

DGI Directorate General of Human Rights and Rule of Law
Department for the Execution of Judgments of the ECtHR
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FRANCE
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April 2025

Dear Sir or Madam

Re: Execution of the ECtHR Judgment in
Wa Baile c. Suisse

Please find enclosed our Communication in accordance with Rule 9.2. of the Rules of the Committee of Ministers regarding the supervision of the execution of judgments.

We respectfully draw to your attention the fact that Switzerland does not contest that the judgment obliges Switzerland:

1. to enact legislation that effectively prevents racially discriminatory police stops;
2. to improve the independence and accessibility of complaints mechanisms for unlawful police stops;
3. to collect data on police stops that can be used to more easily record and prove racially-motivated police stops;
4. strengthen measures within the framework of human resources policy and operational practice that effectively prevent directly and indirectly discriminatory police stops.

Despite not contesting any of these requirements, Switzerland has not complied with them. The response of the Swiss authorities generally, including in their “Action Report”, shows that Switzerland is unwilling to take the significance of the judgment, which has been declared an *impact case*, seriously and to take substantial measures. The respondent State’s conduct clearly demonstrates the need for urgent enhanced supervision.

Our Communication sets out in brief the underpinnings that substantiate the factual and legal conclusions of the Court’s judgment and we trust that the Committee of Ministers will express its concerns to the respondent State and continue to monitor the urgent action the State if called upon to take.

Please accept the assurance of our highest respect and support for your invaluable work.

Yours sincerely,

DGI Directorate General of Human Rights and Rule of Law
Department for the Execution of Judgments of the ECtHR
F-67075 Strasbourg Cedex
FRANCE
Email: DGI-Execution@coe.int

17 March 2025

COMMUNICATION

**In accordance with Rule 9.2. of the Rules of the Committee of Ministers
regarding the supervision
of the execution of judgments and of terms of friendly settlements by
humanrights.ch, the Alliance against Racial Profiling and FIZ Advocacy and
Support for Migrant Women and Victims of Trafficking**

WA BAILE c. SUISSE ([43868/18](#))

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PART I – INTRODUCTION

1. Introduction

1. Pursuant to ECHR Article 46 and Committee of Ministers Rule 9.2, we submit this communication on behalf of humanrights.ch, the Alliance against Racial Profiling and FIZ Advocacy and Support for Migrant Women and Victims of Trafficking and ask that it be published on the Committee of Ministers' online records.
2. We submit that the Swiss Government's proposed "Action Report" of 21 November 2024 is incomplete and does not properly or adequately address the violations of ECHR Articles 8, 13 and 14, as held by the Chamber's 20 February of 2024 judgment. In consequence, we respectfully ask the Committee to reject the Report and to request the Swiss authorities to develop and implement appropriate general measures, as set out below.

2. The NGOs and their role

3. **Humanrights.ch** is committed to human rights – independently, passionately and professionally. The organization informs, advises and empowers those who stand up for their own rights and for the rights of others – in public, in politics, in the judiciary, in organizations and movements, in education. humanrights.ch raises awareness of human rights at a time when they are under pressure worldwide, but also in Switzerland. Our vision remains: all human beings are born free and equal in dignity and rights. We provide know-how so that human rights can be enforced and further developed in and from Switzerland. Humanrights.ch runs a contact point for strategic litigation that supports court cases that are used to close gaps in human rights protection, such as the *Wa Baile c. Suisse* case. The contact point documents strategic cases in order to make this instrument better known to Swiss civil society. The contact point supports lawsuits by networking and advising victims, lawyers, specialist agencies and NGOs, and builds up specific know-how. The long-term goal is for the contact point to be able to provide comprehensive support for strategic cases.
4. Humanrights.ch is member as well as host of the NGO Platform Human Rights Switzerland (Platform HRS), a not-for-profit organization. More than 100 Swiss non-governmental organizations have joined together in the HRS. The member organizations from German-, French- and Italian-speaking Switzerland represent the full spectrum of human rights work and work together to protect and promote human rights in Swiss domestic and foreign policy. Platform HRS coordinates the activities

of its member organizations. It prepares NGO parallel reports for state reporting procedures to international human rights bodies; participates in the implementation of international recommendations to Switzerland; provides advocacy to the government, administration and parliament in legislative and administrative processes and on other key issues; and develops joint analyses and strategies. In this capacity, Platform HRS has offered to support the Head of the Federal Department of Justice and Police (FDJP), the Conference of Cantonal Justice and Police Directors (KKJPD) and the Conference of Cantonal Security Directors (KSSD) in implementing the case of *Wa Baile c. Suisse* (see Annex I).

5. The **Alliance against Racial Profiling** is a nation-wide movement in Switzerland dedicated to combating institutional racism within the police force and the border guard corps, as well as its structural roots in society. Founded in the fall of 2015 the alliance first gained public visibility in 2016 through Mohamed Wa Baile's legal proceedings against the Zurich city police. Through strategic legal proceedings, we initiate activities across Switzerland and support local anti-racist initiatives. We do this with the aim to engage the general public, politicians and civil society in confronting racial profiling and fostering a critical awareness of racism. The alliance pursues three key objectives: 1) Empowerment: we support people who experience racism and their allies to actively engage in the struggle against structural racism. 2) Knowledge production: we generate and disseminate critical insights on racial profiling and systemic racism; 3) Intervention: we intervene in public discourse and engage with political and administrative institutions to drive meaningful change in antiracist practices.
6. In addition, this submission is supported by **FIZ Advocacy and Support for Migrant Women and Victims of Trafficking**. FIZ advocates for the protection and rights of migrant women who are survivors of violence and exploitation. To this end, the organization runs the Counseling Center for Migrant Women and the specialized Counseling and Support Services for Victims of Trafficking in Women. FIZ also works on the educational and policy fronts.
7. The signatories consider it important that people who have been affected by racism at the hands of the police should not have to spend years fighting their cases through all the domestic courts without success, only to then obtain justice from the ICtHR. Such legal proceedings entail high financial, social, mental and emotional costs and

risks.¹ In the case of Mohamed Wa Baile, for example, funds amounting to CHF 100,000 had to be raised. Furthermore, because Mr. Wa Baile dared to take legal action, he was subjected to public pressure as well as racist telephone calls and letters from strangers. This triggered feelings of insecurity and fear. It should also be mentioned that during the legal proceedings, Mr. Wa Baile faced courts which had not seriously engaged with the factual and legal basis of the problem of racism and the prohibition of discrimination. On the contrary, the judges responsible did not take his concerns seriously enough in some respects as demonstrated by their casual communication.² Without the support of a network of committed people, such a procedure would not have been possible. It is therefore not surprising that very few people are willing to file complaints and take legal action, although it has long been proven that racism by the police is not an isolated problem.

8. It is equally important to the signatories that the police officers and employees of the Federal Office for Customs and Border Security have a good legal and institutional-organizational framework for their challenging work. In our view, the ECtHR judgment makes it clear that the Swiss authorities at all levels of the community must fundamentally rethink their approach. Our observations are that to date, the problem of *racial profiling* has been downplayed by political, administrative and judicial decision-makers; in particular, the structural and institutional dimensions of the problem tend to be ignored. This also puts a strain on the work of police officers and leads to costs. The judgment now offers an opportunity for the authorities responsible to enter into a learning process together with experts and human rights organizations in order to develop countermeasures – in line with the principles established in the ECtHR judgment – that have the potential to strengthen protection against

1 Sources: Racial Profiling: Erfahrung, Wirkung, Widerstand: https://www.rosalux.de/fileadmin/rls_uploads/pdfs/Studien/racial-profiling.pdf; Racial Profiling. Struktureller Rassismus und antirassistischer Widerstand: <https://www.transcript-verlag.de/978-3-8376-4145-5/racial-profiling/>; Anti-Schwarze-Rassismus. Juristische Untersuchung zu Problemen und Handlungsbedarf: https://www.ekr.admin.ch/pdf/ZHAW_Studie_Anti_Schwarze_Rassismus_2017.pdf; Discrimination raciale en Suisse. Rapport 2019/2020 du Service de lutte contre le racisme: https://www.edi.admin.ch/edi/fr/home/fachstellen/frb/commandes-et-publications/Bericht_FRB_2020.html.

2 Sources: Protokoll des Prozesses gegen M. Wa Baile vom 7.11.2016: https://www.stop-racial-profiling.ch/site/assets/files/1056/2-1_prozessbericht.pdf; Rassismusanalyse zum Prozess gegen M. Wa Baile vom 7.11.2016: https://www.stop-racial-profiling.ch/site/assets/files/1056/2-1_rassismusanalyse.pdf; Ethnografischer Bericht zum Prozess gegen M. Wa Baile vom 7.11.2016: https://www.stop-racial-profiling.ch/site/assets/files/1056/ethnographischer_bericht_zum_prozess_gegen_m.pdf.

discrimination and fundamental and human rights – even beyond the question of racism.

3. Case Summary

9. On 20 February 2024, the European Court of Human Rights (ECtHR) decided the case of *Wa Baile c. Suisse* (in French only) on racial profiling. The ECtHR critically scrutinizes procedures and repairs shortcomings of earlier case law. It holds that Switzerland violated both the procedural and substantive aspects of Article 14 in combination with Article 8 ECHR. Regarding the substantive violation, the ECtHR reverses the burden of proof and accepts that both the lack of an adequate preventive framework and reports by international human rights bodies and NGOs contribute establishing a presumption of discrimination. In doing so, it shows itself aware of the nature of racial profiling as a form of structural discrimination.

4. Alleged implementation of the judgment

10. Switzerland submits in its action plan to the Committee of Ministers that it has fully executed the judgment.
11. This coalition of non-governmental organizations (“the NGOs”) strongly disagrees with Switzerland’s position. As the NGOs will show in this submission, Switzerland’s report falls woefully short of remedying the violation of Article 8, 13 and 14 of the Convention. The Action Report instead confirms that Switzerland has failed to take the necessary legislative and administrative measures.

PART II – GENERAL MEASURES

1. Introduction

12. Three different elements can be distinguished in the ECtHR’s argumentation to support the finding of *prima facie* discrimination: 1) the fact that Switzerland, as corroborated by international and regional human rights bodies (the CERD Committee and ECRI), has failed to put in place a legal and policy framework providing effective safeguards against racial profiling, notably by ensuring adequate police training; 2) the fact that the national administrative court found that the decision to stop the applicant lacked objective reasons. Here, the Court distinguishes the case from *Basu*, where the unlawfulness of the identity check had not been

established. According to the ECtHR, the absence of a valid motive gives rise to a strong presumption of discrimination; 3) the prevalence of racial profiling by police in Switzerland, as confirmed by reports of international human rights bodies and some of the *third party* Interveners, notably Amnesty International.³

2. *Insufficient legal basis*

13. The ECtHR reiterated that a lack of an adequate legal framework governing police stops is likely to give rise to discriminatory identity checks. (Since the early 2000s, it has been apparent that racial profiling in law enforcement is a widespread systemic problem, including in Europe. Since then, international and regional human rights bodies have produced a plethora of recommendations, including the adoption of laws and policies that *explicitly* prohibit racial profiling.)⁴
14. The action plan mainly mentions measures taken by the City of Zurich. Not a single measure aims to formulate the legislative framework for identity checks. Clarifying the requirements for police checks in a so-called “Dienstanweisung” does not comply with the standards of international law. Rather, this requires clearly defined regulations in cantonal and municipal police law – namely, the Police Law of the Canton of Zurich (Polizeigesetz) and the General Police Ordinance of the City of Zürich (allgemeine Polizeiverordnung).
15. In the action plan, Switzerland does not define any measures to improve the legal framework. In the feedback from the cantons and cities to the surveys conducted by the NGO platform (Annex II), no need for action was identified. Due to the federal state and constitutional system, police actions are also based on federal law. Furthermore, the Wa Baile ruling is a decision that holds the federal government, as well as all cantons and cities, accountable.
16. On January 31, 2025, the NGO platform proposed to the EJPD, the KKJPD and to the KSSD that its laws, ordinances, guidelines and service instructions be supplemented with a sufficiently specific regulation that defines the criteria that the police and other security authorities may or may not use when making arrests and identity checks. The NGO Platform sees a need to amend the following regulations: 1) cantonal and municipal police laws; 2) Art. 9bis para. 1 (new) of the Foreign Nationals and

3 Source: https://www.amnesty.ch/fr/themes/racisme/docs/amnesty-intervient-cour-europeenne-droits-homme/210121_tpi_wa-baile_final.pdf.

4 Overview: <https://www.ejiltalk.org/wa-baile-c-suisse-a-victory-against-racial-profiling/>.

Integration Act – conditions for checks under foreign national legislation; 3) Art. 215 para. 5 (new) of the Swiss Code of Criminal Procedure; 4) Art. 100ter (new) of the Customs Act. If it is necessary for the police to carry out their duties, they may stop a person and establish the person's identity. A personal check and identification procedure must not be based on external appearance such as skin color or ethnic characteristics, nor on other personality traits. It must always be based on individual characteristics and behavior. Routine behavior does not justify identity checks.

17. To date, there is no indication, either within the framework of the action plan or through other channels (such as responses or activities from EJPD, KKJPD, KSSD, the cantons and communities) that projects to improve the legal situation have been initiated at the federal, cantonal, and municipal levels.

3. *Missing and inadequate complaints mechanisms*

18. In addition, the ECtHR has held that State authorities have a duty to conduct an effective and independent investigation to establish whether police conduct was discriminatory once a person makes a reasonably founded allegation of racial profiling. In *Muhammad* (§§99-100) and *Basu* (§36), the ECtHR suggested that the burden of proof is shifted once there is proof of racist motives. In *Wa Baile*, the ECtHR did not fixate on proving individual racist intent. Rather, it supported its argumentation on reports illustrating the prevalence of systemic racial profiling in Switzerland to substantiate the systemic nature of racial profiling. Pivotal in proving the systemic nature of racial profiling and substantiating the presumption of racial discrimination among Swiss police were reports from CERD, ECRI, and Amnesty International (§§133-136). The ECtHR's assessment of the systemic nature of racial profiling is important for interrelated reasons. First, highlighting the systemic nature of racial profiling allows for a contextual approach. Such a contextual approach whereby the police is scrutinized as the powerful institution it is bears more fruit because it does not place the focus on comparing how individual police officers treat other people they encounter in the vicinity, for example. This latter approach hides the systemic harm perpetuated by racial profiling. Solely confining racism to individual behavior and not acknowledging its structural nature and how it is thus embedded in the social, economic, cultural and political organization of society is limiting. Recognizing the systemic nature of racial profiling defies the idea of racism as being an individual aberration. Second, acknowledging the systemic nature of racial profiling also means that the focus is shifted from the individual intentions of

the police to the harm that such racial profiling inflicts. For example, the police in *Wa Baile* argued that the applicant's behavior (averting his eyes when police looked at him) was the reason for his identity check, and not his race (§14). Even if this were true, it does not abate or changing the harm that the profiling inflicted on the applicant. Paying attention to dignitary harm makes law on non-discrimination more attentive to the perspectives of victims.

19. The ECtHR judgment in *Wa Baile* states that if there are credible allegations that the dark skin or stereotypically foreign appearance was a decisive factor in an arrest and identity check, the burden of proof is reversed. Where only the state can establish the relevant facts, it should be incumbent upon it to prove the existence of objective reasons for a police check. A refutable presumption of discriminatory treatment should be assumed in the absence of an effective legal and administrative framework and if reports by human rights organizations documenting racial profiling as a problem cannot be refuted by means of data.
20. The loss of the status of victim requires the recognition and redress of the alleged violations of the Convention by the national authorities. Credible complaints and claims that a person has been subjected to a racial check must be subject to an effective investigation by the national authorities. In order for the ECtHR to be able to exercise its supervisory function, the relevant decisions must be substantiated in detail.
21. The action plan only refers to possible contact and complaint centers in the city of Zurich. Reports from human rights organizations (footnotes 1-2) show that filing criminal charges or administrative complaints against the police are not effective means. There are significant hurdles that make it virtually impossible for people to defend themselves effectively. In the *Wa Baile* case, all parties advised against pursuing legal action. The ombudsperson was subsequently unable to offer an appropriate solution. Furthermore, *Wa Baile* had to appeal to the European Court of Human Rights to obtain justice.
22. The detailed study conducted in 2014 by the **former Swiss Centre of Expertise in Human Rights** (SCHR)⁵ on legal protection against police violence (an outline of the complaints mechanisms in Switzerland) continues to reflect reality in

⁵ Source:

https://www.humanrights.ch/cms/upload/pdf/150225_SKMR_Studie_Rechtsschutz_polizeiliche_Uebergriffe.pdf.

Switzerland today. Neither Switzerland's action plan nor the survey by the NGO Platform Human Rights Switzerland (Annex II) present a different picture. The informal complaints mechanisms and legal remedies, the criminal proceedings and other legal remedies, such as the complaint under Art. 215 let. a Swiss Code of Criminal Procedure, the administrative proceedings and the state liability proceedings are not set up in any of the cantons in such a way that they meet the human rights requirements for legal protection. Although informal legal remedies are described as easily accessible, they are usually used by the police to dispute the accusation of racism. Convictions for abuse of authority are exceedingly rare, and the procedural, psychological, knowledge-based and economic hurdles to litigation are extremely high. The independence of investigations is not guaranteed (see also current). Since the SCHR research, no measures have been taken to establish independent complaints bodies with supervisory, investigative and complaints powers.

23. For effective implementation, the NGO platform proposed at a board meeting of the KKJPD on January 31, 2025 (Annex I) that an association of individual cantons and larger cities implement a pilot project for a joint ombudsman's office for complaints against the police under the umbrella of the KKJPD. Thematically, the office would be limited to discrimination and violence by employees of cantonal and municipal police forces. It must be ensured that the complaints office is independent of the individual police forces in terms of personnel and has the necessary specialist staff and financial resources. It would mediate between the parties with the aim of finding a mutually acceptable solution. It would have the right to access information and inspect files, and the right to make recommendations to the authorities involved, to file criminal charges and to support the person concerned with regard to other legal remedies (e.g. administrative proceedings). In addition, the NGO platform has proposed implementing the inquisitorial principle and the principle of shifting the burden of proof through an explicit regulation in police law and the relevant procedural decrees at all levels of the community.
24. Switzerland's action plan merely points out that the courts are obliged to apply international case law. It does not provide any information on how it will ensure effective legal protection in the future.
25. In its response, the executive board of the KKJPD has not yet informed the NGO platform, if they take any measures to improve the investigations.

26. The responses of political and operational decision-makers (at all levels of government) to the letter from the NGO platform regarding implementation measures do not indicate that legislative and administrative measures are to be taken to improve complaints procedures (Annex II).

4. *Lack of monitoring*

27. Finally, the NGOs respectfully request that the Committee of Ministers urge Switzerland to quantify and qualify racial discrimination. The current scale of excessive racial discrimination, violence and other misconduct by police officers in Switzerland is unknown. One reason for this is that the police forces do not systematically document reports against police officers or the relevant data are not public. Moreover, there are no specific applicable offences in Switzerland, which makes quantifying the cases challenging.

28. The app mentioned in the Swiss action plan (the only one of its kind in Switzerland) and introduced in the city of Zurich, in which police officers have to record the place, time and reason for a check, and whether the check led to a report, arrest or dismissal without consequences, is not an effective instrument in preventing racist police checks and intervening effectively in cases of suspected discrimination. On the contrary, the criteria by which police checks are recorded have the potential to conceal racism and thus legitimize a discriminatory police check as non-discriminatory. In particular, the criteria of “objective experience” and “behavior and appearance of a person” enable police officers to document racist police checks as non-discriminatory, as in the case of Wa Baile. In Wa Baile's case, the police officer who carried out the stop stated that the reasons for the stop were avoidance of eye contact and bowing, which the police officer considered to be objective and behavioral. In the Action Plan, Switzerland has not provided any evidence that this system is effective in combating racial discrimination.

29. No evidence was presented in the survey by the NGO platform (Annex II) either.

30. The Board of the KKJPD has not yet informed the NGO platform if they take any action on this.

5. *Insufficient measures in the area of personnel*

31. Moreover, the ECtHR judgment states that it is difficult for police officers to decide rapidly in the absence of clear internal instructions whether they are facing a threat

to public order and safety. Given this context, contracting states are required to create – in addition to the existing legal framework – an administrative framework for preventing racially discriminatory police practices.

32. A series of awareness-raising measures for police officers was listed in Switzerland's action plan. Effective implementation of the ECtHR obligations requires more than superficial and purely theoretical training provision. Of decisive importance is that time to reflect on own work is integrated into police officers' schedules and that this generates a concrete learning effect. To ensure that this does not increase officers' work burdens, three conditions must be met: 1) Existing structures such as briefings and debriefings before and after police interventions, existing provision such as guided self-reflection and supervision, support for personal development and conversations with staff should be used to make officers aware of the hands-on risks of discrimination and practical approaches to avoiding and tackling discrimination. 2) In terms of the method to be followed, it is also important to mandate internal and external specialists who possess the required knowledge and are capable of creating a structure for a culture of learning from mistakes. It is also important that the topic be actively integrated into recruitment and promotion procedures for police staff.
33. The NGO platform humanrights.ch has made a recommendation to the board of KKJPD that KKJPD commission a study to compare good practices (to be addressed to political and operative police leadership in Switzerland) and on this basis formulate a proposal for a theory-practice circle covering bodies at all levels. All possible measures for the prevention of racial discrimination should be further developed, from recruitment to promotion, initial training, continuous learning, deployment planning, debriefing, supervision and guided self-reflection. The Board of the KKJPD has not yet informed the NGO platform if they take any action on this.

6. *Insufficient measures concerning deployment planning*

34. One final challenge in implementing the ban on racial discrimination as enshrined in international law is institutionalised forms of indirect discrimination in the planning of police missions. Switzerland's action plan does not mention which measures Switzerland might take to prevent discriminatory stigmatisation through increased police presence at places labelled as "hotspots".

PART III. CONCLUSION AND RECOMMENDATION TO THE COMMITTEE OF MINISTERS

The NGOs respectfully recommend that the Committee of Ministers:

35. *Reject* Switzerland's request to close supervision and continue monitoring the execution of the *Wa Baile* judgment;
36. *Express concern* over the response by the Swiss authorities;
37. *Urge* the competent authorities to 'take immediate action' to enact the legal basis for explicit prohibition of racially discriminatory controls and effective prevention;
38. *Urge* the competent authorities to take immediate action to improve the independence and accessibility of complaints mechanisms in the event of possible violations of the prohibition of discrimination through police controls;
39. *Urge* the competent authorities to take immediate action to collect data on police checks, on the basis of which racist police checks can be more easily recorded and proven;
40. *Urge* the competent authorities to take immediate action to implement a comprehensive package of measures in the context of human resources policy that will effectively prevent directly and indirectly discriminatory police checks.

ANNEX I Catalogue of measures of the NGO platform Human Rights Switzerland for the attention of the security authorities

Implementation of the ECtHR judgment *Wa Baile c. Suisse*

Catalogue of recommendations of NGO platform Human Rights Switzerland for the attention of EJD, KKJD, KSSD

Bern, December 2024

Context and purpose of the catalogue

This catalogue of recommendations serves as a basis for discussion with the decision-makers responsible for implementing the *Wa Baile* ruling. The dialogue was initiated by the coordinator of the NGO platform as an offer (in the form of letters) to the political decision-makers with the aim of encouraging the implementation of the ruling. Another aim is to build a relationship and strengthen trust between the NGO platform and the authorities responsible for security in order to gain experience in joint implementation processes - including in other areas where human rights and policing interact.

More specifically, in the landmark ECtHR judgement *Wa Baile c. Suisse* of February 2024, the Court ascertained a substantive and procedural violation of of the prohibition of discrimination (Art. 14) in connection with the right to private life (Art. 8), as well as a violation of the right to an adequate remedy (Art. 13) with regard to a police check at Zürich HB in February 2015 and the two related legal proceedings (under criminal and public law). In its unanimous judgement, the Court addresses legislators and executives at all levels of government with police powers (including the Federal Office for Customs and Border Security) and urges them to take legislative and administrative measures to ensure the prevention of institutionalised racism by the police and staff of the Federal Office for Customs and Border Security.

The NGO platform Human Rights Switzerland considers that people affected by police racism should not have to take a case through all national courts unsuccessfully before a decision is taken in their favour by the international court. The costs and risks of such legal proceedings are high in financial, social, mental and emotional terms. In the aforementioned case of Mohamed Wa Baile, funds of CHF 120,000 had to be raised. Moreover, Mr. Wa Baile was put under public pressure and he received racist phone calls and letters from strangers because he had the confidence to initiate legal proceedings. This caused insecurity and anxiety, and without the support of a network of committed supporters, the proceedings would not have been possible. It is therefore hardly surprising that very few people are willing to file complaints and initiate legal proceedings even though there is copious evidence of the fact that cases of police racism are not isolated incidents (cf. a [study by the Swiss Confederation](#) providing further indications in this regard).

An equally high priority for the NGO platform Human Rights Switzerland is that the police officers and staff at the Federal Office for Customs and Border Security be supported in their challenging work with a good legal and institutional organisational framework. The ECtHR judgment makes clear that the Swiss authorities at all levels of the state must thoroughly rethink their approach. Until now, the problem of racial profiling has been trivialised by decision makers in politics, justice and the administration; in particular, the structural and institutional dimensions of the problems are generally ignored. This increases the strain on police officers carrying out their duties and generates costs. The judgment represents an opportunity for the competent authorities to enter into a learning process to develop, together with experts and human rights organisations, counter-measures in line with the ECtHR judgment. The measures proposed should have the potential to improve protection against discrimination and protect fundamental and human rights – without being limited to the issue of racism.

We are of the view that this work should be pursued as concretely as possible together with the competent state authorities in order to create synergies and coherence as to the relevant packages of measures. In terms of legislation, the question arises for all state instances as to how criteria and organisational measures in institutions should be defined concerning the Criminal Procedure Code, the Federal Act on Foreign Nationals and Integration (*Loi fédérale sur les étrangers et l'intégration / Bundesgesetz über die Ausländerinnen und Ausländer und über die Integration*

), the Customs Act (*Loi sur les douanes / Zollgesetz*), the police acts, in data protection acts, in regulations and staff instructions. Moreover, administrative issues must be addressed concerning divisions of responsibility, monitoring procedures and organisation, independent complaints mechanisms, staff management, management of police missions and training and continuous learning.

Given the significant issues and challenges, we aim to engage in sustainable and well-structured and managed dialogue. To carefully pave the way for this, the coordinator of the NGO platform Human Rights Switzerland met the Secretary-General of KKJPD on 4 April to discuss the issue. This meeting was followed up with a letter to Federal Councillor Beat Jans and the KKJPD and KSSD leadership. The results of the conversation and the answers have demonstrated that an approach involving political decision makers and the administration at cantonal and city level and the EJPD offers great potential. We also recommend involving the Federal Office for Customs and Border Security in the process. We are confident that an exchange of views on measures for effective implementation of the prohibition of discrimination as laid down in international law – with an important role also being played by EJPD – can yield productive dialogue.

Explanations of individual measures

Area for action 1: clear definition of police powers in conducting checks

Requirement of ECtHR case law:

The ECtHR ruling states that the state is required to adopt specific legal provisions and issue staff instructions which lay down comprehensible criteria on which the police and other security forces may or may not base stops and identity checks.

NGO platform's recommendation for implementation:

This requirement can be implemented effectively by amending laws, ordinances, guidelines and staff instructions:

Art. 9bis paragraph 1 (new) Foreign Nationals and Integration Act – requirements for checks under law on foreign nationals

A check under law on foreigners may not be based on external appearance such as skin colour, ethnic features or other personality traits. It must always be based on individual features and behaviour. Everyday behaviour may not justify checks of individuals.

Art. 215 paragraph 5 (new) Criminal Procedure Code Police stops may only be conducted where there is concrete suspicion of criminal activity based on individual features and behaviour. Such stops may not be based on external appearance such as skin colour, ethnic features or other personality traits. Everyday behaviour may not justify police checks.

Art. 100ter (new) Customs Act Checks at borders and when crossing borders may not be based on external appearance such as skin colour, ethnic features or other personality traits. They must always be justified on the grounds of individual features and behaviour. Everyday behaviour may not justify police checks.

Cantonal and municipal police law, exemplified by §21 paragraph 1 (amended) Police Act, Canton of Zürich

Where necessary to fulfil police duties, the police may stop a person, verify their identity and verify whether the person or vehicles, other objects or animals the person is carrying are wanted. [as previously] Checks of persons and personal identification measures may not be based on external appearance such as skin colour, ethnic features or other personality traits. They must always be justified on the grounds of individual features and behaviour. Everyday behaviour may not justify police checks.

These principles must be adopted and **substantiated** analogously **in rules laid down in directives, staff instructions, information sheets and training documents**. Important: at this level of implementation, everyday behaviour must be substantiated concretely with relevant examples such as avoidance of eye contact, changing direction or nervous behaviour etc. Moreover, detailed explanation of criminologically objective criteria and contextualisation to

differentiate everyday behaviour from suspicious behaviour is required.

Area for action 2: regular collection of data for police practices of deployment and checks

Requirement of ECtHR case law:

States are required to collect statistical data on checks of persons, including the location, time and intervention purpose and broken down into sensitive categories (e.g. skin colour, nationality, presumed origin, presumed religion, gender, age) to create indicators for possible discrimination.

NGO platform's recommendation for implementation:

For effective implementation of this requirement, which suggest that KKJPD work together with EJPD/EFD and KSSD to commission a comparative study to serve as an initial point of reference on possible methods for collecting data on police deployment and control practices (including their advantages and disadvantages), with corresponding recommendations for implementation.

We furthermore recommend that a data collection method for the Swiss police corps be developed and that they be encourage to implement it in their work as part of a test phase. The experience gained should then be evaluated at a higher level through KKJPD and relevant conclusions for further development should be drawn.

The mid-term objective is that all police corps in Switzerland run a long-term monitoring programme, on the basis of which they can further develop their policing and investigatory practice with the aim of furthering protection against discrimination on the basis of human rights.

Area for action 3: creation of independent complaints authorities and procedures

Requirement of ECtHR case law:

The status of victim is only lost if the national authorities recognise and compensate for the violations of the convention for which they were reprimanded. Credible suits and complaints by which a person claims to have been checked by police on the basis of their «race» must be subject to an effective investigation by national authorities. For the ECtHR to exercises its function of oversight, the detailed justifications of the relevant decisions must be provided.

NGO platform's recommendation for implementation:

For effective implementation, we propose that individual cantons and large cities associate to carry out a pilot project for a joint police complaints

ombudsman under the KKJPD umbrella. The authority's sole area of work would be discrimination and violence perpetrated by cantonal and city police corps. It is important to ensure that the complaints authority employ separate staff to the individual police corps and be equipped with the necessary specialists and financial resources. It would mediate between parties and be able to find amicable solutions. It would have the right to obtain information, view files, make recommendations to the authorities involved and file criminal charges. The services provided would be free of charge for all parties.

Area for action 4: Massnahmenbereich 4: Festlegung einer klaren Regelung zu Beweismass und Beweislast

Requirement of ECtHR case law:

The ECtHR ruling states that the burden of proof is reverted in the case of credible accusations that dark skin colour or stereotypically foreign appearance were central reasons for a stop and ID check. If only the state could gather the relevant information, it is the responsibility of the state to prove that there were factual reasons for a police check. It must be assumed that there is a refutable presumption of discriminatory treatment if the following cumulative criteria are more: an effective legal and administrative framework as per measures 1-... is lacking; and reports by human rights organisations, which document racial profiling as a problem cannot be disproven by data in line with measure X.

NGO platform's recommendation for implementation:

The decision-making authorities are already required to verify the sequence of events in its entirety as a matter of course in line with the investigative principle. Moreover, it is recommended that the principle of ECtHR case law of the reverted burden of proof be implemented by integrating the following explicit rule into police law and the specific procedural decrees at all state levels:

If facts are established which suggest with high likelihood that skin colour, effective or assumed non-Swiss nationality, effective or assumed non-Swiss origin, effective or assumed ethnicity, or effective or assumed religion was a pivotal motivation for a police measure, it is the responsibility of the competent state authority to refute this or to prove that an objectively justified suspicion based on individual characteristics and behaviour was the decisive motivation. If such evidence cannot be provided, the act shall be considered discriminatory.

Area for action 5: discrimination-sensitive HR policy

Requirement of ECtHR case law:

The ECtHR ruling states that it is difficult for police officers to decide very quickly and without clear instructions whether they are faced with a threat to public order and safety. Therefore, contracting states are required to provide not just the aforementioned legal but also an administrative framework to prevent racially discriminatory police practices.

NGO platform's recommendation for implementation:

Effective implementation of this requirement involves more than theoretical training provision. Of crucial importance is that police officers are provided with time to reflect on their own work as part of their routine activities and that specific lessons be drawn from this. To ensure that this does not increase the work burden, two steps must be taken:

Existing structures such as briefings and debriefings before and after police deployments, existing guided self-reflection and supervision, support services for HR personal development and conversations with staff should be used to raise awareness of the risks of discrimination and action to be taken to prevent and tackle discrimination hands-on.

Moreover, in terms of methodology, it is important to mandate internal and external specialists with the relevant knowledge who are able to create a culture of learning from mistakes. It is also important to integrate the topic actively into procedures for the recruitment and promotion of police staff.

We recommend that the KKJPD commission a study to formulate a proposal for a theory-practice circle covering all levels including recruitment, promotion, initial training, continuous learning, deployment planning, guided self-reflection and supervision. It should be based on a comparison of good practice and directed at policy and operative leadership in the Swiss police forces.

ANNEX II Survey on the implementation of the ECtHR Judgement *Wa Baile c. Suisse*

Bern, 16 October 2024

To:

Cantonal and City Justice and Police Directors and Chiefs of Police Corps

Survey concerning the implementation of the ECtHR ruling *Wa Baile c. Suisse*

Dear Sir or Madam

On 20 February, the European Court of Human Rights published the Impact Case ['Affaire Wa Baile c. Suisse' \('Case Wa Baile v. Switzerland'\)](#)". In its landmark judgment, the ECtHR ruled that there was a violation of the substantive and procedural parts of the prohibition of discrimination (Art. 14) in connection with the right to private life (Art. 8), in addition to a violation of the right to an effective remedy (Art. 13). Moreover, the court appealed in its unanimous ruling to the legislative and executive at all levels of the state. They were urged to ensure effective prevention of police racism by taking legislative and administrative measures.

The *Wa Baile* judgment makes clear that Swiss state authorities at all levels must rethink their approach. Until now, the problem of racial profiling has been trivialised by decision makers in politics, the administration and justice; in particular, the structural and institutional dimensions of the problem tended to be ignored. The ruling offers the competent authorities the opportunity to elaborate counter-measures in line with the ECtHR judgment. To this end, the NGO platform Human Rights Switzerland, made up of around 100 human rights organisations, has sent a letter to Federal Councillor Beat Jeans, the Chair of the Conference of Cantonal Justice and Police Directors (KKJPD) and the Chair of the Conference of City Safety Directors (KSSD) to initiate contact. The coordinator of the NGO platform was subsequently invited to the board meeting of KKJPD, which is to take place in January 2025. The aim of the exchange of views is to discuss concrete issues and implementation measures.

We consider that the *Wa Baile* ruling should be implemented together with the competent state authorities in a maximally specific and fact-orientated manner to create synergies and coherence in the relevant packages of measures. In terms of legislation, an issue for state authorities at all levels is for example how criteria and organisational measures in the institutions can be defined concerning the Criminal Procedure Code, the Foreign Nationals and Integration Act, the Customs Act, the police acts, the data protection acts, the regulations and the staff instructions. Moreover, at the administrative level, questions must be raised concerning the division of responsibilities, monitoring procedures and organisation, independent complaints mechanisms, staff management, deployment management, initial training and continuous learning.

The NGO platform is willing to support you and the competent authorities at all levels of the staff with our rich insights as specialists in this area. Moreover, we will submit a report to the Committee of Ministers of the Council of Europe at the start of 2025 on the state of implementation of the Wa Baile judgment in line with rule number 9.2. We will also submit a report for the UN Human Rights Committee on the monitoring of the Covenant on Civil and Political Rights. To carry out this work seriously, we wish to gain an overview of the current situation in the cantons and cities and the reactions to the judgment. Therefore, we respectfully invite you to respond to the following questions:

- 1) Do you consider that the Wa Baile ruling against Switzerland has consequences for your canton / your municipality?
- 2) Which legislative measures for preventing and tackling racially discriminatory police stops steer action taken in your body? What additional measures have you initiated since the Wa Baile judgment?
- 3) What measures are provided for in your body in staff instructions and other internal police rules for preventing and tackling racially discriminatory police deployments? What additional measures have you initiated since the Wa Baile judgment?
- 4) What measures are in place in your body for collecting data on police deployment and monitoring practices? What additional measures have you initiated since the Wa Baile judgment?

What measures exist in your body concerning independent complaints, investigatory and legal protection mechanisms in case of possible violations of the prohibition of racial discrimination through police interventions? What additional measures have you initiated since the Wa Baile judgment?

What principles are applied in your body regarding the standard and burden of proof in cases of possible violation of the prohibition of racial discrimination in police interventions? What additional measures have you initiated since the Wa Baile judgment?

What measures are available for raising awareness of discrimination among staff (e.g. training and continuous learning provision, the culture of learning from mistakes such as briefing and debriefings after police deployments, guided self-reflection and supervision, HR recruitment and HR personal development)? What additional measures have you initiated since the Wa Baile judgment?

We are aware that responding to the questions will require time and resources, but we are of the view that this work represents an opportunity to strengthen sensitivity to discrimination in the work of the police in Switzerland.

With thanks for your work,
best wishes,

Tarek Naguib,
Coordinator of the NGO platform