

AMNESTY INTERNATIONAL PUBLIC STATEMENT

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SWITZERLAND: MOHAMED WA BAILE WINS ETHNIC PROFILING CASE AS THE EUROPEAN COURT OF HUMAN RIGHTS UNANIMOUSLY CONDEMNS RACIAL DISCRIMINATION

Years of campaigning for justice and the tireless engagement of activist Mohamed Wa Baile and supporters have paid off, resulting in an important judgment against ethnic profiling. The European Court of Human Rights (ECtHR) has condemned Switzerland for racial discrimination across the board. Amnesty International submitted a Third-Party Intervention to the Court on the key issues of discriminatory identity checks and Switzerland's serious failings in the prevention of ethnic profiling.

In a key decision on ethnic profiling, the European Court of Human Rights has condemned Switzerland for its failure to examine whether racial discrimination played a role in the police search Wa Baile was subjected to and for failure by the police to provide any valid justification for the identity check, concluding, for the first time in an ethnic profiling case, that the identity check materially violated his right to privacy and the right to non-discrimination. This is a resounding victory for Wa Baile and racialized communities in Switzerland and Europe.

On 5 February 2015, Mohamed Wa Baile, a Black Swiss citizen, was on his way to work when Swiss police subjected him to an identity check at a train station in Zurich. Police repeatedly asked Wa Baile to identify himself, but since he was not given a reason why, he refused. Police proceeded to subject him to a search. Wa Baile was later convicted and fined 100 Swiss francs for failing to comply with police orders to identify himself.

Amnesty International has documented the ways in which policing in Europe and globally is blighted by racist practices that discriminate against individuals and communities because of their racial or ethnic identity.¹ Ethnic profiling is a violation of international conventions such as the Anti-Racism Convention (ICERD), the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR) as they explicitly prohibit the differential treatment of individuals based on race and require states to actively combat all forms of racism.

Wa Baile was aware of the systemic issue of ethnic profiling in Switzerland when the police subjected him to an identity check, which led to the Court's decision. According to a police report cited by the ECtHR in the ruling, Wa Baile told the police officers "I have rights too. What you are doing here is not right, it is racism. Everywhere I go, I am checked [by the police]."²

European authorities, like in the case of Wa Baile, often attempt to justify discriminatory identity checks with immigration control policies. However, using only the perceived race or ethnicity as a proxy for an individual's nationality and migration status constitutes racial discrimination. As cited by the ECtHR in the Wa Baile judgement, the UN Human Rights Committee concluded in an individual complaint, that "physical or ethnic characteristics of the persons subjected thereto should not be

¹ Amnesty International, *Europe: Policing the pandemic: Human rights violations in the enforcement of COVID-19 measures in Europe* (Index: EUR 01/2511/2020), 24 June 2020, [Europe: Policing the pandemic: Human rights violations in the enforcement of COVID-19 measures in Europe - Amnesty International](#).

Amnesty International, *Germany: Protect the Protest: Against blanket bans of demonstrations for the rights of Palestinians* (Index: EUR 23/7180/2023), 12 September 2023, [Germany: Protect the Protest: Against blanket bans of demonstrations for the rights of Palestinians - Amnesty International](#).

² Original quote: "J'ai aussi des droits. Ce que vous faites ici n'est pas correct, c'est du racisme. Partout où je vais, je suis contrôlé." (Translated by Amnesty International), European Court of Human Rights (ECtHR), *Wa Baile c. Suisse*, Application 43868/18 and 25883/21, Chamber judgment, 20 February 2024, <https://hudoc.echr.coe.int/eng?i=001-231080>, para. 7.

themselves be deemed indicative of their possible illegal presence in the country” and “[t]o act otherwise would not only negatively affect the dignity of the persons concerned, but would also contribute to the spread of xenophobic attitudes in the public at large and would run counter to an effective policy aimed at combating racial discrimination.”³

In its decision in the *Wa Baile* case, the ECtHR found that Switzerland had violated the European Convention on Human Rights (ECHR) in three interconnected ways:

First: The Swiss courts failed to determine if discriminatory motives played a part in the identity check of Mohamed Wa Baile and unjustly shifted onto him the entire burden of proving that he had been subjected to discriminatory treatment. In making this finding, the Court emphasized that racial discrimination is a heinous form of discrimination. States must use all the means available to combat racism and build societies that are diverse. Having received the complaint about racial discrimination from Wa Baile, Switzerland had an obligation to examine whether there had been discrimination in the context of the identity check by the police and it failed to do so. According to the Court, *“Such an obligation is essential to prevent the protections against racial discrimination from becoming theoretical or illusory, to ensure effective protection against the stigmatization of concerned persons, and to prevent the spreading of xenophobic attitudes.”*⁴

Second: Swiss Police failed to provide for any relevant elements justifying the identity check and therefore the Court concluded that by conducting the identity check, the police subjected Wa Baile to discriminatory treatment. In reaching this decision the Court emphasized that states have a positive obligation to ensure effective enjoyment of rights and freedoms and this obligation has an increased importance in cases involving racialized people. The state must provide police officers with a clear legal and administrative framework defining the limited conditions under which they can exercise their powers and explicitly prohibiting discrimination. In its third-party intervention in the case, Amnesty International submitted that data on the use of ethnic profiling practices by law enforcement generally is exclusively known to state authorities. In such cases, the burden of proof should thus fall on the state. Therefore, Amnesty International welcomes the Court’s decision and its recognition that in such instances, the burden of proof rests with the authorities who must provide a satisfactory and convincing explanation for the underlying motives of the stop. The Court also gave recognition in particular to the reports by Amnesty International of the prevailing practice of ethnic profiling in Switzerland and considered this as an important element to support the presumption of a discriminatory identity check in this case.

Third: The ECtHR found that no effective remedy had been available to Wa Baile in the domestic courts in respect of his complaint that he had suffered discrimination based on his skin colour. Specifically, the Court pointed out that the Administrative Court had left open the question of whether skin colour had been a determining factor in the identity check, and the Federal Court had denied that Wa Baile had any interest worthy of protection in having the contested decision set aside or amended, and therefore concluded that he did not have standing to appeal. The state obligation to ensure the right to effective remedy requires that the remedy must be effective both in practice and in law. The ECtHR concluded that Wa Baile did not have the benefit of an effective remedy before the domestic court which violated Art. 13 ECHR.

The ECtHR’s decision signals an important call to all states and duty bearers to take notice of this judgment and take immediate steps to fulfil their obligation to prevent discriminatory police checks and to address racial profiling. Amnesty International calls upon Switzerland to fully implement the decision and set up an adequate legal framework in line with international standards to effectively combat and safeguard against ethnic profiling. Switzerland must now put in place legal and administrative measures to eliminate racial discrimination in policing practices and ensure effective investigation of all allegations of racial discrimination in the context of policing. Amnesty International urges Switzerland to recognize the

³ UN Human Rights Committee, Communication no. 1493/2006, 17 August 2009, CCPR/C/96/D/1493/2006, para 7.2. cited in ECtHR, *Wa Baile c. Suisse*, Application 43868/18 and 25883/21, Chamber judgment (previously cited), para 47.

⁴ Original quote: “Une telle obligation est essentielle pour éviter que la protection contre la discrimination raciale ne devienne théorique ou illusoire, assurer une protection effective contre la stigmatisation des personnes concernées et prévenir la diffusion des attitudes xénophobes (Basu, précité, § 35).” (Translated by Amnesty International); ECtHR, *Wa Baile c. Suisse*, Application 43868/18 and 25883/21, Chamber judgment (previously cited), para 91.

problem of institutional racism within the police force and to collect data that can shed light on the scale of the phenomenon to enable effective combating of racist policing and ethnic profiling. Switzerland must also enshrine the ban on discriminatory identity checks and the reasonable suspicion standard in law and develop clear guidelines for identity checks to prevent an excessively wide margin of discretion for police officers.

For years, international human rights bodies have recommended that Switzerland set up independent police oversight mechanisms in all cantons, empowered to investigate complaints against law enforcement officers.⁵ Amnesty International further asks Switzerland to create effective remedies available against the practice of ethnic profiling and provide information on these complaint mechanisms.

Read the Court's full decision [here](#).

Read Amnesty's submission [here](#).

⁵ Committee on the Elimination of Racial Discrimination, Concluding observations on the combined tenth to twelfth periodic reports of Switzerland, 27 December 2021, CERD/C/CHE/CO/10-12, para 18.