

OPEN SOCIETY
JUSTICE INITIATIVE

**Summary of the case of
Rosalind Williams Lecraft v. Spain**

**Submitted to the Helsinki Commission
March 22, 2010**

Rosalind Williams was stopped by a police officer on the platform of the station in Valladolid, Spain, and told to produce her identity documents. When asked why she was the only person stopped, the police officer told her “It’s because you’re black.” Williams complained of her treatment to the Human Rights Committee of the United Nations which, in June 2009, found that it was unlawful discrimination.

Facts

In the afternoon of December 6, 1992, Rosalind Williams arrived at the Valladolid Campo Grande railway station on a train coming from Madrid. She was with her husband, Federico Augustín Calabuig, and their son Ivan Calabuig-Paris. Moments after they disembarked from the train, a National Police (*Policia Nacional*) officer approached Williams and asked her to produce her identity document (the *Documento Nacional de Identificación* or DNI). The police officer did not ask her husband, son, or any other passengers on the platform for their identity documents.

Williams and her husband asked the reason for the identity check. The officer replied that he was obligated to check the identity of persons who “looked like her,” adding that “many of them are illegal immigrants.” He went on to explain that in carrying out the identity check, he was obeying an order of the Ministry of the Interior that called on National Police officers to conduct identity checks, in particular, of “persons of color.” Williams produced her identity document, and took the number of his badge.

Legal Proceedings

The following day Williams lodged a complaint with the National Police Headquarters in Valladolid (*Jefatura Superior de Policia*). The proceedings were dismissed at the pretrial stage after the after the court found that no crime had been committed.

In February 1993, Williams submitted a complaint to the Ministry of the Interior (*Ministerio del Interior Registro General*), challenging the apparent order of the ministry that called on National Police officers to target persons of color for identity checks and requesting that the General Administration of the State take for the unlawful actions of the Ministry of the Interior. The complaint argued that the practice of stopping people based on their race or ethnicity when carrying out identity checks contravened well-established Spanish and European legal norms against discrimination, arbitrary detention, and protecting freedom of movement. She also submitted medical documents as to the effect of the incident on her. The ministry rejected the complaint, and so Williams appealed to the National Court (*Audiencia Nacional Sala de lo Contencioso-Administrativo*).

The National Court dismissed the appeal on November 29, 1996, finding that there was an obligation to produce identity documents and that police were authorized to demand identification from foreigners. Because Williams belonged to the “black race” she was therefore more likely to be a foreigner.

Spanish Constitutional Court

Williams appealed to the Spanish Constitutional Court, alleging a violation of the prohibition of discrimination in Article 14 of the Spanish Constitution and of the European Convention on Human Rights. In a six-to-one decision issued on January 29, 2001, the Constitutional Court rejected her complaint, finding that a person's racial or ethnic identity is a legitimate indicator of nationality, and to refer to the race of a person for a "descriptive" manner is not *per se* discriminatory, as "specific physical or ethnic characteristics can be taken into consideration as reasonably indicative of the national origin of the person who has them." The court explained:

[T]he police action used the racial criterion as merely indicative of a greater probability that the interested party was not Spanish. None of the circumstances that occurred in said intervention indicates that the conduct of the acting National Police officer was guided by racial prejudice or special bias against the members of a specific ethnic group, as alleged in the complaint. Thus, the police action took place in a place of travelers' transit, a railway station, in which, on the one hand, it is not illogical to think that there is a greater probability than in other places that persons who are selectively asked for identification may be foreigners; moreover, the inconveniences that any request for identification generates are minor and also reasonably assumable as burdens inherent to social life.

On behalf of Williams, the Open Society Justice Initiative filed a complaint to the Human Rights Committee of the United Nations together with Women's Link Worldwide and SOS-Racismo Madrid.

Arguments

The communication to the Human Rights Committee argued that the treatment of Williams violated various provisions of the International Covenant on Civil and Political Rights (ICCPR).

- **Jus Cogens.** The prohibition against racial discrimination is recognized in all major international and regional human rights instrument and is a *jus cogens* norm of international law, creating obligation on states to ensure it does not occur, in accordance with Art.26 ICCPR.
- **Indirect and Direct.** International law prohibits both direct and indirect discrimination, as does the European Union Race Directive.
- **Public Officials.** Police officers are agents of the state and there is a positive obligation on the state to ensure they do not discriminate, through legislation where necessary.
- **Racial Profiling.** The law enforcement practice of relying on generalizations about race, ethnicity, or national origin rather than specific objectively identified evidence that would link perpetrators to a crime is a form of racial discrimination that violates human rights law.
- **Finding.** On June 30, 2009, the UN Human Rights Committee published its views in which it considered that there had been a violation of the ICCPR.

Admissibility

The Spanish Government had argued that Williams had delayed too long in making her submission to the UN Human Rights Committee. Williams replied that she was not able to do so earlier due to the emotional stress and financial cost of nine years of litigation in Spain. Only when Williams was able to find free legal assistance from an NGO was she able to continue the case. The Committee noted the difficulty of obtaining legal aid and found no abuse (at para. 6.3).

Merits

The committee gave its views on the question of whether racial profiling was a discriminatory practice.

7.2 ... The Committee believes that it is generally legitimate to carry out identity checks for the purposes of protecting public safety and crime prevention or to control illegal immigration. However, when the authorities carry out these checks, the physical or ethnic characteristics of the persons targeted should not be considered as indicative of their possibly illegal situation in the country. Nor should identity checks be carried out so that only people with certain physical characteristics or ethnic backgrounds are targeted. This would not only adversely affect the dignity of those affected, but also contribute to the spread of xenophobic attitudes among the general population; it would also be inconsistent with an effective policy to combat racial discrimination.

7.4. In this case, it appears that this was a case of a general identity check. The petitioner states that no one else around her was the target of a similar check and that the police officer that intercepted her alluded to her physical traits to explain why he asked her, and not others around her, to show her identity documents... [T]he Committee can only conclude that the petitioner was singled out only because of her racial characteristics, and this was the decisive factors for suspecting unlawful conduct.

8. Based on the foregoing, the Human Rights Committee considers that the facts before it reveal a violation of Article 26, read together with Article 2, paragraph 3 of the Covenant.

Implementation

The UN Human Rights Committee concluded that the law should be changed, that there should be a public apology to Williams, and that Spain must "take all necessary measures to prevent its officials from committing acts as in the present case." (at para. 9) The Committee also requested that the State party publish the opinion of the Committee and gave Spain until the end of December 2009 to implement the opinion (at para. 10).

Current status

The Human Rights Committee expressed the view that the correct remedy for the violation of the Covenant was for there to be a *public* apology. This reflects a growing body of human rights law which recognizes that it is necessary for there to be a public aspect to an apology, particularly where the treatment complained of contained an element of humiliation or degradation. Rosalind Williams Lecraft received apologies on behalf of the Spanish state in a face-to-face meeting with Minister of Foreign Affairs and Cooperation Miguel Ángel Moratinos on 11 November 2009, and again in written form in a letter addressed to her by Minister of Interior Alfredo Pérez Rubalcaba on 20 January 2010. But to date, there has no been no public apology by the government of Spain. While welcoming the direct expressions of regret, an apology made behind closed doors cannot be considered sufficient to remedy the human rights violation attributed to Spain by the Committee. This public element of the apology is necessary in order to acknowledge the admission of fault and to ensure that any expression of regret is genuine. The Spanish government should move to acknowledge and publish their responsibility in this matter in a truly public forum that will be accessible to members of Spain's police and security forces

The Human Rights Committee expressed the view that in order to remedy the violation of the Covenant the government of Spain must take all necessary steps to ensure that its officials do not repeat the kind of acts observed in this case. Specifically, the government should undertake the following measures immediately:

Firstly, amend the provisions that regulate police powers to conduct identity checks under relevant laws to make clear that race, ethnicity, and/or physical characteristics may not be the basis for decisions about which person(s) to stop for an identity checks, except when they form part of a specific suspect description or derive from specific and reliable intelligence; and

Secondly, instruct all police forces to issue operational guidance manuals on these modifications of identity check powers, which shall provide clear and practical instructions for police officers on

the formulation of suspicion and identify situations where factors such as race, ethnicity and other physical characteristics can be taken into account and when they can not.

In a letter to counsel dated 13 January 2010, the Minister of Justice notes that in the seventeen years since Ms. Williams Lecraft was stopped for an police identity check solely on the basis of her skin color, Spain has become a more multi-ethnic society, and that police forces have subsequently received human rights training that focuses on diversity, equal treatment, and the prohibition of discrimination on the basis of racism, national origin, religion and other grounds. In his letter to Ms. Williams Lecraft dated 30 January 2010, the Minister of Interior states that this ongoing training effort, together with the government's commitment to prosecute police misconduct of all kind, constitute sufficient measures to prevent similar discriminatory police identity checks from occurring in the present and thus give due effect to the views of the Committee.

While recognizing the importance of the work that the Spanish government is undertaking with governmental agencies and elected representatives to develop the *anteproyectos de las nuevas Leyes de Personal del Cuerpo Nacional de Policía y de la Guardia Civil* is indeed important. However, it is not sufficient to address the current practice of ethnic profiling across Spain. The Spanish government must take specific action in the present to stem its prevalence.

Although the ongoing training of police officers is to be commended, the provision of general human rights and diversity training is not sufficient to prevent ongoing ethnic profiling practices. In order for law enforcement officers to understand how and when they may be relying—explicitly or not—on negative ethnic stereotypes, they need specific training on this practice. Given the nature of many manifestations of ethnic profiling as a form of indirect discrimination, it is essential to address the specific policies, powers and practices that are leading to disproportionate and discriminatory outcomes. This is best achieved through training that explains applicable legal standards and provides practical examples of correct and incorrect use of those powers, and complemented by supervision that assures that officers are applying principles learned in training in their daily operational practice. Training should discuss ethnic profiling explicitly, and address both the quality of encounters and quantitative disproportionality.

Furthermore, although several police forces throughout Spain have adopted innovative measures to identify, monitor and address ethnic profiling in their jurisdictions, this discriminatory practice remains a problem throughout Spain. This is especially true in the context of immigration control, a law enforcement area with which the UN Human Rights Committee was particularly concerned. For example, in the past year it has been revealed that local police in Madrid received directives to target specific nationalities for immigration roundups – orders that omitted any instruction to abstain from targeting persons on the basis of their specific physical or ethnic characteristics. More recently, a January 2010 circular issued by the *Comisaría General de Extranjería y Fronteras* effectively encouraged the practice of carrying out massive and indiscriminate police identity checks in public places for the purposes of immigration control.¹ These wide-scale, general operations raise legitimate concerns that many persons are being targeted for stops and even detentions on the basis of what they look like, in direct contradiction of the Committee's views.² It would be impossible for the police to implement these orders *without* relying on ethnic/racial characteristics.

¹ Ministerio de Interior, Dirección General de la Policía y de la Guardia Civil, Comisaría General de Extranjería y Fronteras, Secretaría General Servicio de Recursos e Informes, *Circular núm. 1/2010*.

² Daniel Ayllón, “Un informe denuncia agujeros legales en las expulsiones exprés,” *Público.es*, February 11, 2009; Sindicador Unificado de Policía, Comisión Ejecutiva Nacional, *La Circular sobre extranjería vulnera ley y los derechos: La recurrirá por atentar contra derechos de los inmigrantes y poner en riesgo a los policías*, February 9, 2010, available at <http://www.sup.es>.

Rosalind Williams-Lecraft Timeline

December 6, 1992. Williams stopped in Valladolid Railway Station.

December 7, 1992. Complaint filed with National Police Headquarters, later rejected.

February 15, 1993. Complaint filed with Ministry of the Interior, later rejected.

April 6, 1994. Appeal filed with the National Court.

November 29, 1996. National Court rejects appeal.

October 5, 1998. Appeal to Constitutional Court is registered.

January 29, 2001. Constitutional Court rejects appeal.

September 11, 2006. Communication submitted to the UN Human Rights Committee.

June 30, 2009. Views of the Human Rights Committee published.

December 31, 2009. Deadline for Government of Spain to make a public apology.

June 30, 2009 UN Human Rights Committee finds that there had been a violation of the ICCPR