

## **The power of the Interpol Red Notice**

*In this article, Catherine Heard and Alex Tinsley of Fair Trials International reveal the human impact of Interpol “red notices”. They argue that more must be done to protect Interpol’s systems against abuse and to provide a fairer system for challenging red notices in cases of possible injustice.*

### **Introduction**

Fair Trials International assists individuals who are facing trial in a country other than their own. Its focus is on cross-border criminal cases. In this context, Fair Trials International has worked on several cases raising questions over Interpol red notices. This article examines some common features among three of these cases: one, a businessman and US citizen; the second, a union leader from Mexico; and the third, a West Papuan independence activist. The article puts the case for reform of Interpol’s systems for issuing red notices and for addressing the complaints of those who suffer injustice as a result of them.

### **The power of the Interpol red notice**

#### **Case 1: Ilya Katsnelson, wanted by Russia**

In testimony to the US Helsinki Commission in 2009, Ilya Katsnelson, a US citizen, businessman and father of three, described the following events, which took place as a result of an Interpol red notice issued against him at Russia’s request.

“While driving through Germany to my home in Denmark, I was stopped near the Danish border for a routine document check. After close scrutiny of my U.S. passport, the officer advised me that I was to be detained due to an Interpol Arrest Order issued by the Russian authorities. The next day, four special forces police troops, clad in balaclava hats, bulletproof vests and military fatigues entered my detention cell, handcuffed me, put a bag on my head and dragged me to a waiting car. I travelled in a five car cortege with a police escort at the front and back. With blaring sirens we raced at 100 mph to the court house. The guard next to me had his machine gun trained on me at all times”.

Katsnelson was escorted to the ferry to Germany by policemen armed with machine guns. He was then detained in prison for almost two months, before his legal team managed to secure his return to Denmark. Denmark has taken no steps to arrest or extradite him to face the charges Russia has brought, which Katsnelson maintains are politically-motivated.

The United States has similarly taken no steps to extradite Katsnelson. Yet the red notice remains in place, meaning he faces a risk of re-arrest and detention whenever he crosses an international border. Even when returning with his family on vacations to the United States, Katsnelson is systematically detained and questioned about his plans. He has asked Interpol to remove the notice, but to no avail.

### **Interpol – key facts**

Interpol is one of the largest international organisations in the world, with 190 member countries and an annual budget of nearly €60 million. Headquartered in Lyon, France, it also has seven regional offices across the world. It has representative offices at the United Nations and at the European Union. Most of Interpol’s annual income derives from member countries’ contributions. There is no detailed public information on its finances, on how state contributions are calculated, or where the rest of Interpol’s funding comes from.

Interpol's chief function is to provide liaison between the law enforcement agencies of its member countries, principally communications and database assistance. Interpol's databases contain vast numbers of fingerprints, wanted or missing person details and DNA samples. Interpol's secure worldwide communications network allows its agents and member countries to contact each other 24/7. These services play an important role in facilitating international police cooperation and combating serious crime. However, the cases suggest they are open to abuse, particularly around the use of red notices.

### **Red notices: "a Wanted Poster with teeth"<sup>1</sup> - as Henk Tepper's case shows**

A red notice is an alert issued by Interpol at the request of a member country, indicating that that country seeks an individual's provisional arrest with a view to extradition. In 2011, 7,958 people were arrested or detained following the publication of these notices<sup>2</sup>.

Red notices originate after domestic arrest warrants have been issued by national agencies. Interpol then uses the information in the domestic warrant to produce the red notice, which is circulated globally and allows police and border agencies in other countries to arrest and detain the suspect, ostensibly to await extradition to the country where the charges originate.

A red notice is recorded on Interpol's databases for instant circulation around all the world's police forces. Some are also published on Interpol's public website. This is done by Interpol's General Secretariat at the request of a member country's designated authority, known in Interpol parlance as its National Central Bureau (NCB).

A red notice is not an arrest warrant. However, states choose how to act on a red notice: many consider it a sufficient legal basis for arrest and preliminary detention. Whether the person is further detained pending extradition and in what conditions (in terms of access to legal advice and consular assistance) is, again, at each state's discretion. The results of a red notice are therefore unpredictable and often devastating to individuals involved. Last year, Canadian businessman Henk Tepper was on a trade mission in Lebanon when he was arrested, on a red notice issued at Algeria's request in connection with an allegedly substandard consignment of potatoes from his farm. He spent nearly a year in a Lebanese jail before being allowed to return to Canada, his business by then close to ruin.

### **Impact of red notices - damage to business, reputational harm**

The risk of experiencing an ordeal like Henk Tepper's means that people who know there is a red notice against them refrain from travelling for fear of what will happen at the border. Red notices therefore, of themselves, result in a curb on free movement.

Red notices can also have other severe effects, including damage to reputations and businesses. Individuals subject to red notices are labelled "wanted international criminals" and, as a result, can lose their jobs, have travel visas refused, asylum applications turned down, bank accounts closed and loan applications denied. They can even lose their livelihoods. This has serious consequences for whole families, not just the individuals affected by red notices.

### **Recent surge in use of red notices**

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<sup>1</sup> Ben Howard, Warner Center News, California, June 21, 2012

<sup>2</sup> *Idem*

The red notice has surged in popularity among the world's law enforcement agencies, doubtless because of the way it facilitates the rapid location of fugitives. In 2005, Interpol issued 2,343 red notices. In 2011 it issued 7,678.

Interpol's 'i-link' system (introduced in 2009) allows countries to communicate red notices to other member countries in draft, that is, before they have been formally issued by Interpol's General Secretariat. This system allows notices to be recorded straight onto Interpol's database by the NCB before any detailed legal review of the draft notice has been carried out by Interpol to check compliance with its rules. Arrests can take place on the basis of draft notices.

### **Interpol rules on political neutrality and respect for human rights – do they go far enough?**

Interpol's activities, including the way that red notices are issued, are limited and defined by its Constitution. Article 2 of the Constitution requires Interpol to comply with the 'spirit of the Universal Declaration of Human Rights'. Under Article 3, 'It is strictly forbidden for [Interpol] to undertake any intervention or activities of a political, military, religious or racial character.' This is referred to on Interpol's website as the "neutrality" principle. Interpol has a duty to ensure that its notices comply with these rules before they are processed, but how this fits with the new "i-link" system is unclear.

Interpol is also bound by a set of operating rules, which require information to be processed in accordance with these cardinal rules in the Constitution. A new set of rules ("Rules on the Processing of Data") were agreed last year and apply as from July 1, 2012. The new rules contain some sensible amendments: for example data is to be retained for an initial maximum of five years (49); the General Secretariat is required to cancel a notice if it no longer meets the conditions for publishing a notice (81(c)), and an NCB requesting a red notice is required to provide assurances that extradition will be sought upon arrest of a person (84(b)).

However, it is the NCB that is responsible under the rules for deciding whether data needs to be retained beyond the initial expiry date (50(1)), and the General Secretariat cannot override its decision. Further, the NCBs are primarily responsible for ensuring data transmitted to Interpol complies with the Constitution and fundamental rights standards. As some of the NCBs represent states with poor human rights records, this reliance on their good offices appears optimistic, at best. It is also not clear whether Interpol plans an immediate review of existing cases in light of the new rules.

In 2011, the International Consortium of Investigative Journalists analysed a snapshot of all public red notices on Interpol's website, as at 10 December 2010. This included 7,622 red notices issued at the request of 145 countries. More than 2,200 of the red notices were issued on behalf of countries that do not adequately safeguard human rights, including Russia, Belarus, Iran and China. It is therefore unsurprising that in many cases, politically active individuals who have fled persecution in some of these countries only to discover they are subject to a red notice issued at that country's request, will consider that their red notice is politically motivated, in breach of Interpol's rules. Benny Wenda is one example.

### **Misuse of red notices to pursue refugees who are political opponents Case 2: Benny Wenda, wanted by Indonesia**

Benny Wenda is a key figure in the movement for the independence of West Papua from Indonesia. In 2002, shortly after the murder of the leader of the Papuan movement, Benny

was imprisoned and subjected to a seriously flawed trial for his alleged role in an arson attack. He managed to escape and fled to the UK, where he was granted asylum.

Safe in the UK, Benny was able to pursue his campaigning for West Papuan independence. He promoted his cause through websites and attended events around the world. In 2008 he helped found the International Parliamentarians for West Papua (IPWP), increasing the international profile of his campaign. He was frequently asked to attend overseas events.

In 2011, Benny discovered that he was subject to an Interpol red notice, published on Interpol's website. The notice has stifled Benny's activism: vulnerable to arrest throughout the world, he can no longer attend campaign events. For example, in 2012, the IPWP invited Benny to an event in Canberra, Australia, which he could not attend for fear of arrest and extradition. At no stage has Indonesia sought his extradition from the UK.

### **Can people find out if they are subject to a red notice?**

The first step is to check Interpol's website as some red notices are publicly listed, although most are circulated only within the closed database accessed by NCBs. It may also be possible to apply to the NCB in the country where the individual is based to see if a red notice has been circulated to it. However, that option will depend on national data protection laws.

The direct route is the 'right of access' to information provided under Interpol's Constitution. An individual can make this request to the CCIF, using the pro forma document on Interpol's website. The CCIF, part of the Interpol structure, is tasked with ensuring Interpol's data processing complies with its rules and handling individual requests. However, it can only disclose information 'subject to the agreement of the source', that is, the NCB in the prosecuting state. If that NCB refuses, the CCIF will not be authorised to tell the individual whether or not there is a red notice.

### **How can an individual challenge a defective or unlawful red notice?**

People who lose or risk losing their liberty, livelihood or reputation as a result of red notices have three possible routes to seek a remedy:

- (i) asking their country to protest against the red notice;
- (ii) arguing their case before the national authorities of the requesting country; and
- (iii) seeking an *ex post* review from the CCIF.

Regarding option (i), it would seem that the most a national body could do is confirm it will not arrest or extradite a person. However, this would not necessarily lead to the removal of the red notice. Even if a person's extradition is refused on proper grounds (for example, due to the risk of torture or the death penalty in the requesting state), the red notice still does not need to be removed: instead, Interpol may choose to update it with an "addendum" referring to the refusal to extradite. As to option (ii), challenges against the state where the request for a red notice originated also seem unlikely to succeed, particularly where the authorities in that country are hostile to the individual concerned. The case of Napoleon Gomez demonstrates this.

### **No proper remedy against abuse**

#### **Case 3: Napoleon Gomez, wanted by Mexico**

Napoleon Gomez Urrutía is the leader of the major Mexican mining union 'Los Mineros'. Since 2006, state authorities have repeatedly accused him of misappropriating US\$ 55m from a Union trust fund (the money was transferred to the Union itself, not to Gomez). Ten

different criminal cases have been opened by Mexico, all based on the same events. Of these, three never made it past preliminary investigations, and the other seven have been dismissed by the courts (the last is still technically valid by reason of a prosecutorial appeal). The Union maintains this is a persecution.

Gomez left Mexico in 2006 after receiving death threats. He has since lived in Canada, which, having notice of the allegations in Mexico, has granted him permanent residence. Mexico sought an Interpol red notice in 2006, which has stayed in place despite the various arrest warrants in Mexico being quashed by the courts there.

Gomez has been unable to attend union events abroad due to the live red notice against him. In 2011, he was awarded the Meany-Lane Kirkland Human Rights Award in recognition of his outstanding leadership and defence of union rights, but he could not receive it in person in the US as the authorities refused his visa application because of the red notice. In June 2012, he was invited to attend a seminal international labour union event in Copenhagen, Denmark, but again had to appear by video-conference because he could not obtain guarantees of safe passage.

### **Challenging a red notice through the CCIF – in focus**

Realistically, the only option for individuals wanting red notices against them removed on the ground that they should not have been issued, is to write to the CCIF seeking a review. However, the CCIF itself can only offer limited relief. The CCIF can issue recommendations to Interpol’s General Secretariat, including that a red notice be removed from the public website, amended, or deleted altogether. These recommendations, though usually followed in practice, are not legally binding and can be overturned by a simple majority of the General Assembly, whose proceedings are private. There is no appeal against the decision ultimately taken in response to the CCIF’s recommendations.

The current Chair of the CCIF has stated that 21 of the 215 complaints filed in 2009 with the CCIF claimed they were being targeted for political reasons. In 2010, the CCIF recommended that Interpol delete 21 cases from its databases altogether and also that it remove a further 73 notices from its public website (meaning police could still see and act on these notices).

Though the CCIF is the only realistic chance of getting a red notice deleted, it is not user-friendly (as the summary below illustrates). There is no right to a hearing or disclosure. Individuals do not receive a reasoned response (though the CCIF is required to give reasons for any finding of inadmissibility). There is no expedited procedure even for urgent cases, and recommendations usually take several months to be issued following admissibility decisions.

### **Gomez, Katsnelson and Wenda complaints to CCIF**

	<b>Complaint made</b> (arguments)	<b>CCIF response(s)</b> (detail)	<b>Current status</b>
<b>Gomez</b>	<b>May 18, 2012 (email)</b> (red notice lacked foundation in a national arrest warrant; red notice politically motivated; urgent response sought given event in Copenhagen)	<b>20 June</b> (confirming admissibility)	Pending

<b>Katsnelson</b>	<b>Sept 18, 2009</b> (Denmark has not extradited; harm to family life, business and reputation; not a “fugitive” as alleged by Russia, as whereabouts publicly known.)	<b>September 24, 2009</b> (confirming admissibility)  <b>July 19, 2010</b> (addendum noting Denmark has not extradited)  <b>Oct 14, 2010</b> (investigations still ongoing)  <b>May 2011</b> (investigations complete; red notice to stay in place with addendum about alleged political motive to Russian charges)	Closed
<b>Wenda</b>	<b>April 24, 2012</b> (red notice a political device, contrary to spirit of the UDHR and serving improper purpose)	<b>May 3, 2012</b> (confirming admissibility; as an interim measure, red notice unavailable to Interpol members)	Pending

### Litigation - an alternative?

Individuals bringing claims against Interpol itself rarely get to first base, as courts refuse to adjudicate claims against it. Under its Headquarters Agreement with France, French courts cannot hear cases against it. The Headquarters Agreement states that all Interpol documents are “inviolable”, wherever they are located, and that Interpol data is subject only to Interpol’s internal rules. Research by Fair Trials International suggests that no national or international court has ever issued a decision against Interpol at the suit of an individual litigant.

For US purposes there is also effective immunity from suit. Interpol has been recognised in the US as an international organisation since 1983, but it did not, until recently, enjoy all the associated privileges until 2009, when Barack Obama signed Executive Order 13524, removing those limitations, effectively granting Interpol immunity.

### What next?

Gomez, Katsnelson and Wenda cases are just some of the many individuals Fair Trials International has encountered who have suffered injustice as a result of red notices and the inadequate mechanisms to challenge these. Our individual casework is revealing clear patterns and the cross-border lawyers we work with across Europe and beyond are seeing similar cases.

The reforms contained in Interpol’s new rules, in force from 1 July 2012, do not go far enough. It is imperative that Interpol’s review procedures meet a higher standard of procedural justice, in order to protect this important international crime-fighting body from abuse and ensure that its systems help countries to deliver justice, rather than undermine it.