



Court finds that identity checks of applicants by police not conducted on discriminatory grounds in all but one case

In today's **Chamber** judgment¹ in the case of [Seydi and Others v. France](#) (application no. 35844/17) the European Court of Human Rights held:

unanimously, that there had been **no violation of Article 14 (prohibition of discrimination) taken together with Article 8 (right to respect for private life)** of the European Convention on Human Rights, in its procedural aspect, with regard to the duty to ascertain whether discriminatory grounds had played a part in the identity checks of the six applicants;

unanimously, that there had been **no violation of Article 14 taken together with Article 8 of the Convention**, in its substantive aspect, as to the alleged discriminatory nature of the identity checks of five of the six applicants;

by 6 votes to 1, that there had been a **violation of Article 14 taken together with Article 8 of the Convention**, in its substantive aspect, as to the alleged discriminatory nature of the identity check of the sixth applicant;

unanimously, that there had been **no violation of Article 13 of the Convention**.

The case concerned identity checks by the police to which the applicants – who described themselves as being of African or North African origin – had been subjected between 2011 and 2012, and which they claimed had constituted racial or ethnic profiling.

As regards the procedural aspect and the alleged breach of the duty to ascertain whether discriminatory grounds had played a part in the identity checks of the applicants, the Court found that the domestic courts had, in fact, discharged that duty by conducting a balanced, objective and comprehensive assessment of the cases before them.

As to the substantive aspect and the alleged discriminatory nature of the identity checks, the Court first considered that the domestic legal and administrative framework applicable at the time of the events had been compatible with the requirements of Article 14 taken together with Article 8 of the Convention, and did not disclose a systemic defect. Second, regarding the issue of proof of discrimination, the Court was called upon to examine in each case whether or not the facts in dispute, as assessed in the light of the overall context in France – both in terms of how the checks had been carried out and of the surrounding circumstances –, amounted to a presumption of discriminatory treatment. Were that the case, it was for the Court to verify whether the respondent State had provided objective, non-discriminatory justification for the checks.

Like the domestic courts, the Court considered that, for the identity checks of five of the six applicants, all of which had had at least one identified legal basis, no individualised prima facie evidence of a differentiation of treatment had been produced by demonstrating the coexistence of sufficiently strong, clear and concordant inferences capable of giving rise to a presumption of discriminatory treatment.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

In respect of the sixth applicant, whose identity had been checked three times in ten days, the Court considered that all the circumstances surrounding the checks – one of which had had no legal basis – , taken both together and in conjunction with official reports and statistics, did amount to the coexistence of strong, clear and concordant inferences capable of giving rise to a presumption of discrimination. The burden of proof was thus shifted to the Government, which had failed to provide objective and reasonable justification for any of the three checks. The Court concluded that, in that applicant's case, there had been a presumption of discriminatory treatment against him, which the Government had been unable to refute.

Lastly, the Court found that the applicants had been afforded an effective remedy before the domestic courts.

Principal facts

The applicants, Mounir Seydi, Dia Abdillahi, Bocar Niane, Karim Touil, Amine Mohamed Dif and Lyes Kaouah, are six French nationals who were born between 1979 and 1991 and live in Roubaix, Marseilles, Vaulx-en-Velin, Saint-Ouen and Besançon.

Identity check of Bocar Niane

On 11 November 2011, between 8 p.m. and 10 p.m., Bocar Niane had his identity checked and was searched by four police officers as he was leaving a building. The identity check had been authorised by an order of the Bobigny public prosecutor (known as a check “by requisition”), issued on the basis of the second paragraph of Article 78-2 of the Code of Criminal Procedure, for the purpose of locating, within the municipality of Saint-Ouen, the perpetrators of certain offences. The identity check of Bocar Niane was also based on the first paragraph of Article 78-2 of that Code, which provided for “spontaneous” or “routine” checks.

Identity check of Mounir Seydi

On 7 September 2011 the Lille public prosecutor issued an order on the basis of the second paragraph of Article 78-2 of the Code of Criminal Procedure, for the purpose of locating the perpetrators of certain offences. The police had been informed that an offence had been committed in Lille city centre by “two young individuals of black African appearance”. On 15 September 2011, at about 4 p.m., Mounir Seydi had his identity checked by a police officer as he was leaving an underground station in one of the districts covered by the order.

Identity check of Dia Abdillahi

On 12 February 2012, in Saint-Germain-en-Laye, the police were notified that a robbery had been committed by two people in the city centre. According to the report, the perpetrators appeared to be of North African origin. That same day at an unspecified time, still in Saint-Germain-en-Laye, Dia Abdillahi had his identity checked on the basis of the first paragraph of Article 78-2 of the Code of Criminal Procedure. He was on foot, accompanied by his cousin.

Identity checks of Amine Mohamed Dif and Lyes Kaouah

On 27 September 2011, at about 8.30 p.m., in Vaulx-en-Velin, Amine Mohamed Dif and Lyes Kaouah had their identities checked by police officers while they were talking on the stairs of the building where Lyes Kaouah lived. The basis of the checks was the third paragraph of Article 78-2 of the Code of Criminal Procedure, which provided for “public order” or “preventive” checks.

Identity checks of Karim Touil

Karim Touil had his identity checked on three occasions in the space of ten days in Besançon city centre. The first check took place on 22 November 2011, at about 1.30 p.m., near Grande Rue, while he was accompanied by a friend and another individual. On 25 November 2011 the Besançon public

prosecutor issued an order on the basis of the second paragraph of Article 78-2 of the Code of Criminal Procedure, for the purpose of locating the perpetrators of certain offences in the city centre. On 1 December 2011, at 1.30 p.m., the applicant, accompanied by two friends, had his identity checked a second time by three police officers in the street. That same day, his identity was checked a third time in front of the town hall, at 3.30 p.m., while he was with several friends.

On 2 March 2012 the six applicants sent a letter to the Minister of the Interior, requesting the disclosure of the grounds for their identity checks. The Ministry replied that it would instruct the Directorate General of the National Police to conduct a review.

After hearing no more about the matter, the applicants brought proceedings against the Government Law Officer and the Minister of the Interior before the Paris *tribunal de grande instance*. Alleging that their identity checks had been discriminatory, they sought to have the State found liable for the defective operation of the public justice system on the basis of Article L. 141-1 of the Code of Judicial Organisation. The police officers involved were not identified and, since no criminal-law proceedings had ensued, no record had been kept of the checks.

In six judgments of 2 October 2013 the Paris *tribunal de grande instance* dismissed the applicants' actions. All the applicants appealed against their respective judgments. The *Défenseur des droits* (Defender of Rights) intervened in each set of proceedings. In six judgments of 24 June 2015 the Paris Court of Appeal upheld the judgments of the *tribunal de grande instance*.

All the appeal judgments found that there had been no discrimination.

The applicants appealed on points of law.

In six judgments of 9 November 2016 the Court of Cassation rejected the applicants' appeals on points of law, ruling out any gross negligence or discrimination.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private life) and Article 14 (prohibition of discrimination), the applicants complained that the identity checks to which they had been subjected amounted to racial or ethnic profiling, had interfered with their private life and had been discriminatory. They further relied on Article 13 (right to an effective remedy) to allege that no effective remedy had been available to them to obtain an examination of their complaint under Article 14 taken together with Article 8.

The application was lodged with the European Court of Human Rights on 9 May 2017.

Judgment was given by a Chamber of seven judges, composed as follows:

María Elósegui (Spain), *President*,
Mattias Guyomar (France),
Stéphanie Mourou-Vikström (Monaco),
Gilberto Felici (San Marino),
Andreas Zünd (Switzerland),
Diana Sârcu (the Republic of Moldova),
Kateřina Šimáčková (the Czech Republic),

and also Victor Soloveytschik, *Section Registrar*.

Decision of the Court

Article 14 taken together with Article 8

Procedural aspect: alleged breach of the duty to ascertain whether discriminatory grounds played a part in the identity checks of the six applicants

The Court noted that the civil courts, in dealing with the applicants' cases, had examined whether or not the conduct in dispute amounted to gross negligence attributable to the State for the purposes of Article L. 141-1 of the Code of Judicial Organisation.

The Court observed that the applicants had had their applications examined successively by the *tribunal de grande instance*, the Court of Appeal and the Court of Cassation. Those courts had adopted similar solutions in concurring decisions after a careful assessment of the evidence adduced in support of the allegations of discrimination. In particular, the Court of Appeal and the Court of Cassation had analysed the situations complained of in the light of international instruments prohibiting discrimination, including the Convention and the Court's case-law. They had concluded that the burden of proof had to be adapted because no records were kept of identity checks in France.

The Court noted that the domestic courts had considered that the applicants could produce *prima facie* evidence of a differentiation of treatment amounting to a presumption of discrimination by demonstrating the coexistence of strong, clear and concordant inferences. In such a scenario, it was for the authorities to prove that the differentiation of treatment had been justified. The coexistence of strong, clear and concordant inferences could be established, for example, by general statistical reports, by factual or legal circumstances surrounding the checks and by evidence from third-party witnesses, whether they knew the person being checked or not.

The Court considered that the domestic courts had discharged their duty to ascertain whether discriminatory grounds had played a part in the identity checks. The applicants had had their allegation of racial profiling subjected to a careful and effective examination by the domestic courts, at the heart of whose analysis lay the question whether there had been any discriminatory behaviour on the ground of ethnic-minority status. The Court thus concluded that the domestic courts had conducted a balanced, objective and comprehensive assessment of the cases before them, giving due consideration to the specific issues inherent in adducing evidence in such matters. In each of the cases at hand, the domestic courts had found that none of the witness statements had demonstrated any differentiation of treatment. They had thus considered that the evidence adduced was insufficient to establish that the applicants had been victims, in their personal capacity and in the circumstances of time and place alleged, of any discriminatory conduct on the part of the police.

The Court concluded that there had been no violation of Article 14 of the Convention taken together with Article 8, in its procedural aspect, as to the duty to ascertain whether discriminatory grounds had played a part in the identity checks of the applicants.

Substantive aspect: alleged discriminatory nature of the identity checks

The Court considered that the legal and administrative framework governing identity checks in France did not disclose a systemic defect and that the domestic courts had adapted the burden of proof to reflect the difficulties inherent in proving discrimination in conformity with the Court's case-law. It was called upon to examine, in each of the cases before it, whether or not the facts in dispute, as assessed in the light of the overall context in France – both in terms of how the checks had been carried out and of the surrounding circumstances –, amounted to a presumption of discriminatory treatment. Were that the case, it was for the Court to verify whether the respondent State had provided objective, non-discriminatory justification for the checks.

The identity checks of Bocar Niane, Mounir Seydi, Dia Abdillahi, Amine Mohamed Dif and Lyes Kaouah

The Court observed that the five identity checks had had an identified legal basis. The applicants had not produced prima facie evidence of a differentiation of treatment by demonstrating the coexistence of sufficiently strong, clear and concordant inferences capable of giving rise to a presumption of discriminatory treatment.

The Court was mindful that the checks had taken place – except in the case of Mounir Seydi – against a backdrop of great tension. It took into account the difficulties stemming from the fact that the checks in question had not resulted in any police reports and had not been recorded or even acknowledged in writing. It nevertheless considered, like the domestic courts, which had in each case conducted a particularly careful examination of the evidence produced before them, that the applicants had failed to establish the coexistence of sufficiently strong, clear and concordant inferences demonstrating a differentiation of treatment.

There had therefore been no violation of Article 14 of the Convention taken together with Article 8 in respect of Bocar Niane, Mounir Seydi, Dia Abdillahi, Amine Mohamed Dif and Lyes Kaouah.

The three identity checks of Karim Touil

With regard to Karim Touil, the Court observed that he had produced statistics showing that a certain segment of the population, to which he claimed to belong, was “over-checked”. His identity had been checked three times in ten days, including twice in the same day. For the check of 22 November 2011 no legal basis had been provided. The first check of 1 December 2011 had not fallen within the time frame prescribed by the prosecutor’s order. Regarding the second check of 1 December 2011, which had been carried out within the prescribed time frame, the Court noted that, according to several witness statements, the applicant had been subjected to insults, inappropriate comments about his weight and even physical violence (a slap) by one of the police officers during the intervention. The Court of Appeal had deplored the violent act and the comment about the applicant’s weight, but had imposed no sanction for the discriminatory nature of the identity check.

The Court therefore considered that although the applicant had not expressly referred to any comparison group that had been treated differently from him during his identity check, all the circumstances surrounding the three checks – one of which had had no legal basis –, taken both together and in conjunction with the official reports and statistics on cases of racial profiling during identity checks in France, amounted to the coexistence of strong, clear and concordant inferences capable of giving rise to a presumption of discrimination.

The burden of proof was thus shifted to the Government. However, the Court observed that they had failed to provide objective and reasonable justification for their decision to target Karim Touil for any of the three checks. The Court concluded that there had therefore been a presumption of discriminatory treatment against him, which the Government had been unable to refute.

There had accordingly been a violation of Article 14 of the Convention taken together with Article 8.

[Article 13, in the light of Article 14 taken together with Article 8](#)

The Court observed that the Court of Appeal and the Court of Cassation had acknowledged in their judgments that the legislation governing identity checks did not provide for any obligation to keep records and that that situation thus amounted to an obstacle to judicial review, which was capable of depriving the person concerned of the possibility of meaningfully challenging the disputed measure and its potentially discriminatory nature. The Court noted, however, that the Court of Appeal had counterbalanced that difficulty by adapting the burden of proof and thus requiring prima facie evidence of a differentiation of treatment that could be established by the coexistence of strong, clear and concordant inferences – a standard of proof that the applicants had failed to satisfy – while, in such cases, the authorities would have been required to show that the differentiation of treatment had been justified.

The Court noted that the applicants had been able to apply to the ordinary courts for an examination of their grievances as to the alleged conduct of the police officers who had checked their identities. The courts had had jurisdiction to adjudicate such matters and had examined them during proceedings in which the applicants had had the opportunity to put forward all their arguments.

The Court thus found that the applicants had been afforded an effective remedy before the domestic courts.

Accordingly, there had been no violation of Article 13 taken together with Article 14 of the Convention.

Just satisfaction (Article 41)

The Court held, by 6 votes to 1, that France was to pay Karim Touil 3,000 euros in respect of non-pecuniary damage.

Separate opinion

Judge Stéphanie Mourou-Vikström expressed a separate opinion, which is annexed to the judgment.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.