

NEWS REPORT

Date: 25 September 2009
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Title: The Human Rights Committee deems that there has been a violation of the International Covenant on Civil and Political Rights by Spain in the case of Rosalind Williams
Country: Spain

Context
Ground Racial origin
discrimination: Other
Field:
Source: Views adopted by the Human Rights Committee (HRC)
Legislative provisions: International Covenant on Civil and Political Rights and his Optional Protocol

Content

Case: Rosalind Williams, an Afro-American woman originally from the United States, acquired Spanish nationality in 1969. On 6 December 1992, at Valladolid railway station, a National Police officer requested to check her national identity card. The officer did not request from anyone else on the platform at that time to check their identity cards. The complainant asked the 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 on “coloured people” in particular.

Mrs Williams filed a complaint with the Ministry of Interior, which asserted that there was no order obliging the police to identify people by their racial characteristics. She then appealed to all the competent Spanish courts on the ground that she was a victim of racial discrimination. She lost all these appeals. The Spanish Constitutional Court, in a judgment of 29 January 2001, which put an end to proceedings in Spain, justified the police action because it “applied the racial criterion merely as indicating a greater likelihood that the person concerned was not Spanish”, and because “what might have been discriminatory would have been the use of a criterion (in this case a racial one) with no relation to the identification of persons for whom the law stipulates this administrative measure, in this case foreign citizens.”

Nearly six years after this Constitutional Court judgment, on 11 September 2006, Rosalind Williams filed a complaint to the Human Rights Committee, with the support of Open Society Justice Initiative, Women’s Link Worldwide and SOS Racismo-Madrid.



Decision of the HRC :

1. Admissibility: the HRC declares the claim to be admissible in relation to arts. 2 and 26 of the International Covenant on Civil and Political Rights (but not in relation to art. 12, as the complainant requested), even though it was filed nearly six years after the proceedings in Spain were exhausted, due to the complainant's difficulties in getting free legal assistance (there is a dissenting opinion as to the claim's admissibility, deeming that "late communication" is "an abuse of the right of submission").

2. In the examination of the merits of the case there are several considerations of interest:

a) "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."

b) "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."

c) "The complainant alleges that no one else in her vicinity had their identity checked and that the police officer who stopped and questioned her referred to her physical features to explain why she, and no one else in the vicinity, was being asked to show her identity papers (...) The Committee can only conclude that the complainant 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" (our italics).

d) "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," but in this case "the criteria of reasonableness and objectivity were not met", and "the complainant has been offered no satisfaction, such as an apology by way of a remedy."

Accordingly, the HRC "is of the view that the facts before it show a violation of article 26, read in conjunction with article 2, paragraph 3, of the Covenant." And, therefore, it deems that Spain: 1) "is under an obligation to provide the complainant with an effective remedy, including a public apology"; 2) "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"; 3) the HRC "wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's views"; and 4) requests Spain to publish the Committee's views.