



February 2024

This Factsheet does not bind the Court and is not exhaustive

## Racial profiling

### **Article 14 (prohibition of discrimination) of the [European Convention on Human Rights](#) of 4 November 1950:**

“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

### **Article 1 (general prohibition of discrimination) of Protocol No. 12 to the Convention of 4 November 2000:**

“1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.”

### **[Basu v. Germany](#)**

18 October 2022 (Chamber judgment)

The applicant in this case, a German national of Indian origin, alleged that the police had carried out an identity check on him only because of his skin colour. He was travelling on a train which had just passed the border from the Czech Republic in 2012, with his daughter. When asked, the police told him that it was a random check. He unsuccessfully brought an action in the courts, arguing that he and his daughter had been singled out as they were the only passengers with dark skin colour in the train carriage. Before the European Court, the applicant complained in particular that the identity check had amounted to racial discrimination and that the domestic courts had refused to investigate or examine on the merits his allegations.

The European Court of Human Rights held that there had been a **violation of Article 14** (prohibition of discrimination) **taken in conjunction with Article 8** (right to respect for private life) of the European Convention on Human Rights in the present case. It noted in particular that, in the context of an arguable claim of racial discrimination, racial discrimination as prohibited by Article 14 of the Convention was a particularly egregious kind of discrimination and, in view of its perilous consequences, required from the authorities special vigilance and a vigorous reaction. The Court referred in this context also to the finding of the [European Commission against Racism and Intolerance](#) (ECRI) that racial profiling, in particular, resulted in the stigmatisation and alienation of the persons concerned by it. In the case of the applicant, the Court found that the State authorities had failed to comply with their duty to take all reasonable measures to ascertain through an independent body whether or not a discriminatory attitude had played a role in the identity check, and thus had failed to carry out an effective investigation in this regard. Therefore, the Court was unable to make a finding on whether the applicant had been subjected to the identity check on account of his ethnic origin.

### **[Muhammad v. Spain](#)**

18 October 2022 (Chamber judgment)

This case concerned the police's stopping the applicant, a Pakistani national, in a busy area of Barcelona in 2013 to check his identity documents. According to the police

officers, the applicant laughed at them as they passed by and referred to them using disrespectful language, which was the reason why they approached him and requested to see his identity documents. The applicant denied the officers' version and argued that he had only been stopped because of his skin colour. He complained of the allegedly discriminatory motivation of the officers when carrying out his identity check, as well as of the lack of a sufficient and effective investigation by the Spanish authorities into his claims of having suffered racial discrimination.

In the present case, the Court held that there had been **no violation of Article 14** (prohibition of discrimination) **taken in conjunction with Article 8** (right to respect for private life) of the Convention, as regards both the complaint concerning the domestic authorities' failure to carry out an effective investigation and the complaint concerning the allegedly discriminatory grounds for the police check and arrest of the applicant. It noted in particular that, from a procedural aspect, the applicant had been able to challenge the domestic courts' decisions, which had been sufficiently reasoned and motivated. Moreover, there was no reason for the Court to depart from the domestic courts' conclusion that the applicant's attitude, and not his ethnicity, was what had caused the police officers to stop him and to identify him. In the applicant's case, the Court was therefore unable to find that the requirement on him to identify himself on the street had been motivated by racism.

### **Wa Baile v. Switzerland**

20 February 2024 (Chamber judgment<sup>1</sup>)

This case 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. The applicant, a Swiss national, submitted in particular 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 – had amounted to discrimination on the ground of his skin colour.

The Court held that there had been a procedural **violation of Article 14** (prohibition of discrimination) **in conjunction with Article 8** (right to respect for private life) of the Convention in the present case with regard to the obligation to examine whether discriminatory grounds might have played a part in the identity check to which the applicant had been subjected. It 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. The Court also held that there had been a **violation of Article 14 in conjunction with Article 8** of the Convention as to the allegation of the discriminatory nature of the identity check to which the applicant had been subjected. 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, the Court concluded that there was, in these particular circumstances, a presumption, which the Swiss Government had failed to rebut, that the applicant had been subjected to discriminatory treatment. Lastly, the Court held that there had been a **violation of Article 13** (right to an effective remedy) of the Convention in connection with the applicant's complaint under Article 14 read in conjunction with Article 8, finding that no effective remedy had been available to the applicant in the domestic courts in respect of his complaint.

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<sup>1</sup>. This judgment will become final in the circumstances set out in Article 44 § 2 (final judgments) of the [European Convention on Human Rights](#).

### **Pending application**

#### **[Seydi and Others v. France \(no. 35844/17\)](#)**

Communicated to the French Government on 25 October 2021

This case concerns identity checks carried on the applicants by law enforcement officials and which they describe as racial profiling. The national courts found that the applicants' allegations of discrimination were not sufficiently substantiated and that, in the absence of evidence that the identity checks were discriminatory, the State could not be held liable.

In October 2021 the Court gave notice of the application to the French Government and put questions to the parties under Articles 14 (prohibition of discrimination), 8 (right to respect for private life) and 6 § 2 (presumption of innocence) of the Convention.

### **Texts and documents**

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See, in particular:

- ECHR Knowledge Sharing platform (ECHR-KS), **[Article 14 and Article 1 of Protocol No. 12 - Prohibition of discrimination](#)**
  - **[Handbook on European non-discrimination law – 2018 edition](#)**, European Union Fundamental Rights Agency / Council of Europe, 2018
  - **[webpage](#)** of the European Commission against Racism and Intolerance
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#### **Media Contact:**

Tel.: +33 (0)3 90 21 42 08