FF. Communication No. 1493/2006, *Williams Lecraft v. Spain*

(Views adopted on 27 July 2009, Ninety-sixth session)[*]

Submitted by:	Ms. Rosalind Williams Lecraft (represented by Open Society Justice Initiative, Women's Link Worldwide and SOS Racismo-Madrid)
Alleged victim:	The author
State party:	Spain
Date of communication:	11 September 2006 (initial submission)
Subject matter:	Discrimination resulting from an identity check
Procedural issues:	Abuse of the right to submit communications; insufficient substantiation of allegations
Substantive issue:	Racial discrimination
Articles of the Covenant:	2, paragraph 3; 12, paragraph 1; 26
Articles of the Optional Protocol:	2 and 3

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 27 July 2009,

Having concluded its consideration of communication No. 1493/2006, submitted to the Human Rights Committee by Ms. Rosalind Williams Lecraft under the Optional Protocol to the International Covenant on Civil and Political Rights,

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[*] The following members of the Committee participated in the consideration of the present communication: Mr. Abdelfattah Amor, Mr. Mohammed Ayat, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Mr. José Luis Pérez Sánchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabián Omar Salvioli and Mr. Krister Thelin.

The text of the dissenting opinion of Committee members Mr. Krister Thelin and Mr. Lazhari Bouzid is appended to the present document.

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication, dated 11 September 2006, is Rosalind Williams Lecraft, a Spanish citizen born in 1943, who claims to be the victim of a violation by Spain of article 12, paragraph 1, and article 26, read in conjunction with article 2 of the Covenant. She is represented by counsel. The Optional Protocol entered into force for Spain on 25 April 1985.

The facts as submitted by the author

2.1 The author, who is originally from the United States of America, acquired Spanish nationality in 1969. On 6 December 1992, she arrived at Valladolid railway station from Madrid with her husband and son. Shortly after she got off the train an officer from the National Police approached her and asked to see her National Identity Card. The police officer did not ask anyone else who was on the platform at that time, including her husband and son, for their identity cards. The author asked the police officer to explain the reasons for the identity check; the officer replied that he was obliged to check the identity of people like her, since many of them were illegal immigrants. He added that the National Police were under orders from the Ministry of the Interior to carry out identity checks of "coloured people" in particular. The author's husband observed that that was racial discrimination, which the police officer denied, asserting that he had to carry out identity checks owing to the high number of illegal immigrants living in Spain. The author and her husband asked the police officer to produce his own National Identity Card and police badge, whereupon he replied that if they did not change their attitude he would arrest them. He escorted them to an office in the railway station where he recorded their personal details, and at the same time showed them his identity badge.

2.2 The following day the author went to the San Pablo district police station to file a complaint of racial discrimination. The complaint was dismissed by Valladolid investigating court No. 5 on the ground that there was no evidence that any crime had been committed. The author did not appeal against this decision; instead, on 15 February 1993, she filed a complaint with the Ministry of the Interior challenging its alleged order to the National Police to conduct identity checks on coloured people.

She also claimed that the General State Administration should be held materially responsible for the police officer's unlawful action. She asserted that the practice of carrying out identity checks based on racial criteria was contrary to the Spanish Constitution and the European Convention for the Protection of Human Rights and Fundamental Freedoms, and that the identity check carried out on her had caused her and her family moral and psychological injury. She therefore requested compensation of approximately 5 million pesetas. To support her request the author submitted a medical certificate dated 15 March 1993 stating that she was suffering from "social phobia" and "agoraphobic trauma" caused by "an identity check by the police in a railway station, based on racial discrimination".

2.3 In a decision of 7 February 1994, the Ministry declared the first part of the author's complaint inadmissible; it held that there was no order obliging members of the State Security Corps and Forces to identity people by their race. If such an order existed it would be unconstitutional *ipso jure*. The Ministry also declined to consider the lawfulness of the identity check carried out on the author, since her complaint related solely to a general order and not to what had happened to her. An appeal against the decision was lodged with the administrative division of the National High Court (*Audiencia Nacional*), which dismissed it in a ruling of 15 March 1996.

2.4 The claim about the General State Administration's material responsibility was also dismissed by the Ministry of the Interior, which held that the police officer in question had been acting within his authority to control illegal immigration and responding to the author's foreign appearance, in the assessment of which police officers could take into account the racial characteristics of the current Spanish population. The author lodged an appeal against this decision with the National High Court.

2.5 On 29 November 1996, the National High Court dismissed the appeal. Among other things, it considered that the police officer's behaviour arose out of legislation on foreigners according to which police officers were under orders to identify foreigners at Valladolid railway station. Since the author was black, the request for identification was not disproportionate. In addition, article 20 of the Public Security Organization Act authorized the authorities to carry out such procedures "whenever ascertaining the identity of those concerned is necessary for the purpose of maintaining security"; and it had not been shown that the police officer's conduct had been inconsiderate or humiliating.

2.6 The author filed an application for *amparo* with the Constitutional Court, which was dismissed in a judgement of 29 January 2001. The Court considered that the request for identification was not a clear case of discrimination, since the administrative proceedings had determined that there was no specific order or instruction to identify individuals of a particular race. As to the matter of whether there had been any covert racial discrimination, the Court found no evidence that the National Police officer's conduct was dictated by racial prejudice or any particular intolerance of members of a specific ethnic group.[1]

2.7 After the Constitutional Court had handed down its judgement, the author considered approaching an international body. She did not do so, however, because of her emotional state as a result of nine years of litigation and financial problems. At that time, Spanish law did not provide for free legal assistance for the type of remedies she was seeking; she therefore bore all the costs herself. After the Constitutional Court judgement was issued, she could not afford to seek further remedies.

The complaint

3.1 The author alleges that she was the victim of direct racial discrimination. The reason she had to undergo the identity check was that she belonged to a racial group not normally associated with Spanish nationality. She herself was a Spanish citizen but was treated less favourably than other Spanish citizens (including her husband, of Caucasian origin, who was with her) would have been in a comparable situation.

3.2 Although Spanish legislation allowing the police to carry out identity checks for the purposes of immigration control appears to

[1] The judgement states that, as was clear from the previous judicial proceeding, "the police took the criterion of race merely as indicating a greater probability that the person concerned was not Spanish. None of the circumstances surrounding the incident suggest that the National Police officer's conduct was dictated by racial prejudice or any particular intolerance of members of a specific ethnic group (...). The action taken by the police occurred in a place of transit, a railway station, where, on the one hand, it is not unreasonable to suppose that there might be a greater probability than elsewhere that people who are selectively requested for identification may be foreign; and, on the other hand, the inconvenience that any request for identification may cause is minor and a reasonably acceptable part of daily life. (…) Nor has it been proved that the police officers carried out the procedure in an inconsiderate, offensive way or gratuitously hindered the complainant's freedom of movement (…), since they took only as long as was necessary to carry out the identity check. Lastly, it may be excluded that the police officers acted in an angry or strident fashion which attracted attention to Ms. Williams Lecraft and the persons accompanying her, making them feel ashamed or uncomfortable in front of the other people in the railway station (…). What might have been discriminatory was the use of a criterion (in this case a racial one) which bore no relation to the identification of the persons for whom the legislation stipulated the administrative measure, in this case foreign citizens".

be neutral, the way it is applied has a disproportionate impact on people who are coloured or have "specific ethnic physical characteristics" deemed "indicative" of non-Spanish nationality. In view of the way it was applied by the police officer in question and by the Spanish courts, Spanish legislation on immigration control places such persons at a disadvantage.

3.3 The Spanish courts justified the action of the police officer in question by arguing that it was for a legitimate purpose: to control immigration by identifying foreigners without identity papers. By implication they regarded the procedure as appropriate and necessary to achieve that purpose, because, in the opinion of the courts, black people were more likely to be foreigners than people with other racial characteristics. This line of argument, however, cannot be considered valid.

3.4 Skin colour cannot be considered a reliable criterion by which to guess at a person's nationality. Increasing numbers of Spaniards are black or belong to other ethnic minorities and are consequently prone to humiliation by special police attention. On the other hand, large numbers of foreigners are white and look no different from native Spaniards. A policy which targets a specific race runs the risk of diverting police attention from foreigners without identity papers who are of other origins, and may therefore be counterproductive. From a legal standpoint, the aim — immigration control — cannot justify a policy directed specifically towards black people. Such a policy foments racial prejudice within society and serves, albeit unintentionally, to legitimize the use of racial differences for inappropriate ends.

3.5 The author requests the Committee to find a violation of article 2, article 12, paragraph 1, and article 26 of the Covenant and to instruct the State party to grant her compensation of 30,000 euros for moral and psychological injury and a further 30,000 euros to offset the costs she incurred in the proceedings before the domestic courts.

State party's observations on admissibility and on the merits

4.1 In its observations of 4 April 2007, the State party argues that, while it is true that the Optional Protocol does not formally establish a deadline for the submission of communications, it does exclude communications which, for reasons including time factors, may entail an abuse of the right of submission. This is the case with the present communication: almost six years have elapsed since the final judgement was issued by the domestic courts. The author's argument that there was no free legal assistance available at the time is not correct: the State party refers to the Civil Procedure Act, article 57 of the

Bar Statute of 1982, the Judiciary Organization Acts of 1985 and 1996 and article 119 of the Constitution. The State party concludes that the communication should be declared inadmissible under article 3 of the Optional Protocol.

4.2 The State party also argues that the facts disclose no violation of the Covenant. Controlling illegal immigration is perfectly lawful and there is nothing in the Covenant to prevent police officers from carrying out identity checks for that purpose. This is provided for under Spanish legislation: specifically, at the time the incident took place, by article 72.1 of the enabling regulations for Organization Act No. 7/1985 on the Rights and Freedoms of Foreigners in Spain, which required foreigners to carry their passports or documents with which they entered Spain and, where appropriate, their residency permits, and to show them to the authorities upon request. The Public Security (Organization) Act and the Decree on the National Identity Document also empower the authorities to carry out identity checks and require everyone, including Spanish citizens, to show identity documents.

4.3 There are relatively few blacks in the Spanish population at present, and they were even fewer in number in 1992. On the other hand, one of the major sources of illegal immigration into Spain is sub-Saharan Africa. The difficult conditions in which these people often arrive in Spain – they are frequently the victims of criminal organizations – constantly attract media attention. If one accepts the legitimacy of the control of illegal immigration by the State, then one must surely also accept that police checks carried out for that purpose, with due respect and a necessary sense of proportion, may take into consideration certain physical or ethnic characteristics as being a reasonable indication of a person's non-Spanish origin. Furthermore, in this case the existence of an order or specific instruction to identify individuals of a given race was ruled out. The author has not been subjected to a further identity check for 15 years and it would therefore not make sense to claim a motive of discrimination.

4.4 The author's identity check was conducted in a respectful manner and at a time and place where it is normal for people to be carrying identity papers. The police action took only as long as was necessary to carry out the identity check and ended when the author was found to be Spanish. All things considered, the check on the author's identity was carried out with the necessary legal authorization, based on a reasonable and proportionate criterion and in a respectful manner; thus there was no violation of article 26 of the Covenant.

Author's comments on the State party's submission

5.1 On 17 December 2007, the author reiterated that the time which elapsed between the exhaustion of domestic remedies and her submission of the communication to the Committee was due to financial difficulties. The 1996 Act to which the State party refers does not provide for the possibility of free legal assistance in respect of regional or international bodies. The European Court of Human Rights does provide this type of assistance, at its discretion, but never at the start of proceedings. Furthermore, when the Constitutional Court handed down its judgement the author did not know of any non-governmental organizations in Spain with the necessary experience and interest to bring her case before a regional or international body. As soon as she obtained free legal assistance from the organizations that are representing her before the Committee, she decided to present her case.

5.2 The author agrees with the State party's assertion that the control of illegal immigration is a legitimate objective, and that police identity checks are an acceptable method of achieving that objective. However, she does not agree that in order to do so police officers should use only racial, ethnic and physical characteristics as indicators of people's non-Spanish origins. In its reply the State party admits that it considers skin colour as an indicator not only of non-Spanish nationality, but even of illegal presence in Spain. The author reiterates her statement that skin colour may not be considered indicative of nationality. Selecting a group of people for immigration control based on the criterion of skin colour is direct discrimination, because it is tantamount to using stereotypes in the immigration control programme. Moreover, using skin colour as a basis for asserting that this group may be victims of trafficking constitutes differential treatment. A study conducted by the Spanish police in 2004 concluded that only 7 per cent of trafficking victims came from Africa. The State party has not succeeded in showing that its policy of using race and skin colour as indicators of illegal status is reasonable or proportionate to the objectives it seeks to achieve.

5.3 The author also states that the absence of intent to discriminate and the courteous conduct on the part of the police officer who requested her identity document are irrelevant. What is important is that his act was discriminatory. The fact that it was not repeated is not relevant either. Neither the Covenant nor the Committee's jurisprudence requires an act to be repeated in order to determine the existence of racial discrimination.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Human Rights Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

6.2 As required under article 5, paragraph 2 (a), of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee takes note of the State party's argument that the communication should be considered inadmissible under article 3 of the Optional Protocol as constituting an abuse of the right of submission, in view of the excessive delay in submitting the communication to the Committee – almost six years after the date of the *amparo* judgement by the Constitutional Court. The Committee reiterates that the Optional Protocol does not establish any deadline for submitting communications, and that the period of time that elapses before doing so, other than in exceptional cases, does not in itself constitute an abuse of the right to submit a communication. In the present case, the Committee takes note of the author's difficulties in securing free legal assistance and does not consider that the delay in question constitutes such an abuse.[2]

6.4 The author claims that the facts as submitted constitute a violation of article 12, paragraph 1, of the Covenant. The Committee considers that this allegation has not been substantiated for purposes of admissibility and finds it inadmissible under article 2 of the Optional Protocol.

6.5 Since there are no further obstacles to the admissibility of the communication, the Committee decides that the communication is admissible insofar as it appears to raise issues under article 2, paragraph 1, and article 26 of the Covenant.

Consideration of the merits

7.1 The Human Rights Committee has considered the present communication in the light of all the information made available

[2] Communications No. 1305/2004, *Villamón v. Spain*, Views adopted on 31 October 2006, para. 6.4; No. 1101/2002, *Alba Cabriada v. Spain*, Views adopted on 1 November 2004, para. 6.3; and No. 1533/2006, *Zdenek and Ondracka v. Czech Republic*, Views adopted on 31 October 2007, para 7.3.

to it by the parties, as provided for in article 5, paragraph 1, of the Optional Protocol.

7.2 The Committee must decide whether being subjected to an identity check by the police means that the author suffered racial discrimination. The Committee considers that identity checks carried out for public security or crime prevention purposes in general, or to control illegal immigration, serve a legitimate purpose. However, when the authorities carry out such checks, the physical or ethnic characteristics of the persons subjected thereto should not by themselves be deemed indicative of their possible illegal presence in the country. Nor should they be carried out in such a way as to target only persons with specific physical or ethnic characteristics. To act otherwise would not only negatively affect the dignity of the persons concerned, but would also contribute to the spread of xenophobic attitudes in the public at large and would run counter to an effective policy aimed at combating racial discrimination.

7.3 A State's international responsibility for violating the International Covenant on Civil and Political Rights is to be judged objectively and may arise from actions or omissions by any of its organs of authority. In the present case, although there does not appear to have been any written order in Spain expressly requiring identity checks to be carried out by police officers based on the criterion of skin colour, it appears that the police officer considered himself to be acting in accordance with that criterion, a criterion considered justified by the courts which heard the case. The responsibility of the State party is evidently engaged. It is therefore for the Committee to decide whether that action is contrary to one or more of the provisions of the Covenant.

7.4 In the present case, it can be inferred from the file that the identity check in question was of a general nature. The author alleges that no one else in her immediate vicinity had their identity checked and that the police officer who stopped and questioned her referred to her physical features in order to explain why she, and no one else in the vicinity, was being asked to show her identity papers. These claims were not refuted by the administrative and judicial bodies before which the author submitted her case, or in the proceedings before the Committee. In the circumstances, the Committee can only conclude that the author was singled out for the identity check in question solely on the ground of her racial characteristics and that these characteristics were the decisive factor in her being suspected of unlawful conduct. Furthermore, the Committee recalls its jurisprudence that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are

reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant. In the case under consideration, the Committee is of the view that the criteria of reasonableness and objectivity were not met. Moreover, the author has been offered no satisfaction, for example, by way of apology as a remedy.

8. In the light of the foregoing, the Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation of article 26, read in conjunction with article 2, paragraph 3, of the Covenant.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including a public apology. The State party is also under an obligation to take all necessary steps to ensure that its officials do not repeat the kind of acts observed in this case.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not, and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.

[Adopted in English, French and Spanish, the Spanish text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the present report.]

Appendix

Dissenting opinion of Committee members Mr. Krister Thelin and Mr. Lazhari Bouzid

The majority has found the communication admissible and has considered it on its merits.

I respectfully disagree.

Delay in submitting a communication does not in itself constitute an abuse of the right of submission under article 3 of the Optional Protocol. However, from the jurisprudence of the Committee, as it could be understood, it follows that undue delay,

absent exceptional circumstances, should lead to inadmissibility of a communication. In a number of cases the Committee has found a period of over five years to constitute undue delay (refer to relevant Czech cases, including *Kudrna*,[3] and dissenting opinion in *Slezák*).[4]

In the present case, the author has let almost six years elapse before submitting her complaint. Her claim, that she had difficulties in securing free legal assistance, does not, in light of all the facts in the case, constitute a circumstance, which could justify this undue delay. The late communication should therefore be considered an abuse of the right of submission and, consequently, inadmissible under article 3 of the Optional Protocol.

(*Signed*) Mr. Krister **Thelin**

(*Signed*) Mr. Lazhari **Bouzid**

[Done in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the present report.]

[3] Communications No. 1582/2007, *Kudrna v. Czech Republic*, inadmissibility decision of 21 July 2009 (below), No. 1452/2006, *Chytil v. Czech Republic*, inadmissibility decision of 24 July 2007; No. 1484/2006, *Lnenicka v. Czech Republic*, Views adopted on 25 March 2008; and No. 1485/2006, *Vlcek v. Czech Republic*, Views adopted on 10 July 2008.

[4] See communication No. 1574/2007 (below), Views adopted on 20 July 2009.