

**EUROPEAN COURT OF HUMAN RIGHTS**

**ZESHAN MUHAMMAD V. SPAIN**

**Application No. 34085/17**

**OBSERVATIONS OF THE APPLICANT IN REPLY TO THE  
GOVERNMENT'S OBSERVATIONS  
AND GROUNDS FOR JUST SATISFACTION**

**I. INTRODUCTION**

1. These Observations do not seek to rehearse the facts and submissions that were fully set out in Mr. Muhammad's Application ('the Application'). The facts and arguments presented in the Application establish that the police stop and identity check by an officer of the Spanish National Police, on 29 May 2013, and the State's subsequent failure to take any effective steps to investigate allegations that the stop and identity check were racially discriminatory, violated Mr. Muhammad's rights under Article 8, alone and in conjunction with Article 14, and Article 1, Protocol 12 of the Convention. Mr. Muhammad seeks just satisfaction for those violations.
2. The police racial profiling of Mr. Muhammad, and his public humiliation by the National Police, were not isolated events. Rather, they are part of a consistent pattern of ethnic profiling and racially discriminatory law enforcement in Spain, enabled by inadequate legal protections and flawed constitutional jurisprudence. The Council of Europe and a number of international, regional, and national human rights monitoring bodies have repeatedly condemned systemic racial profiling in Spain and the inadequate legal protections against this form of discrimination.<sup>1</sup>

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<sup>1</sup> Application, Doc. 1, Additional submissions, paras. 10-21, Applicant's Observations, para. 66.

3. These Observations – which should be read together with the Application – respond to the two questions raised by the Court, and set out Mr. Muhammad’s reply to the Government’s submissions.<sup>2</sup> For the reasons set out below, the Applicant rejects each of the Government’s arguments.

## **II. GOVERNMENT’S OBSERVATIONS ON THE FACTS**

### **A. Procedural facts**

4. The Government begins its Observations with 10 pages of submissions on the domestic proceedings in Spain. The Applicant has already set out the relevant facts of those proceedings in the Application.<sup>3</sup> The following points require further emphasis.
5. First, the Government’s references to and arguments concerning the criminal proceedings instituted by Mr. Muhammad in Spain are fundamentally misplaced.
6. Mr. Muhammad instituted two separate and independent sets of proceedings in Spain: administrative and criminal. As agreed by the Ministry of Interior (the Ministry) in its resolution of 20 May 2014,<sup>4</sup> the factual and legal basis for the administrative and the criminal proceedings are different.<sup>5</sup> The criminal proceedings conducted by Barcelona’s investigating judge concern the alleged crimes of falsification of documents by public officials, unlawful detention, degrading treatment, harassment, and verbal abuse committed by the police officers during and after the police stop and identity check.<sup>6</sup> The administrative proceedings before the Ministry were limited to the discriminatory stop and identity check and excluded the subsequent events. As discriminatory identity

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<sup>2</sup> If and to the extent that these Observations do not expressly deal with a submission made by the Government in its Observations – which run to over 60 pages – should not be taken to indicate that the Government’s position is accepted.

<sup>3</sup> Application, paras. 8-27

<sup>4</sup> Application, Doc. 25.

<sup>5</sup> Application, para. 11; Documents 22, 24 and 25.

<sup>6</sup> Government’s Observations, Annex 2, page 81, *Audiencia Provincial de Barcelona*, decision of 4 February 2016 upholding temporary stay proceedings adopted by Barcelona’s investigating judge.

checks are not a criminal offence under Spanish law,<sup>7</sup> the police identity check carried out on Mr. Muhammad was never part of the criminal proceedings. This Application concerns only the issues that were the subject of the administrative proceedings, and the criminal proceedings are therefore not relevant to the Application.

7. Second, because the criminal proceedings did not address and could not possibly have remedied the allegations that are the subject of this Application, the Applicant did not need to exhaust the criminal proceedings.<sup>8</sup>
8. As a result, the Government’s assertion that the Applicant should have appealed the temporary stay of the criminal proceedings to the Constitutional Court is also misplaced and should be rejected.
9. The Government argues that the “failure to appeal” the temporary stay resulted in “the applicant’s version of the events [...] not [being] confirmed by domestic courts”<sup>9</sup> and that Mr. Muhammad’s acceptance of the temporary stay “acknowledge[d] that his biased account of facts had not been proven.”<sup>10</sup> In fact, the temporary stay simply meant that the facts were not the subject of a court finding. As stated by the Prosecutor in the criminal proceedings:

*“There exist contradictory versions that do not allow us to establish the reality of the facts, with that we are not saying that the claimant [Mr. Muhammad] lies but that his testimony is not supported by incriminatory evidence to complement it [...] without having been able to obtain enough incriminatory evidence to bring criminal charges against the defendants.”*<sup>11</sup>

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<sup>7</sup> In February 2018, ECRI recommended that the Spanish authorities criminalize any racial discrimination in the exercise of one’s public office, citing as an example racial profiling by the police. *Fifth Report on Spain*, published on 28 February 2018, para. 8 and Recommendation No.1, page 39.

<sup>8</sup> See Application, paras. 13-18 (submissions on admissibility); Applicant’s Observations, paras 13-20.

<sup>9</sup> Government’s Observations, Facts, I.5, para. 22.

<sup>10</sup> Government’s Observations, Facts, III, para. 49.

<sup>11</sup> Government’s Observations, Annex 4, Prosecutor’s brief requesting the temporary stay, dated 23 April 2015, para. 3 (4) and last para, page 2, Author’s translation of the original.

10. In any event, a ruling in the criminal proceedings would not have involved findings on the discriminatory stop and identity check because that was not part of the criminal proceedings.
11. It is essential to distinguish the substance of the criminal and administrative proceedings instituted by Mr. Muhammad as relevant to the present Application, and the Court is respectfully invited to approach the Government's Observations with that distinction in mind.

### **B. Substantive facts**

12. The Government argues that the police officers' version of the events differs from Mr. Muhammad's, and it endorses, without qualification, the officers' account of events. The existence of different versions of the events heightened the need to carry out further investigations, particularly the examination of the police officers' involved, to uncover any possible racist motives, which the State failed to undertake. Any investigation, and this Court's consideration, should entail close examination of contextual evidence that suggests that the officers' actions are connected to pattern or general policy of racially discriminatory behaviour on the part of police in Spain. In this regard, see submissions below in our response to Question 2 (paras. 42-63).

### **III. ADMISSIBILITY OF THE APPLICATION**

13. As detailed in the Application, Mr. Muhammad exhausted domestic remedies according to applicable rules and procedures of domestic law, including an *amparo* before the Constitutional Court, whose decision is final.<sup>12</sup> Consequently, as Mr. Muhammad satisfies the criteria set out in Article 35 of the Convention, the Application should be declared admissible.
14. The Government's response argues that Mr. Muhammad (i) did not exhaust domestic remedies concerning the criminal proceedings, and (ii) filed an *amparo* with the Constitutional Court for the administrative state liability

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<sup>12</sup> Application, Statement of exhaustion and compliance with six-month rule, pages 10-11.

proceedings, but did not properly justify the constitutional relevance of the appeal to that court.

15. The Court should reject both objections.

**A. Domestic criminal proceedings could not provide a remedy**

16. As set out above, the appropriate domestic procedure to challenge an allegedly discriminatory identity check was the administrative state financial liability proceedings. The Government has never questioned that position. The administrative judge had power, in those proceedings, to determine that the identity check had violated the prohibition on racial discrimination and to order payment of damages and other reparations to Mr. Muhammad. As carrying out a racially motivated identity check is not a crime, the identity check could not be challenged in criminal proceedings.
17. The Government's suggestion that the Applicant should also have exhausted criminal proceedings before making his application is therefore wrong: the criminal proceedings were incapable of addressing the discriminatory identity check.
18. Further, and in any event, as this Court has repeatedly established:

*“Where there is a choice of remedies open to an applicant, Article 35 must be applied to reflect the practical realities of the applicant’s position in order to ensure the effective protection of the rights and freedoms guaranteed by the Convention. [...] Moreover, an applicant who has used a remedy which is apparently effective and sufficient cannot be required also to have tried others that were also available but probably no more likely to be successful.”<sup>13</sup>*

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<sup>13</sup> *R.B. v. Hungary*, Judgment of 12 April 2016, para. 60.

**B. The constitutional relevance of the *amparo* appeal was adequately justified**

19. The Government accepts that Mr. Muhammad filed an *amparo* with the Constitutional Court in the administrative proceedings, but baldly claims that the filing did not justify “*in a proper manner its constitutional relevance.*”<sup>14</sup>
20. The Government provides no support for its argument. As described in the Application, the *amparo* brief in fact set out clear arguments justifying the constitutional relevance of the case, by reference to a number of the circumstances referred to in the jurisprudence of the Constitutional Court.<sup>15</sup> These arguments were summarised in the Application.<sup>16</sup> An English translation of the relevant section of the *amparo* brief is submitted with these Observations.<sup>17</sup> Thus, The Applicant fulfilled the formal requirements for the brief. After the *amparo* was rejected, Mr. Muhammad had no further possibility under domestic law to appeal the administrative court decision.

**IV. MERITS**

21. The Court posed two questions to the Parties:

*“1. Did the applicant suffer discrimination on the grounds of his race, contrary to Article 14 of the Convention read in conjunction with Article 8 and/or contrary to Article 1 of Protocol No. 12 to the Convention for the identity check carried out by the Police?*

*2. Has there been a violation under Article 8 of the Convention on account of the authorities’ alleged failure to take all reasonable steps to uncover any possible racist motives behind the alleged incident (see, mutatis mutandis, R.B. v. Hungary, no. 64602/12, § 88, 12 April 2016 and B.S. v. Spain., no. 47159/080)?”*

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<sup>14</sup> Government’s Observations, Legal Grounds, I, para. 55.

<sup>15</sup> Application, Doc. 34, Constitutional Court appeal, paras. 120-131.

<sup>16</sup> Application, paras. 24-26; Doc. 1, Additional submissions, paras. 10-16, 37-39, 50-55, 78-83.

<sup>17</sup> Applicant’s Observations, Doc. 1. Translated into English from the original Spanish.

**A. The Applicant suffered racial discrimination as a result of the identity check carried out by the police**

22. As set out in the Application,<sup>18</sup> there is clear evidence that Mr. Muhammad suffered racial discrimination, including: (i) his own detailed and consistent testimony, and the account of his conversation with the officer; (ii) an abundance of corroborating documentary and statistical evidence concerning the pattern and practice of ethnic profiling by police in Spain (iii) the undisputed fact that no one belonging to the Caucasian majority population in the vicinity was selected for an identity check;<sup>19</sup> (iv) the corroborative eye-witness testimony of Mr. Kamran Ali; (v) documents demonstrating Mr. Muhammad's immediate and repeated attempts to seek a remedy; and (vi) the absence of motive to pursue such a remedy over a period of more than five years if his account was false. These facts must be viewed in the context of the continuing application in Spain of the 2001 Constitutional Court's outdated decision in *Rosalind Williams*, relied upon by the State lawyer before the *Audiencia Nacional* years after the reasoning underlying that ruling was criticized by the UN Human Rights Committee as inconsistent with Spain's international human rights obligations.<sup>20</sup>

**B. Reply to the Government's Observations on Question 1**

23. The Government's Observations fail to refute the strong evidence of discrimination in Mr. Muhammad's case.
24. Instead, the Government's Observations raise several arguments that are irrelevant and without merit.
25. First, the Government alleges that during domestic proceedings "the applicant did not produce a single evidence of the existence of discriminatory behaviour" other than Mr. Kamran Ali's testimony, which the Government discounts

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<sup>18</sup> Application, Statement of alleged violations and explanations, paras. 1-7; Doc. 1, Additional Submissions, paras. 27-72.

<sup>19</sup> Application, para. 3; Doc. 37, Mr. Muhammad's statement, para. 1-3; Doc. 19, Mr. Kamran Ali's sworn statement as eyewitness, para. 1-3. This evidence has never been disputed by the authorities.

<sup>20</sup> *Rosalind Williams v. Spain*, UNHRC, Decision of 17 August 2009, paras. 7, 4, 8, and 9.

(arguing it “was obviously rejected given the lack of impartiality”).<sup>21</sup> The Government’s argument ignores the factual record in this case, summarized above,<sup>22</sup> and fails to appropriately address the evidence that the Applicant put forward at the national level. The assertion is simply factually wrong and fails to account for settled jurisprudence on the burden of proof in cases of discrimination.

26. As set out in the Application, from the outset, and consistently throughout the exhaustion of domestic remedies, Mr. Muhammad raised specific, substantiated allegations and submitted corroborating evidence in support of his claim, both of direct and indirect discrimination.<sup>23</sup>
27. Under settled jurisprudence, where the Court is asked to decide if there has been racial discrimination, the burden of proof is shared: once an “applicant has shown that there has been a difference in treatment, it is then for the respondent Government to show that the difference in treatment could be justified.”<sup>24</sup> Mr. Muhammad provided his own testimonial evidence, corroborated by eyewitness testimony, demonstrating a difference in treatment: that a National Police officer conducted the stop because of Mr. Muhammad’s skin colour and that no members of the country’s Caucasian majority population in the vicinity were stopped.
28. Moreover, Mr. Muhammad has provided substantial evidence that the individual stop forms part of a widespread pattern of racially discriminatory identity checks in Spain facilitated through an unjustifiably permissive legal and policy framework. He has adduced statistical evidence demonstrating that a clearly higher percentage of stops target members of ethnic minority groups. The Court considers that if the statistical evidence submitted by the applicant can be regarded as sufficiently reliable and significant, such evidence gives rise to a strong presumption of indirect discrimination without requiring victims of discrimination to provide further proof of discriminatory intent on the part of

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<sup>21</sup> Government’s Observations, Legal Grounds, Merits, II.3, paras. 12, 14.

<sup>22</sup> See Observations, para. 23.

<sup>23</sup> Application, paras. 12, 15-16; Doc. 1, Additional submissions, paras. 18-20.

<sup>24</sup> *Timishev v. Russia*, Judgment of 13 December 2005, para. 57..

authorities engaged in discriminatory behaviour.<sup>25</sup> The Government has not identified any reason for departing from the Court's established approach. The materials Mr. Muhammad submitted, which the national court failed to evaluate, amount to *prima facie* evidence sufficient for this Court to find that the burden had shifted and that it was for the Government to prove that the discriminatory conduct of the authorities is justified – its Observations fail to do so.<sup>26</sup>

29. Notably, during the entire domestic proceedings, the State: (i) acknowledged Mr. Kamran Ali was an eyewitness of the incident and did not challenge the credibility or reliability of his testimony; (ii) did not dispute the fact that no one belonging to the Caucasian majority population was stopped; and (iii) never disputed the merits of the statistics. Significantly, the national judge did not refer to or take into account Mr. Kamran Ali's admissible, relevant, and uncontested testimony.<sup>27</sup>
30. Second, the Government suggests that a finding of a violation of the Convention on grounds of racial discrimination in this case would violate the police officers' presumption of innocence.<sup>28</sup> In so arguing, the Government conflates individual criminal liability with State responsibility for violations of the Convention, and the different evidentiary rules that apply, including in relation to the shifting of burden of proof. As the Court has explained in other contexts, "Whatever the outcome of the domestic proceedings, the police officers' conviction or acquittal does not absolve the respondent State from its responsibility under the Convention."<sup>29</sup>
31. Lastly, the Observations assert that the identity check carried out on Mr. Muhammad was a justified interference under Article 8 because it was prescribed by law – namely the 2015 Public Security Law.<sup>30</sup> This is one element

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<sup>25</sup> *D.H. and others v. the Czech Republic*, Judgment of 13 November 2007, para. 195.

<sup>26</sup> Application, Doc. 1, Additional Submissions, paras. 32, 38, 39, 43.

<sup>27</sup> See Application, para. 19, Doc. 1 (discussing Ministry's decision in administrative proceedings); Additional Submissions, para. 40 (discussing Ministry's decision in administrative proceedings); Additional Submissions, para. 46, Doc. 1 (discussing Judge in administrative judicial proceedings).

<sup>28</sup> Government's Observations, Legal Grounds, Merits, II.1, para. 6.

<sup>29</sup> *Selmouni v. France*, Judgment of 28 July 1999, para. 87; *Ribitsch v. Austria*, Judgment of 4 December 1995, para. 34.

<sup>30</sup> Government's Observations, p.23, para 19.

of the multipronged Article 8 test, and it is insufficient on its own to determine whether conduct was lawful. The Government does not attempt to address the other elements of the test. In any event, the provisions cited by the Government to substantiate its claim that the stop and identity check were prescribed by law, namely the 2015 Public Security Law, are of no assistance to it, having come into force two years *after* the date of the alleged incident.

32. Moreover, far from providing a clear basis for police action, the 2015 law fails to incorporate a “reasonable suspicion” requirement to effectively constrain the practice of discriminatory stops and ensure that stops are conducted based on objective criteria. The 2015 law merely requires, in certain circumstances, that a stop should be “reasonably necessary” to prevent a crime from occurring. As found by the UN Committee on the Elimination of Racial Discrimination (CERD), the relevant provisions may actually be counterproductive:

*“The new law on public safety had been presented as a step forward in the protection of human rights, notably the rights of foreigners and migrants, but, according to information received, in some ways the new legislation had instead exacerbated the situation.[...]. Similarly, the Act broadened the scope for carrying out identity checks on the rather vague grounds of “prevention of administrative offences.”<sup>31</sup>*

33. The evidence before the national court and before this Court is sufficient to establish that Mr. Muhammad suffered discrimination on the grounds of his race during the identity check carried out by the Police as part of a pattern of racially motivated police stops in Spain. The Government’s Observations offer no basis for concluding otherwise.
34. To conclude, whether the Applicant suffered discrimination is a question of fact and law. For all the reasons set out in our answer to Question 2, the Court

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<sup>31</sup> CERD, *Consideration of reports, comments and information submitted by States parties under article 9 of the Convention*. Un Doc. CERD/C/SR.2424, 4 May 2016, para 25. It is noted that, although the law actually in force at the time of the applicant’s stop criminalized the offense of lack of respect for authority, Mr. Muhammad was never fined or prosecuted.

cannot consider itself bound by the findings of the national judiciary as determining the facts of the case.

### **C. Failure of the authorities to take all reasonable steps to uncover any discriminatory reasons for the police stop and identity check**

35. The Spanish authorities plainly failed to take all reasonable steps to uncover any possible racist motives or practices behind the alleged incident, and Spanish law and practice operates to obstruct effective investigations, in violation of Article 1 of Protocol 12, and Article 14 read in conjunction with Article 8 of the Convention.
36. First, the administrative judge never considered the Applicant's evidence of racial discrimination. Mr. Muhammad's evidence was clearly highly relevant, and should have been determinative if it could be verified. This Court has explained that racial discrimination is a particularly invidious kind of discrimination that requires from the authorities special vigilance and a vigorous reaction, and the use of all available means to combat racism.<sup>32</sup> As the Grand Chamber has explained, where evidence of racial discrimination "comes to light in the investigation, it must be verified and – if confirmed – a thorough examination of all the facts should be undertaken in order to uncover any possible racist motives."<sup>33</sup> The competent authorities, therefore, had "plausible evidence at their disposal suggesting possible racist motivation"<sup>34</sup> but they failed to address it.
37. Second, Mr. Muhammad submitted evidence of a pattern of racial discrimination by the Spanish police against ethnic minorities to which his stop is plausibly connected, and argued that his allegations should be evaluated within the context of the documented and repeated failure by the Spanish

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<sup>32</sup> *D.H. and others v. the Czech Republic* [GC], para. 176.

<sup>33</sup> *Nachova and others v. Bulgaria* [GC], Judgment of 6 July 2005, para. 164. In *R.B. v Hungary*, the Court made it clear that the obligations to investigate bias-motivated treatment that arise under Article 8 are similar to those that arise under Article 3 (para 84). In addition, it is noted that, as set out in the Application (para.82), according to domestic law it is the ordinary tribunals' function to protect fundamental rights in all kinds of legal proceedings.

<sup>34</sup> *Abdu v Bulgaria*, Judgment of 11 March 2014, paras. 49-53

authorities to remedy the systemic practice of ethnic profiling by the Spanish police, and its failure to provide redress for discrimination.<sup>35</sup>

38. The competent authorities, therefore, also had had plausible evidence at their disposal suggesting a racist pattern or practice, including evidence of systemic racism within the Spanish National Police driving the use of racial and ethnic criteria in making stops, and which plausibly explains the racially discriminatory nature of Mr. Muhammad's stop. The Spanish authorities similarly failed to address this evidence.
39. This Court has said that, in recognition of the insidious effect of racism and other forms of bias, the applicable norms "require a higher standard of States to respond to alleged bias-motivated incidents."<sup>36</sup> To the contrary, in Mr. Muhammad's case, the Spanish authorities turned a blind eye to the specific nature of Mr Muhammad's allegations and approached them without any recognition of the higher standards required of them.
40. The Government's failures are clear from the following.
  - i. The authorities made no attempt to gather any evidence or to interview witnesses
41. There was no attempt on the part of the Judge, or the State lawyer representing the Ministry, to interview the police officers involved in order to confirm the events, to establish whether any further evidence could be obtained, or to ascertain whether discrimination may have played a part.<sup>37</sup>
42. The authorities accepted the conclusions of the Police's internal report created by the immediate superior of the officers' involved without seeking to clarify the discrepancies between Mr. Muhammad and the officers, and without carrying out a more thorough investigation into the alleged racist attitudes.<sup>38</sup> Since there were contradictory versions of the events, this was a crucial and

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<sup>35</sup> Application, para. 10-21; Doc. 1, Additional Submissions, paras. 18-21.

<sup>36</sup> *R.B. v Hungary*, Judgment of 12 April 2018, para. 84.

<sup>37</sup> *B.S. v. Spain*, Judgment of 24 July 2012, paras. 44-45; *Amarandei and Others v Romania*, Judgment of 26 April 2016, para. 170.

<sup>38</sup> *B.S. v. Spain*, paras. 42 and 61.

reasonable step, even more so when the onus was on the Government to produce evidence establishing facts that cast doubt on the victim’s account.<sup>39</sup>

43. Cross-examination of the officers involved would have allowed the court to clarify discrepancies among the officers themselves and with Mr. Muhammad, explore the officers’ records, ascertaining, for instance, whether they had been involved in the past in similar incidents, have a record of discriminatory claims against them, or whether they had been accused of displaying racist sentiment on previous occasions.<sup>40</sup> In this respect, the existence or otherwise of disciplinary proceedings, and their content and outcome, are at the exclusive hands of the State, from which the Court ought to draw inferences.
44. Instead, Mr. Muhammad’s repeated requests to have the police officers examined, both during the administrative claim before the Ministry of Interior and before the *Audiencia Nacional* administrative judge, were rejected by the Ministry and the national judge.<sup>41</sup> The Applicant’s requests also show his willingness to confront the officers’ version of the facts before a judge. Moreover, the national Judge and State lawyer chose not to examine the Applicant during the hearing. Since, according to the Government, Mr. Muhammad’s attitude allegedly provoked the whole situation, it would have seemed reasonable to examine him too.
45. Notably, the Government did not challenge the credibility of Mr. Kamran Ali during domestic proceedings, and simply ignored the evidence provided by him, as did the Judge, who did not even refer to him in the judgment.
46. Finally, during the judicial hearing before the national Judge, the Government lawyer used racially charged language to refer to Mr. Muhammad, while in his presence.<sup>42</sup> The Judge did not react to the racially charged language in his

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<sup>39</sup> *B.S. v Spain*, para. 58.

<sup>40</sup> *Nachova and others v Bulgaria* [GC], para. 167.

<sup>41</sup> Application, paras. 14 and 16; Document 27, Ministry’s resolution No. 469, of 18 July 2014, rejecting applicant’s request to examine officers, para. 6; Doc. 30, video recording of trial hearing, minutes 33:15 to 33:30.

<sup>42</sup> Application, para 17.

courtroom, during a discrimination case, and did not hold him in contempt. The Government offered no explanation of these remarks in its Observations.

47. In sum, the Government failed to secure and properly test relevant evidence concerning the incident and explore all practical means of discovering the truth.<sup>43</sup>
  - ii. The national judge refused to examine the expert witness on statistics on disproportionate stops of racial minorities
48. During the trial, the Judge rejected Mr. Muhammad's lawyer's request for examination of an expert witness on statistics, Dr. Ben Bradford,<sup>44</sup> and disregarded the statistical evidence showing that ethnic minorities are disproportionately subjected to stops.<sup>45</sup> The Judge also disregarded evidence from international and national human rights bodies' and NGOs' reports adduced by Mr. Muhammad.<sup>46</sup>
49. The Applicant alleged indirect discrimination and produced reliable and significant statistics, which are sufficient to constitute *prima facie* evidence of indirect discrimination.<sup>47</sup> As a result, the statistics and the expert witness were appropriate evidence in the investigation of a discrimination case. Yet, the Judge rejected this evidence outright and refused to allow the examination of the expert witness.
  - iii. The investigation lacked impartiality

50. Both the Judge and the Government lawyer relied exclusively on the Police Chief's investigatory report, despite the fact that he was the immediate superior of the officers involved.<sup>48</sup> Mr. Muhammad's alleged during judicial proceedings that the Ministry's investigation lacked impartiality,<sup>49</sup> which severely undermined its reliability and effectiveness. This compounded the

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<sup>43</sup> *B.S. v Spain*, para. 58.

<sup>44</sup> Application, Doc. 30, video recording of the trial hearing, minutes 31:29 to 32:12 and 32:55 to 33:12.

<sup>45</sup> Additional Submissions, paras 18-21.

<sup>46</sup> Application, Doc. 31, *Audiencia Nacional*'s judgment, Merits.

<sup>47</sup> *D.H. and others v Czech Republic*, paras. 188-195.

<sup>48</sup> Application, paras. 13-14, and Doc. 1, Additional submissions, para. 40.

<sup>49</sup> Application, Doc. 29, Judicial application before *Audiencia Nacional*, para. 76.

Government’s failure to “collect and secure the evidence, explore all practical means of discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of a racially induced violence” within the meaning of *B.S. v Spain*.<sup>50</sup>

51. The failings of the investigation in Mr. Muhammad’s case are symptomatic of the endemic issues surrounding lack of independence, impartiality and public accountability on the part of the authorities handling investigations of police ill-treatment in Spain, reported in the findings of a number of national and international authorities.<sup>51</sup>
  - iv. The national Judge failed to apply the burden-shifting standard required in discrimination cases
52. In addition to its failure to consider Mr. Muhammad’s allegations of discrimination and supporting evidence appropriately, the national Judge did not correctly apply the shifting of burden of proof.
53. The national court considering the administrative state liability claim was bound by national, ECHR and European Union (EU) law to consider whether the evidence presented by Mr. Muhammad was sufficient to shift the burden of proof to the Government. Where a national court is adjudicating a claim of state liability for racial discrimination, this Court will determine whether its approach to evidence was “compatible with the Convention.”<sup>52</sup>
54. The Spanish Constitutional Court has ruled that when there is an allegation of discrimination, the onus is on the Government to justify that its actions have legal basis and meet the requirements of proportionality and reasonableness.<sup>53</sup> By failing to follow the Constitutional Court’s case law, the national court did not adopt a lawful or reasonable approach to the evidence.

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<sup>50</sup> *B.S. v Spain*, para. 58.

<sup>51</sup> See Application, paras. 22-26.

<sup>52</sup> *Rohlena v. the Czech Republic*, Judgment of 27 January 2015, para. 51.

<sup>53</sup> STC 13/2001, 29 January 2001, FJ 10°; STC 39/2002, 14 February 2002, FJ 4°. The Spanish legislation passed to implement the relevant EU directives concerning discrimination also includes the shifting of burden of proof (Law 62/2003, 30 December, art. 32).

55. In any event, the jurisprudence of this Court is that evaluation of civil or administrative claims of state liability for racial discrimination require the burden of proof to shift to the Government where the applicant has provided a *prima facie* case.<sup>54</sup> It would be incompatible with Article 14 of the Convention and with Protocol 12, Article 1, for national courts adjudicating claims of state liability for racial discrimination to take the approach that the burden of proof cannot shift to the state authority. This approach would also be inconsistent with EU law.<sup>55</sup>
56. Lastly, there was never proper consideration of whether the Government's explanation during domestic proceedings was sufficient to satisfy its burden.
- v. Spanish law and courts give improper weight to police officers' testimony compared to victim testimony
57. As set out above (paras. 42-46), the authorities considered the testimony of the police officers to be credible and disregarded Mr. Muhammad's testimony, which was corroborated by Mr. Kamran Ali.
58. This is in part a product of provisions of Spanish domestic law that impede effective investigations, and preclude the authorities from adopting reasonable steps to uncover possible racist motives or institutional racism that may cause discrimination.
59. First, codifying the practice, the administrative law grants public officials' reports a general presumption of veracity.<sup>56</sup> The Public Security Law further specifies that police officers' reports concerning identifications enjoy the presumption of veracity.<sup>57</sup> When the authorities choose not to test the evidence of officers, this creates an almost impossible hurdle for applicants.<sup>58</sup>

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<sup>54</sup> *D.H. and others v Czech Republic*, paras. 177-179 and 188-195.

<sup>55</sup> Race Equality Directive 2000/43/EC, Recital 21 and art. 8; Directive 97/80/EC 15 December 1997, Recital 18 and art. 4.

<sup>56</sup> Law 39/2015, 1 October, *Procedimiento Administrativo Común*, art. 77(5).

<sup>57</sup> LO 4/2015, 30 March, Public Security, art. 19.

<sup>58</sup> See Application, paras. 23-26.

60. Second, as reported by the Commissioner for Human Rights of the Council of Europe, judges frequently dismiss allegations of ill-treatment by law enforcement officials,<sup>59</sup> stressing the lack of an independent complaints mechanism concerning the actions of law enforcement authorities.<sup>60</sup>
61. To conclude, the authorities did not do what was reasonable in the circumstances to collect and secure the evidence, explore all practical means of discovering the truth, and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of racially induced violence. The Government's failures in this case violated Mr. Muhammad's rights under Article 8, Article 14, and Protocol No. 12 of the Convention.<sup>61</sup>
62. The Government provides no proper explanation regarding any of these failures in its Observations.

#### **D. Response to the Government's observations to Question 2.**

63. The Government's Observations concerning Question 2 are also meritless. Ignoring facts that have been exhaustively documented, the Government denies both the existence of police racial profiling and the lacunae in legal protection from discrimination in Spain. The Government provides no explanation as to the failures to take all reasonable steps to uncover any possible racist motives behind Mr. Muhammad's identity check.
  - i. The prevalence of police ethnic profiling
64. The Government's Observations state that racial discrimination by the police while carrying out identity checks does not occur, and submit a “*report regarding statistical reality of identity check requirements*” carried out by the Ministry of Interior's Police Directorate as supporting evidence.<sup>62</sup>

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<sup>59</sup> Report by Nils Muižnieks Commissioner for Human Rights of the Council of Europe following his visit to Spain from 3 to 7 June 2013 (CommDH(2013)18), 9 October 2013, paras. 110-111 and 132.

<sup>60</sup> *Ibid.*, paras. 141, 144.

<sup>61</sup> *Nachova and others v. Bulgaria* [GC], para. 161; *R.B. v Hungary*, para. 84.

<sup>62</sup> Government's Observations, Legal Grounds, Merits, II.1, para. 37.

65. Yet, this conclusion is in contrast to the 2018 report from the Spanish Ombudsperson, in which it found that police ethnic profiling during identity checks continues, particularly in street stops.<sup>63</sup> Similarly, the European Commission against Racism and Intolerance (ECRI) and UN bodies have repeatedly condemned the prevalence of ethnic profiling practices and, as recently as this year urged Spain to end the practice.<sup>64</sup>
66. The Government's argument is based on a report (*Nota Informativa*) elaborated by the Police Directorate, which concludes that there is no discrimination because most of the identifications that take place in the police stations concern individuals from the European continent.<sup>65</sup> However, as concluded by the expert witness Dr. Juan Jose Medina Ariza,<sup>66</sup> the claims made in the Government's report are not supported by the evidence they submit and are unconvincing for a number of reasons.<sup>67</sup>
67. First, the data offered by the report relates only to requests for identification by the National Police conducted within police stations. It therefore excludes data on identity checks carried out in the street, which constitute the vast majority of all the identity checks carried out by the police.<sup>68</sup> According to statistical bulletins from the Ministry of Internal Affairs, in 2015 identifications in police stations represent just 0.5% of the total identifications carried out and so the

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<sup>63</sup> *Defensor del Pueblo, Annual Report 2017*, published in March 2018, page 344. Available at: [https://www.defensordelpueblo.es/wpcontent/uploads/2018/03/Informe\\_anual\\_2017\\_vol.I.1\\_Gestion.pdf](https://www.defensordelpueblo.es/wpcontent/uploads/2018/03/Informe_anual_2017_vol.I.1_Gestion.pdf)

<sup>64</sup> ECRI, *Fifth report on Spain*, note 7 above, para. 81; UN Working Group of Experts on People of African Descent, Statement to the media by the United Nations Working Group of Experts on People of African Descent, on the conclusion of its official visit to Spain 19-26 February 2018, para. 12. Available at:

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22705&LangID=20D=E>); CERD, *Concluding Observations*, UN doc. CERD/C/ESP/CO/21-23, 13 May 2016, para. 28.

<sup>65</sup> Government's Observations, Legal Grounds, Merits, II.1, paras. 38-39.

<sup>66</sup> Applicant's Observations, Doc. 2, *Expert Report on police stops, ethnicity, nationality and immigration status*, 17 August 2018. Dr. Juan Jose Medina is Professor of Quantitative Criminology (Centre for Criminology and Criminal Justice, Manchester University) and President of the Spanish Society of Criminology. He has extensive experience evaluating claims made on the basis of statistical data and working with administrative data in three different continents (para. 4) and has published in this area (para. 17).

<sup>67</sup> Applicant's Observations, Doc. 2, paras. 3-4.

<sup>68</sup> *Ibid.*, para. 6.

*Nota Informativa* analyses a minuscule and unrepresentative fraction of the overall numbers of identity checks relevant to this case.<sup>69</sup>

68. Second, the report allocates a person's ethnicity based on the person's "residence", "citizenship" or "belonging" to a continent. Yet, it does not define how the authors have made that determination. The use of continent categories is, at best, unclear, if not plainly inaccurate, and shows the report's unreliability.<sup>70</sup> Aggregating police identifications at the continental level very likely masks disparities that exist at the national level, and ignores other relevant attributes such as race/ethnicity as well as the experience of nationalized immigrants.<sup>71</sup> Therefore, the Government's report "*assumes that everyone in said continent effectively looks the same and there are no visible ethnic or racial differences between them.*"<sup>72</sup> In conclusion, the data provided by the Ministry of Interior is insufficient to reach the conclusion that national or racial disproportionality in ID checks does not exist.<sup>73</sup>
69. Contrary to the Government's submissions, the data presented in the Government's report "very clearly show that police identifications in which an individual is transported to a police station are applied in a disproportionate manner in Spain against individuals from different continents. Specifically, the probability of being taken to a police station for an identification is considerably higher if you are not European. [...] These rates clearly show that the Asian, African and American population (in that order) are identified by the police at a much higher rate in relation to the size of these populations subgroups."<sup>74</sup>
70. Lastly, the Government argues in its Observations that the statistical reports submitted by the Applicant are "*not contrasted with official statistical data, lack*

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<sup>69</sup> *Ibid.*

<sup>70</sup> *Ibid.*, paras. 8-9.

<sup>71</sup> *Ibid.*, para. 9.

<sup>72</sup> *Ibid.*, para. 9.

<sup>73</sup> *Ibid.*, para. 9.

<sup>74</sup> *Ibid.*, para. 13.

*authenticity and have null probative purposes.”<sup>75</sup>* The Government provides no explanation for this assertion. Conversely, as established by Dr. Medina Ariza in his assessment of the Applicants’ statistical reports “*The methodology used by the researchers in that study is solid and fits with the standards of scientific rigour in the field.*”<sup>76</sup> therefore, he assessed the results as “authentic” and consistent with the data provided by the Government and other studies in the topic.<sup>77</sup>

71. To conclude, the report submitted by the Government provides no support for its submission but actually confirms Mr. Muhammad’s claims regarding indirect discrimination and the findings of the statistical report submitted as evidence with the Application.<sup>78</sup>
  - ii. Lack of lacuna in protection against discrimination
72. The discriminatory identity check involving Mr. Muhammad was enabled by the Government’s inadequate legal framework and flawed constitutional jurisprudence, which together have given rise to a clear lacuna in protection from discrimination. In its Observations, the Government points to three purported legal protections from discrimination. None of them support its position. Moreover, even had there been, in principle, adequate protections in place, it is clear that they failed to provide adequate protection to Mr. Muhammad.
  - a. *Legislation against discrimination*
73. The Government’s suggestion that it has a comprehensive legal framework for protection against discrimination is rebutted by the Council of Europe and UN bodies’ reports.
74. In its recent report on Spain, ECRI:

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<sup>75</sup> Government’s Observations, Legal Grounds, Merits, II.1, para. 40.

<sup>76</sup> Applicant’s Observations, Doc. 2, *Expert Report on police stops*, note 61 above, para. 18.

<sup>77</sup> *Ibid.*, para. 19.

<sup>78</sup> *Ibid.*, para. 20.

*“again strongly recommends that the Spanish authorities adopt as soon as possible comprehensive anti-discrimination legislation in line with the standards laid down in §§ 4 to 17 of its General Policy Recommendation No. 7.”<sup>79</sup>*

75. Among the necessary measures, ECRI recommended the criminalization of any racial discrimination in the exercise of public office, referring explicitly to ethnic profiling.<sup>80</sup> Notably, ECRI also urged the Spanish authorities to “urgently establish a proper independent body to combat racism and intolerance in line with European standards such as ECRI’s GPRs No. 2 and 7, the EU equality directives and the recent recommendation of the UN CERD.”<sup>81</sup>
76. CERD, in turn, expressed concerns that the new law on public safety, presented as a step forward in the protection of human rights, notably the rights of foreigners and migrants, had instead exacerbated the situation, and broadened the scope for carrying out identity checks on the legally vague grounds of prevention of administrative offences.<sup>82</sup> In its 2016 Concluding Observations, CERD again urged the Spanish authorities to adopt measures to end race-based identity checks, and to investigate and properly punish them.<sup>83</sup>
77. In any event, the Court has made clear that merely having adequate laws and regulations is not enough; it will look at the Government’s practice as well as its laws.<sup>84</sup> In this respect, the safeguards relied on by the Government were, even if adequate in theory (which is not accepted), plainly not adequate in practice.

*b. Disciplinary proceedings*

78. The Government also relies in its Observations on the existence of law enforcement and armed forces disciplinary regulations, and maintains that it collects:

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<sup>79</sup> ECRI, Fifth Report on Spain, note 7 above, para. 11 and Recommendation No. 2.

<sup>80</sup> ECRI, Fifth Report on Spain, para 8.

<sup>81</sup> *Ibid.*, para. 26.

<sup>82</sup> CERD, *Consideration of reports*, note 29 above, para. 25.

<sup>83</sup> CERD, *Concluding Observations*, note 59 above, paras. 27-28.

<sup>84</sup> *Perry v the United Kingdom*, Judgment of 17 July 2003, paras. 46-48.

*“information on poor practices or the presumed commission of torture, ill-treatment, inhuman or discriminatory treatment, including identity checks. The Ombudsman may exercise supervision on those irregular actions perpetrated by State Security forces, whose findings are published in the yearly Report on the State mechanism to prevent torture and other inhuman or degrading treatment or punishment.”<sup>85</sup>*

79. Significantly, the 2016 Ombudsperson’s Report on the State mechanism to prevent torture and other inhuman or degrading treatment or punishment shows that half of the complaints against law enforcement officers concern police ill-treatment during street identity checks.<sup>86</sup> The Report also reveals the complete lack of accountability for police abuse in disciplinary proceedings: not a single police officer was disciplined, and disciplinary proceedings have not been even initiated in relation to the vast majority of complaints.<sup>87</sup>

*c. Constitutional case law protection: the Rosalind Williams case*

80. The Government continues to endorse the Constitutional Court’s decision in *Rosalind Williams*, and refers to this decision to illustrate the protection afforded by the constitutional case law.<sup>88</sup>
81. Far from serving as proof of Spain’s constitutional protection against discrimination, the Government’s reliance on the Constitutional Court’s decision in *Rosalind Williams* is positive proof of the serious deficiency that continues to leave members of racial and ethnic minorities such as Mr. Muhammad vulnerable to police profiling and without effective redress. ECRI has explicitly identified the Constitutional Court’s decision in *Rosalind Williams*

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<sup>85</sup> Government’s Observations, Legal Grounds, Merits, II.2.2, paras. 65-66. Note that, contrary to what the Government argues, the State mechanism to prevent torture does not monitor or report discriminatory actions.

<sup>86</sup> *Defensor del Pueblo, Mecanismo Nacional de Prevención de la Tortura*, 2016 Report, Annex IV, p. 24-25. Report available at [https://www.defensordelpueblo.es/wp-content/uploads/2017/04/Informe\\_Añual\\_MNP\\_2016.pdf](https://www.defensordelpueblo.es/wp-content/uploads/2017/04/Informe_Añual_MNP_2016.pdf)  
Annex available at [https://www.defensordelpueblo.es/wp-content/uploads/2018/07/Anexo\\_4\\_datos\\_estadistica\\_denuncias\\_tortura\\_malos\\_tratos.pdf](https://www.defensordelpueblo.es/wp-content/uploads/2018/07/Anexo_4_datos_estadistica_denuncias_tortura_malos_tratos.pdf)

<sup>87</sup> *Ibid.*, Annex IV, page 27.

<sup>88</sup> Government’s Observations, Legal Grounds, Merits, II.2.2, paras. 72-74.

as a leading cause of the continued practice of police racial profiling in Spain.<sup>89</sup> The Constitutional Court's ruling in the case conflicts with the UN Human Rights Committee's subsequent *Rosalind Williams* decision. The Government's continued reliance on and application of the erroneous Constitutional Court ruling – more than 10 years after the HRC ruled against it – severely undermines protections against discrimination afforded by the European Convention and other binding international law, and has contributed to widespread discriminatory policing practices in Spain.<sup>90</sup>

82. The Government's uncompromising defence of the Constitutional Court's decision throughout Mr. Muhammad's case<sup>91</sup> is itself a matter of concern, and is evidence of the lacuna in protection from discrimination that continues to pervade Spain's legal framework.

## V. REQUEST TO THE COURT TO ORDER JUST SATISFACTION

83. The discriminatory identity check suffered by Mr. Muhammad has infringed upon his personal dignity, honour and private life. The Applicant's immediate, consistent, and successive attempts to seek justice show the adverse and lasting impact the discriminatory identity check has had on him. According to Mr. Muhammad's statement:

*“I felt I had been discriminated against, humiliated and embarrassed in public, and marginalized in the society I grew up in and the country where I reached adulthood.”<sup>92</sup>*

84. The Applicant's feelings of humiliation, alienation, degradation, and anguish are consistent with the observed profound negative effects of police ethnic profiling

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<sup>89</sup> In 2005, ECRI already identified the Constitutional Court's decision as a leading cause behind the continued practice of racial profiling. ECRI, Third Report on Spain (Adopted on 24 June 2005, published in 2006), para 18.

<sup>90</sup> Application, Statement of Alleged Violations, para. 4; Doc. 1, Additional Submissions, paras. 10-13 and 50-56.

<sup>91</sup> Application, para. 17.

<sup>92</sup> Application, Doc. 37, Mr. Muhammad's Statement, para. 6.

on the targeted individuals and groups as reported by human rights bodies and NGOs.

85. UN bodies, ECRI and the EU Fundamental Rights Agency have highlighted the particularly humiliating effect and profound emotional toll on the targeted individuals, which subsequently translate into negative group effects.<sup>93</sup> The targeted group may develop a negative self-image, feel alienated and lose trust in the authorities.<sup>94</sup> Resulting external stigmatization, stereotyping and reinforced racial discrimination by society and by law enforcement contribute, in turn, to a self-reinforcing cycle of negative effects.<sup>95</sup>
86. As reported by Spanish and international non-governmental organisations,<sup>96</sup> these sentiments often lead to an inhibition to participate and move freely in every-day public life due to fear of being stopped and undergoing the degrading practice again, which entails severe negative economic and social consequences for the targeted individuals and their families.<sup>97</sup>
87. Moreover, regular and disproportionate contact with the police reinforce social stigmatization, which contributes to the increase of societal racism and xenophobia, and hinders integration.<sup>98</sup> Conversely, police ethnic profiling erodes trust between the targeted communities and the police, which is detrimental to effective, legitimate police work.<sup>99</sup>

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<sup>93</sup> UN Human Rights Council, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, Martin Scheinin, UN Doc. A/HRC/4/26, 29 January 2007, paras. 56-57; ECRI, *General Policy Recommendation N°11 on Combating racism and racial discrimination in policing*, 29 June 2007, para. 25; EU FRA, *Towards More Effective Policing, Understanding and preventing discriminatory ethnic profiling: A guide*, Luxembourg, 2010, pp. 37-41.

<sup>94</sup> *Ibid.*

<sup>95</sup> EU FRA, *Towards More Effective Policing*, note 89 above, p. 40, and *Perceptions of Discrimination and Islamophobia. Voices from members of Muslim communities in the European Union*, December 2006, p. 54; ECRI *General Policy Recommendation N°11*, para. 25.

<sup>96</sup> Application, Doc. 4,5,6,7 and 8, relevant NGOs' reports.

<sup>97</sup> Application, Doc. 6, Amnesty International report, p. 11 and 18; Doc. 4, Ferrocarril Clandestino report, p. 8; Doc. 5, Brigadas Vecinales report, p. 54; Doc. 8, Grupo Inmigrapenal report, p. 5; Doc. 7, Brigadas Vecinales report, p. 35.

<sup>98</sup> Application, Doc. 6, Amnesty International report, p. 11; Doc. 4, Ferrocarril Clandestino report, p. 5; Doc. 5, Brigadas Vecinales report, p. 55.

<sup>99</sup> Application, doc. 11, *Identificación por perfil étnico en España. Informe sobre experiencias y actitudes en relación con las paradas policiales*, p. 31.

88. For the reasons detailed in this submission, the Court should find that the Convention and Protocol 12 have been violated and provide appropriate relief. Mr. Muhammad requests that relief be granted, including non-pecuniary damages in the amount of €3,000, his dignity be restored by the issuing of a public apology, and widespread dissemination of the decision and apology in major Spanish media outlets. The request for non-pecuniary damages of €3,000 is equitable to amounts awarded in related cases considered by the Court in the past.<sup>100</sup>

## **VI. REQUEST TO THE COURT UNDER ARTICLE 46**

89. The Respondent Government has failed to fulfil its obligations arising from the Convention and Protocol 12. Mr. Muhammad's case reveals that these failures represent a structural pattern of discrimination evident in Spain.
90. Articles 2, 3, 4, 8 and 14 of the Convention, Protocol 12 provisions, and their harmonious interpretation entail and demand fair and effective policing from the Government. Policing must be fair and effective in order to comply with the Government's obligations not to discriminate against individuals, to protect against discrimination by public authorities, and to eliminate discrimination.
91. In order to fulfil its positive obligations, Spain must adopt and implement a number of safeguards addressing structural discrimination. Since the case before the Court reveals a problem of a systemic nature, Mr. Muhammad respectfully submits that the prevention of future violations, and assurances of non-repetition, demand that the Court provides guidance to the Respondent Government by indicating the following general measures under Article 46:

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<sup>100</sup> *B.S. v. Spain*, paras. 60, 68; *R.B. v. Hungary*, paras. 89-91.

**A. Legislative reform to ensure that domestic legislation conforms with the Convention.**

92. As detailed in the Application and Observations,<sup>101</sup> by granting unfettered powers to the police to carry out identity checks, the Spanish relevant legislation effectively enable ethnic profiling. As established by the Court,
- “unregulated and arbitrary action by State agents is incompatible with effective respect for human rights. This means that, as well as being authorised under national law, policing operations must be sufficiently regulated by it, within the framework of a system of adequate and effective safeguards against arbitrariness and abuse of force, [...] and even against avoidable accident.”<sup>102</sup>*
93. Therefore, applicable Spanish law, binding protocols, and operational guidance should state that police officers may request a person’s identity documents only when they can articulate indicators of reasonable suspicion, based on objective criteria or concrete and timely police intelligence, that an individual may have committed an offense or is preparing to do so.
94. In addition, a Spanish law should be enacted to supersede the Constitutional Court’s decision in *Rosalind Williams* and explicitly provide that race or ethnicity, on their own or in combination with others factors, cannot be used as a basis for decisions on whom to stop.

**B. Introduce mechanisms for recording police stops**

95. The Government must put in place sufficient safeguards to provide practical and effective protection against discrimination, and allow for the investigation of possible racist motives for police action. These should enable the authorities to identify when discrimination is taking place, explore patterns and practice of discrimination and provide victims with an effective remedy where

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<sup>101</sup> Application, paras. 5-7, Doc. 1, Additional submissions, paras. 6 and 63-68; Applicant’s Observations, paras. 76-78.

<sup>102</sup> *Makaratzis v. Greece* [GC], Judgment of 20 December 2004, para. 58. According to ECRI, laws that do not require a reasonable suspicion for a police stop encourage discrimination, *ECRI Report on Germany*, published on 25 February 2014, para. 15, p. 15; Human Rights Committee, *General Comment no. 6*, Article 6, 1982, para. 3.

discrimination has occurred, so as to provide just satisfaction and deter future repetitions of the same conduct.

96. Safeguards should include a requirement that each police stop is recorded, including the details of the person stopped and their ethnicity, the time and date, the reason for the stop, the name of the officer conducting the stop, the and outcome of the stop. A copy of the record should given to the person stopped. All data collected should also be anonymised, and systematically shared publicly and with relevant oversight authorities to allow for assessment and discussions of patterns and practice of discrimination.<sup>103</sup>

**C. Ensure there is effective external oversight of complaints about police conduct.**

97. Spain must ensure that there are independent complaints mechanisms, or current Equality or Complaints bodies, are able to effectively and impartially investigate and act upon allegations of discriminatory police stops, including when the incident is part of a pattern suggesting systemic discrimination and racist motives might be involved.<sup>104</sup> Since the Court has made clear that for an investigation to be effective it must be independent,<sup>105</sup> the mechanism must be fully independent from police structures.
98. These measures would remedy violations and contribute to bring to an end the structural practice of ethnic profiling in Spain while preventing future violations. The above measures are in line with the recommendations issued by

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<sup>103</sup> EU FRA, *Towards More Effective Policing*, note 89 above; Open Society Justice Initiative *Reducing Ethnic Profiling in the European Union: A Handbook of Good Practices*, 2013. Available at: <http://www.opensocietyfoundations.org/publications/reducing-ethnic-profiling-european-union-handbook-good-practices>). There are also a number of municipal police forces across Spain who routinely collect data on their officers use of stops. Open society Justice Initiative, Technical report (2015) *Fair and Effective Police Stops: Lessons in Reform from Five Spanish Police Agencies*, Available at: <https://www.opensocietyfoundations.org/sites/default/files/fair-effective-police-stops-20160208.pdf>

<sup>104</sup> *R.B. v. Hungary*, para. 88; *B.S. v. Spain*, paras. 59, 62.

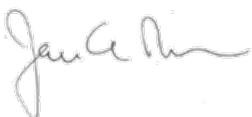
<sup>105</sup> *Mikheyev v. Russia*, Judgment of 26 January 2006, para. 110; *Mehmet Emin Yiksel v. Turkey*, Judgment of 20 July 2004, para. 37. Similarly, ECRI has urged in various reports that investigations into alleged discrimination must be conducted by an independent body instead of by internal police bodies. ECRI *Report on France*, published on 15 June 2010, para. 143; *Report on the Azerbaijan*, published on 31 May 2011, para. 134; *Report on Monaco*, published on 8 February 2011, paras. 122-123.

the Spanish Ombudsperson in its 2013 report and reiterated since then, including in its 2017 annual report.<sup>106</sup>

99. Mr. Muhammad turns to this Court for proper consideration and protection of his fundamental rights under the Convention.



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James A. Goldston

Open Society Justice Initiative

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<sup>106</sup> *Defensor del Pueblo, Recommendation 45/2013*, 17 April 2013, Annex E.1, pp. 154-156. Available at [https://www.defensordelpueblo.es/wp-content/uploads/2015/05/2013\\_Anexo\\_E\\_1\\_Recomendaciones\\_2013.pdf](https://www.defensordelpueblo.es/wp-content/uploads/2015/05/2013_Anexo_E_1_Recomendaciones_2013.pdf); and *Annual Report 2017*, Volume I.1, Madrid 2018, pp. 344-345. Available at [https://www.defensordelpueblo.es/wp-content/uploads/2018/03/Informe\\_anual\\_2017\\_vol.I.1\\_Gestion.pdf](https://www.defensordelpueblo.es/wp-content/uploads/2018/03/Informe_anual_2017_vol.I.1_Gestion.pdf)

## **ANNEX 1: LIST OF DOCUMENTS**

<b>Document</b>	<b>Description</b>
1	Translation of <i>amparo</i> Brief –section on the constitutional relevance of the <i>amparo</i>
2	Expert report on police stops, ethnicity, nationality and immigration status- Dr. Juan Jose Medina Ariza