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NEWS REPORT

Country:	France
Title:	Paris Court of Appeal, civil chamber, 24 June 2015 on liability of the state for racial profiling in police controls
Date:	15/07/2015
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<u>Context</u>	
Issue at stake:	Liability of the State for practices of racial profiling
Ground of discrimination:	Origin
Source:	National court decision
Field:	Other
Applicable law:	Articles 5, 8, 13 and 15 of the ECHR, Preamble of the Constitution of 1946, Article 1 st and 66 of the Constitution of 1958, Article L141-1 of the Code of Judicial Organisation, Article 78 par 3 and 3 of the Code of penal procedure

Content

Case: Article 78 Paragraph 2 of the Code of penal procedure allows police forces to proceed to police controls without cause when there is a magistrate order allowing controls on a specific day in a designated area, or in application of paragraph 3 in order to prevent the perpetration of a crime. These provisions are widely used to control illegal immigrants or persons living in unsecure areas, giving rise to racial profiling.

In the absence of arrest, there is no procedure to trace individual police controls and the penal procedure does not explicitly provide for a remedy.

The 13 plaintiffs have been subjected to identity controls and searches without being arrested. In this context their lawyers requested from the police justification of the controls and received no answer. On this basis they sued the state in civil damages for liability for racial profiling in application of Article L141-1 of the Code of Judicial Organisation. Civil liability of the state requires that intentional characteristic fault be established.

The 13 cases were dismissed by the first instance court on the basis that the actions of the police officers, who acted within the parameters of the law, could not give rise to liability of the State.¹ The Defender of rights presented observations before the Court of Appeal arguing that the State had a positive obligation to take action to prevent police controls based on racial grounds and ensure an effective recourse in application of the Constitution and of Articles 5, 8, 13 And 15 of the ECHR.

¹ High Court of Paris, 2 October 2013, nos RG 12/05876, RG 12/05884, and seq.

Decision of the Court: The Defender of rights' observations were followed by the Court of Appeal who admitted the Appeals in 5 of the 13 cases even if all controls were legal and made under the authority of a magistrate order.

It held that police controls must be implemented in the respect of fundamental rights and of the principle of equal treatment, which cannot allow police controls operated on the basis of racial criteria, physical appearance or origin. The State must not only refrain from discrimination but must take all necessary measures to prevent its occurrence.

In order to be effective the protection of the court must allow plaintiff to demonstrate the fault. In the absence of any mechanism to trace and report on the circumstances of police controls once the circumstances of the control are established by plaintiff, the police authorities must be in a position to justify why the control of this person or this profile of population chosen by reason of physical appearance or origin, is justified. In the absence of such evidence, even in the absence of evidence that police behaviour was inadequate, police controls based on a selection on discriminatory grounds constituted an aggravated fault that triggers liability of the State.

The existence of racial profiling is known to be a wide spread practice. However Plaintiff has to establish the discriminatory circumstances of the police control. These circumstances can be established by simple written statements of witnesses, which will trigger the obligation of the State to justify the legitimacy of the control.

The Court has found discrimination in situations where a witness was able to describe a systematic discriminatory selection process systematically and exclusively targeting persons of North African or African origin. The civil court awarded 1500€ in damages to the five plaintiffs who had their action in damages admitted. However the identity of the policemen was never confirmed by the State and the civil court has no power to order disciplinary sanctions.

However it accepted justifications of the police where the controls were based on the search for a person of North African Origin who had just committed a robbery, were the person controlled was in an insecure neighbourhood running and hiding his face with the hood of his sweatshirt, and controls in a place known for massive violence and drug dealing.

Key points of analysis: This is the first decision on racial profiling in France, in the context of an ongoing debate and activism by NGOs to generate a reform by government of its policy on the use of police controls, on the creation of control mechanisms on the actual implementation of controls by police officers and of the practice of police force and of the legal framework allowing discretionary controls without cause.

Internet link source and additional information:

Observations of the Defender of rights

Decision of the Paris Court of Appeal, 24 June 2015, docket numbers: N° 348 – 13/24286, N) 347, 13/24284, N° 346, 13/24277, N°345, 13/24274, N°344, 13/24269, N°343, 13/24267, N°342, 13/24265, N° 341, 13/24262, N° 340, 13/24261, N° 351, 13/24303, N° 350, 13/24300, N° 349, 13/24299, N° 339, 13/24255.

<http://www.defenseurdesdroits.fr/fr/actions/protection-des-droits-libertes/decision/decision-msp-mds-mld-2015-021-du-3-fevrier-2015>