Abusive recourse to the Interpol system: the need for more stringent legal safeguards

Parliamentary Assembly

1. The Parliamentary Assembly stresses the importance of Interpol as an efficient instrument for international co-operation in the fight against transnational crime, including terrorism.

2. Interpol is based on mutual assistance among national law-enforcement authorities and should function with full neutrality and respect for the human rights of suspects.

3. The International Notices system allows police in member countries to share critical crime-related information. Police can use notices to alert law-enforcement bodies in other countries of potential threats or to ask for assistance in solving crimes. "Red Notices", in particular, are used to seek assistance in locating and arresting a person wanted by a national jurisdiction or an international tribunal, with a view to extradition. The number of Red Notices has increased dramatically over the last decade.

4. Article 2 of its constitution requires Interpol to act in the spirit of the Universal Declaration of Human Rights and Article 3 strictly prohibits any intervention or activities of a political, military, religious or racist character. In a number of cases in recent years, however, Interpol and its Red Notice system have been abused by some member States in the pursuit of political objectives, in order to repress freedom of expression or to persecute members of the political opposition beyond their borders.

5. Red Notices have a serious negative impact on the human rights of targeted persons, including the rights to liberty and security and the right to a fair trial. Red Notices should therefore be requested by National Central Bureaus (NCBs) and circulated by Interpol only when there are serious grounds for suspicion against the targeted person. These grounds should be verified following procedures designed to minimise the possibility for abuse, without hindering international police co-operation in the vast majority of legitimate cases.

6. Targeted persons cannot successfully challenge Red Notices before any national or international courts. This jurisdictional immunity can only be justified insofar as an internal appeals mechanism provides an effective remedy, in accordance with applicable human rights standards. In this respect, Interpol’s Commission for the Control of Files (CCF) has been criticised for being ill-equipped to deal with the large and growing number of complaints and their complexity.

7. The Assembly notes that Interpol has reacted to these criticisms by engaging in a dialogue including civil society. Interpol’s Working Group on the Processing of Information submitted a number of reform proposals adopted at Interpol’s General Assembly in Bali (Indonesia) in November 2016. Recent improvements, including those decided in Bali, include:

7.1. further strengthening Interpol’s internal vetting procedures before Red Notices are published, by setting up a task force consisting of lawyers, police officers and analysts;

7.2. appointing a data protection officer within Interpol’s secretariat general;

1. Assembly debate on 26 April 2017 (15th Sitting) (see Doc. 14277, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Bernd Fabritius). Text adopted by the Assembly on 26 April 2017 (15th Sitting).
7.3. strengthening the CCF, whose new statute entered into force in March 2017, in particular by separating its advisory function from its appeals function, increasing the number of members of the appeals chamber to five, setting clear timetables for its work, making its findings binding on Interpol and increasing the resources at its disposal.

8. The Assembly welcomes these reforms as steps in the right direction. It stresses the importance of their implementation and calls on Interpol to continue improving its Red Notice procedure in order to prevent and redress abuses even more effectively, including by:

8.1. further strengthening the preventive checks before Red Notices are circulated, in particular by:

8.1.1. increasing the capacity of Interpol’s task force entrusted with such checks by bolstering the resources placed at its disposal;

8.1.2. ensuring that information on relevant cases made available by international or regional intergovernmental human rights bodies (in particular the United Nations High Commissioner for Refugees, the United Nations High Commissioner for Human Rights and the competent bodies of the Council of Europe) and, if appropriate, by non-governmental human rights organisations is duly taken into account;

8.1.3. publishing sufficiently detailed, authoritative interpretations (“repositories of practice”) of Articles 2 and 3 of the constitution and of Interpol’s policy in refugee and asylum cases;

8.1.4. re-examining Red Notices periodically to ensure that they are deleted when they have not given rise to successful extradition within a reasonable amount of time;

8.1.5. examining with particular care repetitive Red Notice requests emanating from the same NCB targeting the same person after earlier requests were either rejected by Interpol or deleted following a decision of the CCF;

8.2. strengthening the CCF as an appeals mechanism by:

8.2.1. making it fully independent from Interpol, in particular by continuing to ensure that staff members dealing with preventive checks are not involved in assessing complaints against Red Notices which had passed these checks;

8.2.2. increasing its capacity, in particular by making sufficient staff available with expertise in the fields of human rights and criminal law and procedure;

8.2.3. ensuring that the CCF fulfils minimum procedural standards, in particular by enabling the targeted persons and their lawyers to be informed of and to comment on the reasons for the Red Notice request given by the requesting NCB;

8.2.4. ensuring that the CCF responds to and resolves appeals within a reasonable time, taking into account the gravity of the consequences of a Red Notice for a targeted person;

8.2.5. ensuring that the CCF publishes its decisions, provided the applicants agree; the decisions shall be sufficiently motivated in order to contribute to the development of consistent and predictable case law;

8.3. dealing appropriately with NCBs which have repeatedly abused the system for requesting publication of Red Notices, in particular by:

8.3.1. keeping statistics on Red Notices filtered out upstream by Interpol’s preventive mechanism and downstream by successful challenges before the CCF;

8.3.2. subjecting new Red Notice requests by NCBs that have previously submitted a high number of abusive requests to more intensive prior scrutiny;

8.3.3. prioritising scrutiny by the CCF of complaints made against Red Notices requested by NCBs that have previously submitted a high number of abusive requests;

8.3.4. charging NCBs that submit a high number of abusive requests for the additional budgetary costs generated by the more intensive scrutiny of their requests and of complaints made against their requests;

8.4. setting up a compensation fund for victims of abusive or otherwise unjustified Red Notices financed by member States in proportion to the number of unjustified Red Notices emanating from their NCBs.
9. The Assembly calls on all member States of the Council of Europe to:

9.1. set a positive example by ensuring that Red Notice requests from their own NCBs clearly specify the targeted persons, the suspected crime and the elements of proof linking the targeted person to the alleged crime;

9.2. swiftly communicate to Interpol relevant information on persons targeted by Red Notices (for example, the granting of political asylum and judicial decisions refusing extradition);

9.3. refrain from carrying out arrests on the basis of Red Notices when they have serious concerns that the notice in question could be abusive;

9.4. make use of their influence within Interpol to ensure the implementation of necessary reforms so that Interpol respects human rights and the rule of law whilst remaining an effective tool for legitimate international police co-operation.