

The Burden of Proof: Is It Always Fair to the Red Notice Subject?

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Since we have been on the issue of the ease with which Red Notices often seem to be obtained by INTERPOL member countries, today's discussion centers on the burden of proof faced by Red Notice subjects and their lawyers.

Once it is issued, a Red Notice is presumed to be accurate and proper, according to INTERPOL's rules. In order to overcome that presumption, substantial and competent evidence must be presented to show precisely which rules or laws have been violated.

When an NCB has complied with all of the rules governing INTERPOL member countries, this presumption may be fair. But when a member country has engaged in illegal behavior or has a consistent record of human rights violations, the idea that the member country enjoys such a presumption is a bit hard to stomach.

In order to be successful in their challenges, Red Notice subjects and their attorneys are required to obtain credible evidence of the illegalities and/or rules violations in their cases. The evidence must be presented in a clear, cogent, and persuasive manner, and then the subject must wait for a decision. If that evidence cannot be found, it can be quite difficult to prevail on a request for a Red Notice removal or modification.

As to the question of whether that burden is fair, NCB's would likely think it is. Red Notice subjects, however, probably disagree.

As always, thoughts and comments are welcomed.