

Police failed to observe non-discrimination principle during identity check in Zürich railway station

The case of **Wa Baile v. Switzerland** (applications nos. 43868/18 and 25883/21) concerned an allegation of racial profiling during an identity check at the Zurich railway station and the subsequent proceedings in the criminal and administrative courts.

In today's **Chamber** judgment¹ in this case the European Court of Human Rights held, unanimously, that there had been three violations of the European Convention on Human Rights:

A procedural violation of Article 14 (prohibition of discrimination), in conjunction with Article 8 (right to respect for private life).

The Court found, having regard to the particular circumstances of the identity check and to the place in which the applicant had been subjected to it, that the requisite threshold of severity had been reached such that the right to respect for private life was engaged, and that the applicant had an arguable claim of discrimination on the ground of his skin colour. In that connection, the Court held that neither the administrative courts, nor the criminal courts had examined the applicant's complaint in an effective manner. There had therefore been a procedural violation of Article 14 of the Convention in conjunction with Article 8 of the Convention as those courts had failed to examine whether discriminatory grounds might have played a part in the identity check to which the applicant had been subjected.

A violation of Article 14 in conjunction with Article 8 as to the allegation of the discriminatory nature of the identity check to which the applicant had been subjected.

The Court, which was well aware of how difficult it was for police officers to decide – very quickly and without necessarily having the benefit of clear domestic guidelines – whether they were faced with a threat to public order or security, concluded that there was, in these particular circumstances, a presumption, which the Government had failed to rebut, that the applicant had been subjected to discriminatory treatment.

A violation of Article 13 (right to an effective remedy) in connection with the applicant's complaint under Article 14 read in conjunction with Article 8.

The Court found that no effective remedy had been available to the applicant in the domestic courts in respect of his complaint.

A legal summary of this case will be available in the Court's database HUDOC ([link](#))

Principal facts

The applicant, Mohamed Shee Wa Baile, is a Swiss national.

In 2015, while on his way to work, Mr Wa Baile was stopped for an identity check by municipal police officers in the Zürich railway station. As Mr Wa Baile refused to comply with their orders, the officers

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

took him aside and asked him to raise his hands in the air and spread his legs. They then searched his pockets and his backpack until they found a document that established his identity. Once his identity had been confirmed, Mr Wa Baile was allowed to leave.

Criminal proceedings, lasting from 2015 to 2016, were brought against Mr Wa Baile for having refused to comply with orders from the police. In his defence he argued that the identity check had been based on racial profiling. He was ultimately fined 100 Swiss francs by the District Court.

In 2016 Mr Wa Baile sought to have the identity check declared unlawful by the Zürich municipal police, complaining of a number of violations, relying in particular on the prohibition of discrimination. Between 2018 and 2020 his request was rejected first by the municipal police, then by the Municipal Council and subsequently by the Zürich District Office, which all found that they were bound by the facts as established by the criminal courts.

In 2020 Mr Wa Baile appealed to the Zürich Cantonal Administrative Court, which set aside the lower authorities' decisions. That court held that the identity check in question had been unlawful but considered that the question as to discrimination on the ground of skin colour remained open. Mr Wa Baile lodged an appeal against that decision with the Federal Supreme Court, which declared it inadmissible.

Before the European Court of Human Rights, Mr Wa Baile alleged that he had been the victim of discrimination on the ground of his skin colour and argued that the Swiss authorities had failed to determine whether or not he had been the target of racial profiling. In particular, he pointed out that on the day of the identity check no one else in the crowd of people going to work – who he claimed were almost all white – had been subjected to an identity check. He further claimed not to have received an answer as to why he had been stopped.

Complaints

Relying on Article 14 (prohibition of discrimination) in conjunction with Article 8 (right to respect for private life), the applicant submitted that the identity check and search to which he had been subjected – and the fine imposed on him for having refused to submit to the identity check – amounted to discrimination on the ground of his skin colour.

Relying on Article 13 (right to an effective remedy), he submitted that no effective remedy had been available to him by which to have his complaint examined under Article 14 in conjunction with Article 8 of the Convention.

Procedure and composition of the Court

The applications were lodged with the European Court of Human Rights on 10 September 2018 and 7 May 2021.

Judgment was given by a Chamber of seven judges, composed as follows:

Pere Pastor Vilanova (Andorra), *President*,
Jolien Schukking (the Netherlands),
Georgios A. Serghides (Cyprus),
Darian Pavli (Albania),
Peeter Roosma (Estonia),
Ioannis Ktistakis (Greece),
Andreas Zünd (Switzerland),

and also Milan Blaško, *Section Registrar*.

Decision of the Court

[Article 14 in conjunction with Article 8 \(prohibition of discrimination: procedural aspect\)](#)

The Court reiterated that racial discrimination was a particularly invidious kind of discrimination and, in view of its perilous consequences, required from the authorities special vigilance and a vigorous reaction.

In the present case, in the light of the Administrative Court's finding that there had been no objective justification for the identity check to which the applicant had been subjected, the Court took the view that it had been incumbent on the courts of competent jurisdiction to determine whether or not the check and search had been racially motivated.

As to the criminal proceedings, the Court noted that the applicant's allegation of racial profiling had not been reviewed in detail by the domestic criminal courts. In addition, the District Court, far from conducting a separate investigation into the applicant's credible allegations of racial profiling, had shifted onto him the entire burden of proving that he had been subjected to discriminatory treatment.

As to the administrative proceedings, the Court noted that the Administrative Court had found that, given that the identity check was unlawful irrespective of any explanations put forward, the question whether the applicant's skin colour had played a decisive role in the police officer's decision to subject him to a check remained open. Moreover, the Federal Supreme Court had failed to examine the allegation of racial profiling.

In the light of the foregoing considerations, and in particular of the specific circumstances of the identity check and the place – Zürich railway station – where the applicant had been subjected to it, the Court found that the requisite threshold of severity had been reached such that the right to respect for private life within the meaning of Article 8 of the Convention was engaged, and that the applicant had an arguable claim of discrimination on the ground of his skin colour. It followed that Article 14 of the Convention, read in conjunction with Article 8, was applicable in the present case. On the merits, the Court took the view that neither the administrative courts nor the criminal courts had examined this complaint in an effective manner. Consequently, **there had been a procedural violation of Article 14 of the Convention in conjunction with Article 8 of the Convention**, as those courts had failed to examine whether discriminatory grounds might have played a part in the identity check to which the applicant had been subjected.

[Article 14 in conjunction with Article 8 \(prohibition of discrimination: substantive aspect\)](#)

The Court reiterated that States had an obligation to secure the effective enjoyment of the rights and freedoms under the Convention and that this obligation was of particular importance for persons belonging to minorities, because they were more vulnerable to victimisation. Such an obligation therefore took on added importance in a case where Article 14 of the Convention, enshrining the prohibition of discrimination, was engaged.

Concerning racial profiling more specifically, in its Concluding observations of 27 December 2021 on the report on Switzerland, the United Nations Committee on the Elimination of Racial Discrimination had considered that the training received by Swiss police officers was insufficient to prevent, in an effective manner, any racism or any racial profiling on their part.

Moreover, in its report on Switzerland adopted on 10 December 2019 and published on 19 March 2020, the Council of Europe's European Commission against Racism and Intolerance (ECRI) had recommended that further training be given to police on the issue of racial profiling and on the use of the "reasonable suspicion standard". It had also strongly recommended that a body be set up that was independent of the police and prosecution authorities and entrusted with the investigation of alleged cases of racial discrimination and racially-motivated misconduct by the police.

In the light of the foregoing, the Court took the view that the absence of a sufficient legal and administrative framework was liable to give rise to discriminatory identity checks.

More specifically, as to the burden of proof in such matters, the Court clarified that, where an applicant had established the existence of a difference in treatment, it fell to the Government to demonstrate that such a difference in treatment had been justified.

The Court also pointed out that certain international bodies dedicated to the defence of human rights had reported cases of racial profiling by the police in Switzerland, a finding that had been further corroborated by the observations submitted by some of the third-party interveners, in particular Amnesty International. Considered as a whole, these reports tended to lend support to the rebuttable presumption that the applicant had been subjected to discriminatory treatment.

Consequently, the Court, which was well aware of how difficult it was for police officers to decide – very quickly and without necessarily having the benefit of clear domestic guidelines – whether they were faced with a threat to public order or security, concluded that there was, in these particular circumstances, a presumption, which the Government had failed to rebut, that the applicant had been subjected to discriminatory treatment.

It followed that there had been a violation of Article 14 of the Convention, read in conjunction with Article 8.

[Article 13 in conjunction with Article 8 \(right to an effective remedy\)](#)

The Court had already found that the applicant's arguable claim of discrimination on the ground of his skin colour had not been examined by the Swiss courts in an effective manner. For essentially the same reasons, it found that no effective remedy had been available to the applicant in the domestic courts in respect of his complaint of having been subjected to discriminatory treatment during the identity check and search in question. **There had therefore been a violation of Article 13 of the Convention in connection with the applicant's complaint under Article 14, read in conjunction with Article 8** (application no. 25883/21).

[Just satisfaction \(Article 41\)](#)

The Court held that Switzerland was to pay the applicant 23,975 euros in respect of costs and expenses.

The applicant did not claim any compensation in respect of pecuniary or non-pecuniary damage.

The judgment is available only in French.

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Press contacts

echrpess@echr.coe.int | tel.: +33 3 90 21 42 08

We would encourage journalists to send their enquiries via email.

Inci Ertekin (tel.: + 33 3 90 21 55 30)

Tracey Turner-Tretz (tel.: + 33 3 88 41 35 30)

Denis Lambert (tel.: + 33 3 90 21 41 09)

Neil Connolly (tel.: + 33 3 90 21 48 05)

Jane Swift (tel.: + 33 3 88 41 29 04)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.