued by judicial authorities of Country B, stating that the extradition of the RP had been filed due to the "lack of seriousness of the demand" and of providing the extradition file.

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

14. The NCB of Country A was invited to address the question of the extradition of the RP. In its reply the NCB explained that the authorities of Country A had submitted a request for extradition to the authorities of the Country B in

15. The NCB further added that Country B responded by a Note Verbale explaining that the condition for extradition of the RP's was that Country A concludes an extradition treaty with Country B. All necessary procedures for drafting the said agreement have been done in Country A. The NCB explained that the extradition treaty, of which a copy is provided, would be delivered to Country B

16. The NCB added that the Embassy of Country C in Country A had also been informed of the ongoing procedures.

c) The NCB of the Country B

17. The NCB of the Country B stated that their authorities were still considering the case against the RP and had not closed the file completely.

d) Findings of the Commission

18. The RP previously requested the deletion of his information stored by INTERPOL, and that request was denied. He has now filed a new complaint, which is considered to be the equivalent of a request for reexamination of the prior decision.

19. To determine whether a request may be re-examined, under Article 19 of the Operating Rules of the Commission for the Control of INTERPOL's File, the party seeking re-examination must establish "the

discovery of a fact which would probably have led to a different conclusion if that fact had been known at the time the request was processed”.

20. The RP had a full opportunity to raise all relevant facts and legal arguments when he originally sought deletion of his information. In his most recent filing, the RP makes a number of factual and legal arguments that were either already made, or, to the extent they were not previously made, do not constitute “the discovery of a new fact which would probably have led to a different conclusion if that fact had been known at the time the request was processed.” More detailed information establishing that the requirements of Article 19 of the Operating Rules are not met is set forth below. Thus, reconsideration of this argument is procedurally barred.
21. In view of the elements mentioned above, and of the Commission’s previous conclusions, the Commission found that the only new element provided by the RP was that Country B would have denied his extradition to Country A.
22. However the answers provided by the NCBs of Country A and Country B, demonstrated that the procedure is still in progress and is leading to the adoption of an extradition treaty to be signed between these countries.
23. Therefore, the Commission finds that there is no new fact which falls within the circumstances for which reexamination under Article 19 is available.

FOR THESE REASONS, THE COMMISSION

Concludes that the conditions to re-examine the case have not been met.
