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HIGH COMMISSIONER FOR HUMAN RIGHTS

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REFERENCE: G/SO 215/51 ESP (99)
CR/sn 1493/2006

[stamp] **received 17/8/09**

August 12, 2009.

Dear Sir,

I have the honor of sending you attached hereto the text of the views adopted by the Human Rights Committee on July 27, 2009 regarding communication No. 1493/2006 submitted by you to the Committee for consideration in accordance with the Optional Protocol to the International Covenant on Civil and Political Rights.

I also attach the text of an individual opinion signed by two members of the Committee.

In accordance with established practice, the text of the opinion will be made public.

Sincerely

[Ilegible signature]
Ibrahim Salama
Head
Human Rights Treaties Service

Mr. Jim Goldstone
Open Society Justice Initiative
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International Covenant on Civil and Political Rights

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HUMAN RIGHTS COMMITTEE
96th period of sessions
July 13-31, 2009

VIEWS

Communication No. 1493/2006

Submitted by:	Rosalind Williams Lecraft (represented by an attorney)
Alleged victim:	The author
State party:	Spain
Date of the communication:	September 11, 2006 (date of original submission)
References:	Decision of the Special Rapporteur pursuant to article 97 of the regulations, transmitted to the State party on October 3, 2006 (not published as a document)
Date of approval of the opinion:	July 27, 2009.

* Disclosed by decision of the Human Rights Committee.

Subject matter: Discrimination in connection with an identity check.

Procedural issue: Abuse of the right to submit communications; lack of grounds.

Substantive issue: Discrimination by reason of race

Articles of the Covenant: Article 2, paragraph 3; Article 12, paragraph 1; Article 26.

Articles of the Optional Protocol: Article 2, Article 3

On July 27, 2009, the Human Rights Committee approved the attached text as the views of the Committee issued pursuant to paragraph 4 of article 5 of the Optional Protocol regarding communication No. 1493/2006.

[Annex]

Annex

VIEWS OF THE HUMAN RIGHTS COMMITTEE ISSUED PURSUANT TO PARAGRAPH 4 OF ARTICLE 5 OF THE OPTIONAL PROTOCOL OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS
- 96th PERIOD OF SESSIONS -

Concerning

Communication No. 1493/2006*

Submitted by:	Rosalind Williams Lecraft (represented by Open Society Justice Initiative, Women's Link Worldwide and SOS Racismo-Madrid)
Alleged victim:	The author
State party:	Spain
Date of the communication:	September 11, 2006 (date of original submission)

The Human Rights Committee, created under article 28 of the International Covenant on Civil and Political Rights,

Meeting on July 27, 2009,

Having concluded the examination of communication No. 1493/2006 submitted on behalf of Ms. Rosalind Williams Lecraft under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all the information filed in writing by the author of the communication and the State party,

Adopts the following:

* The following Committee members participated in the examination of the communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Mohammed Ayat, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Rajsoomer Lallah, Mr. Lazhari Bouzid, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli and Mr. Krister Thelin.
Attached to this decision is the text of the individual vote signed jointly by Mr. Krister Thelin and Mr. Lazhari Bouzid, members of the Committee.

Views of the Human Rights Committee under Article 5, paragraph 4, of the Optional Protocol

1. The author of the communication, dated September 11, 2006, is Rosalind Williams Lecraft, a Spanish citizen born in 1943, who claims that she was the victim of a violation by Spain of articles 12, paragraph 1 and 26, read in conjunction with article 2 of the Covenant. The author is represented by an attorney. The Optional Protocol became effective for Spain on April 25, 1985.

The facts described by the author

2.1. The author, born in the United States of America, became a Spanish citizen in 1969. On December 6, 1992, she arrived at the Valladolid railway station from Madrid with her husband and son. Moments after she left the train, a member of the National Police approached her and asked her for her National Identity Document (DNI). The policeman did not ask any other person on the platform at that time for their DNI, including the husband and son of the author. The author asked the policeman to explain the reasons for the identity check, to which he replied that he had the duty to check the identity of persons like her, since many were illegal immigrants. He added that the National Police had been ordered by the Ministry of the Interior to carry out identity checks specifically of "colored persons." The author's husband stated that this constituted racial discrimination, which the policeman denied, saying that the had to perform identity checks owing to the large number of illegal immigrants living in Spain. The author and her husband asked the police officer to show them his own DNI and police badge, to which he replied that, unless they changed their attitude, he would arrest them. He then led them to an office within the station, where he took down their personal details and showed them his police ID.

2.2. The next day the author went to Police Headquarters in the San Pablo neighborhood to file a complaint for racial discrimination. Such complaint was dismissed by Investigating Court No. 5 of Valladolid because there were no indications that a crime had been committed. The author did not appeal such decision. Instead, on February 15, 1993, she filed a complaint with the Ministry of the Interior challenging its order requiring the National Police to perform identity checks of colored persons. In addition, the author requested that the General Government Administration *[Administración General del Estado]* be held financially liable for the unlawful police action to which she had been subject. She claimed that the practice of making identity checks based on racial standards was contrary to the Spanish Constitution and the European Convention for the Protection of Human Rights and Fundamental Freedoms and that the check to which she had been subject had caused her and her family non-economic and psychological damage. She therefore requested compensation of approximately five million pesetas. In support of her petition, the author submitted a medical certificate dated March 15, 1993 stating that the author suffered from "social phobia" and "agoraphobic disorder" which had been caused by "a police check at a railway station based on racial discrimination."

2.3. By resolution of February 7, 1994, the Ministry held the first part of the author's complaint to be inadmissible because it considered that there was no order requiring the law

enforcement officers and forces to identify persons according to their race. If such an order were to exist, it would be unconstitutional as a matter of law. The resolution refused to consider the lawfulness of the identity check conducted on the author because it considered that her complaint referred only to the general order and not to the incident she had suffered. The resolution was challenged before the Administrative Litigation Division of the Court of Appeals, which dismissed the motion in its judgment of March 15, 1996.

2.4. The claim regarding the financial liability of the Administration was also dismissed by the Ministry of the Interior, holding that the police officer involved had acted within the scope of his powers to control illegal immigration and in response to the foreign appearance of the interested party, to appraise which police officers could take into account the racial features of the current Spanish population. The author filed an administrative appeal against this decision with the Court of Appeals.

2.5. On November 29, 1966, the Court of Appeals dismissed the appeal. It found, among other things, that the police action was based on the application of the system governing the rights and freedoms of foreigners in Spain, under which policemen had orders to identify any foreigners at the Valladolid station. Since the author was of the African race, the request for identification was not disproportionate. Furthermore, section 20 of the organic law on the security of citizens authorizes the administration to take this kind of action "provided the knowledge of the identity of the persons asked [to show their ID] is necessary to comply with the duty of protecting security." Moreover, no evidence had been provided that the actions of the police were inconsiderate or humiliating.

2.6. The author filed an action for the protection of constitutional rights and liberties *[recurso de amparo]* with the Constitutional Court, which was dismissed by judgment of January 29, 2001. The Court ruled that the demand for identification was not the result of patent discrimination, since in the administrative-litigation proceeding the existence of any specific order or instruction to identify individuals of a given race had been ruled out. As to the matter of determining whether or not there had been concealed racial discrimination, the Court held that there were no indications that the behavior of the National Police officer involved was guided by racial prejudice or by a particular bias against the members of a given ethnic group.[1]

[1] The judgment points out that, as shown by the prior judicial process, "the police action followed the standard of race as merely indicative of a greater likelihood that the interested party was not Spanish. None of the circumstances that occurred in such action indicates that the behavior of the acting National Police officer was guided by racial prejudice or by a particular bias against the members of a particular ethnic group (…). Thus, the police action took place in a place of passenger transit, a railway station where, on the one hand, it is not illogical to think that there would be a higher likelihood than elsewhere that the persons who are selectively asked to show their ID might be foreign and, on the other, that the inconveniences created by any request to show ID are minor, and may be reasonably be taken as obligations inherent in social life (…). It does not seem to have been established either that the police officers acted inconsiderately, offensively, or that they gratuitously interfered with plaintiff's freedom of movement (…), since the police action only lasted the minimum time required to achieve identification. Finally, it may be ruled out that the police officers acted arrogantly or strikingly calling attention to Ms. Williams Lecraft and her companions in a manner that was offensive or uncomfortable for them before the group of citizens at the railway station (…). What would have been discriminatory would have been the use of a standard (in this case, the racial standard) lacking any

2.7. After the Constitutional Court passed judgment, the author gave serious consideration to the possibility of resorting to an international agency. However, she did not do so because of her emotional distress as a result of nine years' litigation and financial hardship. At that time, Spanish law did not provide for free legal aid for the type of remedy that the author sought, so that she paid all expenses herself. After such decision was rendered, she lacked the financial wherewithal to bring any further legal actions.

The complaint

3.1. The author claims that she was the victim of direct racial discrimination. The reason why she was subject to the identity check was the fact that she belongs to a racial group not typically associated with Spanish nationality. Although she is a Spanish citizen herself, she was treated less favorably that other Spanish citizens (including her husband, a Caucasian, who was with her) would have been treated in a similar situation.

3.2. Spanish laws authorizing the police to make identity checks to control immigration are apparently neutral. However, the application thereof creates a disproportionate impact on persons of color or with "specific physical ethnical characteristics" considered as "indicative" of non-Spanish nationality. Given the manner in which it was applied by the police officer in question and the Spanish courts, Spanish immigration laws put such persons at a disadvantage.

3.3. The Spanish courts justified the actions of the police officer in question with the argument that they pursued a legitimate goal: to control immigration by identifying undocumented foreigners. In addition, they implicitly considered this procedure to be appropriate and necessary to achieve such goal because, in their opinion, black people were more likely to be foreigners than people with other racial characteristics. This reasoning, however, cannot be considered valid.

3.4. Skin color cannot be considered as a reliable standard to surmise a person's nationality. There is a growing number of Spanish citizens who are black or members of other ethnic minorities and, thus, who may have to bear the humiliation of being the subject of special attention by the police. Conversely, a significant number of foreigners are white and their appearance is no different from that of indigenous Spaniards. A policy focusing on a specific race runs the risk of diverting police attention from undocumented foreigners of a different origin and thus, of being counterproductive. The objective of controlling immigration cannot justify, from the legal standpoint, a policy that focuses specifically on black persons. Such a policy contributes to the strengthening of racial prejudice in society and helps, even if unintentionally, to legitimize the use of racial distinctions for improper purposes.

3.5. The author requests that the Committee declare the violation of articles 2; 12, paragraph 1 and 26 of the Covenant and urge the State party to grant her compensation in

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relevance for the identification of persons in respect of which applicable laws and regulations provide for the measure for administrative intervention, foreign citizens in this case.)

the amount of 30,000 euros for the psychological damage suffered and a further 30,000 [euros] as compensation for the expenses of the proceedings before the domestic courts.

State party's observations on admissibility and merits

4.1. In its observations of April 4, 2007, the State party contends that, even though it is true that the Optional Protocol does not formally establish a time bar on the filing of communications, it does rule out those that, because of their conditions, without excluding those relating to time, may constitute an abuse of the right to submit communications. Such is the case with this communication, which is submitted almost six years after the final decision at the domestic level. The author's argument regarding the lack of free legal aid at the time does not conform to reality. In this connection, the State party refers to the Law of Civil Procedure, Section 57 of the General Rules for the Practice of Law *[Estatuto General de la Abogacía]* of 1982, the Organic Law of the Judiciary in the text of 1985 and 1996 and article 119 of the Constitution. The State party concludes that the communication should be held to be inadmissible under Article 3 of the Optional Protocol.

4.2. The State party also asserts that the facts do not indicate any violation of the Covenant. It is fully lawful and in no way inconsistent with the Covenant for the State to control illegal immigration and, to such end, for members of the police to perform identity checks. This is provided for in Spanish law, specifically at the time of the events, in Section 72.1 of the Implementing Regulations of Organic Law No.7/1985 on the rights and liberties of foreigners in Spain, which required foreigners to carry with them their passport or the document on the basis which they had entered Spain and, where appropriate, their residence permits and to exhibit them whenever required by the authorities. The Organic Law on the protection of the safety of citizens and the Decree on the National Identity Document authorize the authorities to make identity checks and require everyone, including Spanish citizens, to exhibit their identity documents.

4.3. At present, black people are relatively rare among the Spanish population, and they were even more rare in 1992. In addition, one of the important origins of illegal immigration into Spain is sub-Saharan Africa. The difficult circumstances which often surround the arrival in Spain of these persons, who are often victims of criminal organizations, constantly attracts the attention of the media. If we accept the legitimacy of control of illegal immigration by the State, it seems inevitable to admit that police checks made for such purpose, with due respect and the required proportionality, may take into account certain physical or ethnic features as reasonably indicative of the non-national origin of the person involved. Furthermore, the existence of a specific order or instruction to identify individuals of a given race had been ruled out in this case. In addition, there is no evidence after 15 years that the author has been subject to any new request for identification, which would be incomprehensible if there were a discriminatory motivation.

4.4. The identification of the author was carried out respectfully and at a place and time where people usually carry their identity documents with them. The police action only lasted the minimum time necessary to make the identification and ended when it was determined that the author was a Spanish citizen. In short, the identification of the author was made with the necessary legal authorization, following a reasonable and proportionate

standard and in an entirely respectful manner, and there was therefore no violation of Article 26 of the Covenant.

Author's comments on the State party's observations

5.1. On December 17, 2007, the author reiterates that the time elapsed between the exhaustion of domestic remedies and the submission of the communication to the Committee was due to financial hardship. The 1996 law mentioned by the State party does not provide for free legal aid for regional or international proceedings. The European Court of Human Rights does provide this kind of aid, at its discretion, and never at the outset of the proceeding before it. In addition, when the Constitutional Court delivered its judgment, there were no non-governmental organizations in Spain known by the author with the experience and the interest needed to take the case to a regional or international agency. As soon as the author was able to obtain free legal assistance from the organizations representing her before the Committee she decided to submit her case to it.

5.2. The author agrees with the statement of the State party that control of illegal immigration is a legitimate objective and that police identity checks are an acceptable method to achieve such goal. However, she does not agree that, for such purpose, law enforcement officials should use only racial, ethnic and physical features as indicative of the non-national origin of specific persons. The State party admits in its answer that it takes skin color not only as indicative of non-Spanish nationality, but even as indicative of illegal status in Spain. The author reiterates her statement to the effect that skin color cannot be considered as indicative of nationality. Selecting a group with a view to controlling immigration using skin color as a standard constitutes direct discrimination, as it is tantamount to using racial stereotypes in the immigration control program. Stating that this group of persons could be victims of trafficking on the basis of skin color also constitutes differential treatment. A survey carried out by the Spanish police in 2004 concluded that only 7% of trafficking victims came from Africa. The State party has not established that its policy of using race and skin color as indicative of illegal status is reasonable or proportionate to the goals it seeks to achieve.

5.3. The author also points out that the absence of an intention to discriminate and the courteous conduct of the police officer who asked for her documents are irrelevant. What is important is that his act was discriminatory. The absence of the repetitive element is also irrelevant. Neither the Covenant nor Committee decisions require an act to be repeated to determine the existence of racial discrimination.

Issues and Proceedings before the Committee

Examination of Admissibility

6.1. Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with article 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2. The Committee has ascertained, as required under article 5, paragraph 2 a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3. The Committee notes the State party's argument that the communication should be held to be inadmissible because it constitutes an abuse of the right to submit communications under article 3 of the Optional Protocol, in view of the excessive delay in submitting the communication to the Committee, almost six years after the judgment of the Constitutional Court in the action for the protection of constitutional rights and liberties. The Committee reiterates that the Optional Protocol does not establish any time bar on the submission of communications, and that the time elapsed prior to doing so, save for exceptional cases, does not constitute, in and of itself, an abuse of the right to submit a communication. In the case at hand, the Committee notes the problems the author had in finding free legal aid and does not consider that the above-mentioned delay constitutes such abuse.[2]

6.4. The author alleges that the facts reported constitute a violation of article 12, paragraph 1 of the Covenant. The Committee finds that this allegation has not been substantiated for purposes of admissibility and considers it inadmissible under article 2 of the Optional Protocol.

6.5. There being no other obstacles to admissibility, the Committee finds the communication is admissible to the extent that it seems to raise issues related to articles 2, paragraph 1 and 26 of the Covenant.

Examination of the merits

7.1. The Human Rights Committee has considered this communication in light of all the information submitted to it by the parties in accordance with article 5, paragraph 1 of the Optional Protocol.

7.2. The issue before the Committee is whether, in having been subject to an identity check by the police, the author was subject to discrimination by reason of race. The Committee finds that it is legitimate to make general identity checks to protect the safety of citizens and prevent crime or with a view to controlling illegal immigration. However, when the authorities perform such controls, the mere physical or ethnic features of the persons subject to them should not be taken as indicative of their possible illegal status in the country. Neither should such checks be made such that only persons with given physical or ethnic features are selected. Doing otherwise would not only adversely affect the dignity of the persons affected, but would also contribute to spreading xenophobic attitudes among the population at large and would be inconsistent with an effective racial discrimination prevention policy.

[2] Communications Nos. 1305/2004, *Villamón c. España*, views adopted on October 31, 2006, para. 6.4. and 1101/2002, *Alba Cabriada c. España*, views adopted on November 1, 2004, para. 6.3; 1533/2006, and *Zdenek y Ondracka c. la República Checa*, views adopted on October 31, 2007, para. 7.3.

7.3. The international liability of the State for violating the International Covenant on Civil and Political Rights is objective in nature and may arise from the actions or omissions of any of its branches. In the case at hand, while there seems to be no written and express order in Spain to conduct police identity controls using skin color as a standard, the police officer apparently acted in accordance with such standard, which the courts hearing the case held to be justified. The State party is clearly liable. It is thus up to the Committee to decide whether such action goes against one or more provisions of the Covenant.

7.4. In the case at issue here, it may be inferred from the case file that it was a general identity check. The author maintains that no other person around her was subject to such control and that the policeman who approached her mentioned her physical features to explain the reason why he asked her, and not other persons around her, to show her identity documents. These allegations were not refuted by the administrative and judicial bodies to which the author reported the events, or before the Committee. In these circumstances, the Committee can only conclude that the author was picked out for such identity check only by reason of her racial characteristics and that these constituted the determining element to suspect her of unlawful conduct. The Committee also notes its prior decisions to the effect that not all differences in treatment constitute discrimination if the differentiating standards are reasonable and objective, and if the goal pursued is lawful under the Covenant. In this case, the Committee is of the view that the standards of reasonability and objectivity are not complied with. Furthermore, no satisfaction has been offered to the author such as, for instance, an apology as redress.

8. On the basis of the foregoing, the Human Rights Committee, acting under article 5, paragraph 4 of the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation of article 26, read in conjunction with article 2, paragraph 3 of the Covenant.

9. As provided in paragraph 3 a) of Article 2 of the Covenant, the State party has the obligation of providing the author with an effective remedy, including a public apology. The State party also has the obligation of taking all necessary measures to prevent its officials from carrying out acts such as those in the instant case.

10. Bearing in mind that, as a party to the Optional Protocol, the State party acknowledges the jurisdiction of the Committee to determine whether or not there was a violation of the Covenant and that, under article 2 of the Covenant, the State party has undertaken to guarantee to all individuals in its territory and subject to its jurisdiction the rights recognized in the Covenant, the Committee wishes to receive from the State party, within 180 days, information regarding the measures adopted by it to apply these views. The State party is also requested to publish the Committee's Views.

[Approved in Spanish, French and English, with Spanish being the original version. To be subsequently published in Arabic, Chinese and Russian as part of the Committee's Annual Report to the General Assembly.]

APPENDIX

Individual vote (dissenting) signed by Mr. Krister Thelin and Mr. Lazhari Bouzid, members of the Committee

The majority has decided that the communication is admissible and has examined its merits.

I respectfully disagree.

Delay in filing a communication does not constitute, in and of itself, an abuse of the right to submit communications under article 3 of the Optional Protocol. Nonetheless, according to the interpretation of the Committee's prior decisions, undue delay, in the absence of exceptional circumstances, must lead to the conclusion that the communication is inadmissible. In some cases the Committee has found that a period of more than five years constitutes undue delay (reference is made to the relevant cases relating to the Czech Republic, including Kudrna, and the dissenting opinion in Slezak).

In the case at hand, the author has let almost six years go by before filing her complaint. Her claim that she had trouble in finding free legal aid does not constitute, in light of all the facts of the case, a circumstance that could justify such undue delay. Accordingly, it must be held that the late communication constitutes an abuse of the right to file communications and is therefore inadmissible under article 3 of the Optional Protocol.

[signed]: Mr. Krister Thelin

[Approved in Spanish, French and English, with English being the original version. To be subsequently published in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
