

*File-number:*

## ***EUROPEAN COURT OF HUMAN RIGHTS***

*– Council of Europe –*  
Strasbourg, France

# ***APPLICATION***

*under Article 34 of the European Convention on Human Rights  
and Rules 45 and 47 of the Rules of Court*

**IMPORTANT:** This application is a formal legal document and may affect your rights and obligations.

**I. THE PARTIES**

**A. THE APPLICANT**

1. Surname: Solomon
2. First name(s): Beauty
- Sex: female
3. Nationality: Spanish
4. Occupation:
5. Date and place of birth: May 15, 1977; Nigeria
6. Permanent address: C/O Women's Link Worldwide.  
Calle Coloreros nº 2, 2º 3ª. PC 28013. Madrid. Spain
7. Tel. Nº: + 34 91 185 1904
8. Permanent address (if different from 6.):
9. Name of representative:\* Viviana Waisman
10. Occupation of representative: Executive Director and attorney-at-law
11. Address of representative: Calle Coloreros nº 2, 2º 3ª. PC 28013. Madrid. Spain
12. Tel. Nº: + 34 91 185 1904 Fax Nº: + 34 91 185 1907

**B. THE HIGH CONTRACTING PARTY**

13. Spain

---

\* In accordance with Rule 36 of the Rules of Court the Notice of complaint (which gave way to the present file number 47159/08) presented by Ms. Solomon on September 29, 2008 to the ECHR was accompanied by a power of attorney in favor of Ms. Viviana Waisman.

## ***II. STATEMENT OF THE FACTS***

14. The applicant, Ms. Beauty Solomon, is a woman of Nigerian descent who has been living in Spain since 2003. She is fully entitled to live and work in the country.

### **CASE NUMBER 3468/2005:**

1. On the 15<sup>th</sup> of July, 2005, Ms. Solomon was assaulted twice in the same day by the police in the city of Palma de Mallorca (Spain) while standing in a public thoroughfare where prostitution is commonly practised. Prostitution is not penalized in the criminal code in Spain nor is there any prohibition regarding standing in an area where it is known that prostitution is solicited. Under national law, Royal Decree 2393/2004, of 30 May, Article 100.1, foreigners must produce their identity documents when the authorities or agents of the State request it. Thus, with the pretext of requesting Ms. Solomon's identity document, she was asked by two national police officers to identify herself and then the officers told her to leave the area. There was no explanation given to her regarding why she could not remain where she was. Nonetheless, fearing repercussions if she did not leave, she did so.

2. Later on the same day, at approximately 2:45 am, she saw the same national police agents approach her and, having been stopped previously, she attempted to hide from them. Despite this, they saw her and she was assaulted by one of the officers who hit her on the left thigh and on her knuckles with his baton and asked for her identification once again. During the assault, one of the officers said to her "black slut, get out of here" (*Put a negra, fuera de aquí*) and seized her mobile phone. She was also threatened by the officers – telling her that if she had any previous arrests she would be in trouble. She requested the return of her telephone and produced her identity card again and then was allowed to leave.

3. On July 21, 2005, Ms. Solomon made a formal verbal complaint in front of the *Juzgado de Instrucción número 8 de Palma de Mallorca*, a first instance court (referred to as case number 3468/2005; hereinafter the first complaint). In the complaint Ms. Solomon clearly stated that she has suffered two assaults by police officers and she was insulted and threatened by them, and with regard to the second aggression she explains there were three witnesses. (See Annex 1) The written complaint was prepared by a court official without a lawyer or an interpreter present even though Spanish is not the applicant's first language. On that same day, she went to the public hospital, seeking treatment for the injuries suffered from the assault, which included inflammation and a bruise on left hand. (See Annex 2)

4. In accordance with the rules of procedure, complaint number 3468/2005 was assigned to the *Juzgado de Instrucción número 9 de Palma de Mallorca*, a first instance court. The *Juzgado de Instrucción número 9 de Palma de Mallorca* requested a written statement about the police stops suffered by Ms. Solomon on the 15<sup>th</sup> July, 2005, from the superior of the alleged offenders, the Chief of Police of the national police in Palma de Mallorca.

5. The written statement submitted by the Chief of Police, dated October 11, 2005, recognized that Ms. Solomon was stopped and identified both on July 15<sup>th</sup> at 2:30am and on July 21<sup>st</sup> at 2:14am, specifying the two different police units of the national police that conducted the stops on both days; however, there was no mention in the report regarding the insults or the use of force in either police action. (See Annex 3) The report stated that Ms. Solomon was stopped due to the troubling situation produced by the concentration of “these women” in a tourist area. The report also explains that the women tried to avoid identification because it “makes their job more difficult, as it frightens away the men that are tempted to use their services.” (*se dificulta el ‘trabajo’ de las mujeres allí reunidas, al ahuyentar a los posibles varones que son tentados, por su presencia, a usar de sus servicios*).

6. The *Juzgado de Instrucción número 9 de Palma de Mallorca* reached its judgement as to the merits of the first complaint (case 3468/2005) on October 17, 2005. (See Annex 4) The judgment stated that there was not enough evidence that a crime was committed and thus, in accordance with the criminal rules of procedure (*artículo 641-1º de la Ley de Enjuiciamiento Criminal*) the case was dismissed (with leave to appeal).

7. Neither the applicant nor her legal representatives were notified regarding the outcome of the case until the applicant’s legal representatives requested this information to the *Juzgado de Instrucción número 9 de Palma de Mallorca*, that was in charge of case number 3468/2005. (See Annex 5) The applicant was notified on April 23, 2007.

8. The judgment of the *Juzgado de Instrucción número 9 de Palma de Mallorca* was appealed on April 26, 2007, (See Annex 6), in front of the same court as required by the rules of procedure, the *Juzgado de Instrucción número 9 de Palma de Mallorca*. The appeal submitted by the applicant denounced the inhumane and degrading treatment (Article 173 Penal Code), the lack of access to an effective legal remedy (Article 24 Spanish Constitution), and requested that the appeal court consider the aggravating circumstances of discrimination based on sex, race and social status (Article 22.4 Penal Code), and also classified the acts by the police agents as a misdemeanour (Article 617 Penal Code).

9. The judgement of the *Juzgado de Instrucción número 9 de Palma de Mallorca* resolving the above mentioned appeal was delivered on June 10 of the same year, but notified on September 4, 2007. (See Annex 7) The judge declared the appeal inadmissible because the allegations presented in the complaint could not be corroborated. In the legal basis of the judgment, the judge stated that the applicant filed the complaint with “spurious motives”, and that the case merely demonstrated the applicant’s repeated disobedience to police requests produced within the exercise of their duties. Also, it explains that the actions of the police had no other aim than to impede the “shameful spectacle of prostitution in the public space.”

10. On October 7, 2008, the applicant’s legal representative filed a disciplinary complaint against the judge of the *Juzgado de Instrucción número 9 de Palma de Mallorca* Mr. Enrique Morell García, that issued the above cited decision. (See Annex 8) The complaint was based on the judge’s inappropriate use of discriminatory language, the fact that he completely

ignored his judicial duty, and denouncing the use of unnecessary, inappropriate, offensive and disrespectful expressions in the judgment announced on September 4, 2007. The complaint was admitted on January 20, 2009, and is still pending resolution. (See Annex 9)

11. The above mentioned decision of the 4<sup>th</sup> September, 2007, of the *Juzgado de Instrucción número 9 de Palma de Mallorca* was appealed by the applicant to the corresponding court, in this case, the *Audiencia Provincial de Palma de Mallorca*. The date of this appeal is the same as the previous one as the rules of procedure allow for an automatic appeal. The decision of the *Audiencia Provincial de Palma de Mallorca*, issued on October 16, 2007, found that there had been an assault that amounted to a misdemeanour, and ordered the first instance court to hold a trial. (See Annex 10) The other violations alleged in the appeal were dismissed by the court.

12. The applicant was cited for trial on March 3, 2008, where the police officers that were called by the state as alleged authors of the assaults denounced by Ms. Solomon were not the ones that had assaulted Ms. Solomon. During the trial, Ms. Solomon's attorney insisted that there should have been a line up to allow the applicant to identify those responsible for assaulting her.

13. On March 11, 2008, the *Juzgado de Instrucción número 9 de Palma de Mallorca* issued a decision stating that since the police officers had not been identified, no criminal charges could be applied (See Annex 11). In this judgment, the judge stated that the request made during the trial to hold a line up was denied because he considered that it would not be effective due to the amount of time that had gone by and because the applicant had stated that the police officers were wearing helmets. The judge also stated that in the complaint Ms. Solomon had not identified the alleged aggressors or the place where the aggressions occurred.

14. This decision was appealed again on April 8, 2009, in front of the *Audiencia Provincial de Palma de Mallorca* alleging a violation to the right to an effective remedy due to the court's denial to hold a line up. This party explained in the appeal that there was contradiction in the judgment given the fact that the judge said that it was not efficient to hold a line up because too much time had gone by and at the same time, he cited two officers (not the correct ones) and determined it to be appropriate to ask the applicant to establish whether they were the ones responsible for the assault. Thus, the judge did not hold the line up but dismissed the case because the Applicant was not able to identify the police officers he had cited. The appeal also denounced the court's lack of investigation. Allegations were also included regarding the violation of the right of equality and non discrimination for the absolute lack of investigation regarding the racial discrimination that caused the assaults, and the sex discrimination held by the *Juzgado de Instrucción número 9 de Palma de Mallorca* for the comments did by that court in the judgment of April 8, 2008. (See Annex 12) The appeal is still pending.

**CASE NUMBER 3204/05:**

15. The facts that gave way to this second complaint were very similar to the one that caused the first complaint.

16. On the 23<sup>rd</sup> of July, 2005, in the city of Palma de Mallorca (Spain) Ms. Solomon was standing on a street where prostitution is commonly practised when she was stopped by the same police officers that assaulted her on 15<sup>th</sup> of the same month. The national police officers informed Ms. Solomon that she was not allowed to remain in the area, and could not “work” there. Ms. Solomon asked the police officer why he didn’t ask the other women of European phenotype that were standing in the same area to leave. Ms. Solomon argued with the police officer, and then the same officer assaulted the applicant with his baton on the knee and on the hand. Ms. Solomon was then taken to the police station by another agent in a car that had been called during this exchange. Whilst at the police station, the officers attempted to force her to sign a statement stating that she had resisted police authority. When she refused to do so, she was allowed to leave without any charges made against her. On the same day Ms. Solomon went to a public hospital to get medical assistance for the injuries received which included: inflammation on the back side of her hand with pain, inflammation and bruises on the knee. (See Annex 13)

17. On the 25<sup>th</sup> of July, 2005, Ms. Solomon made a second formal verbal complaint in front of the *Juzgado de Instrucción número 2 de Palma de Mallorca* (henceforth 3204/05, the second complaint), a first instance court, accompanied by two medical reports detailing the injuries suffered on both occasions, the 15<sup>th</sup> and the 23<sup>rd</sup> July 2005. (See Annex 14) In this verbal complaint, she also applied to the court for a restraining order against the officers that had assaulted her. This second complaint 3204/05 was transferred to a different magistrates’ court and all subsequent attempts to unify the cases were rejected by the magistrate considering the first complaint (case 3468/05).

18. On October 14, 2005, (See Annex 15) the applicant submitted a written request to the court that the judge hold an identity line-up, to locate the batch numbers of police officers working on the day of the assault and seeking permission to amend the complaint to include more information. These requests were never answered.

19. In accordance with the rules of procedure complaint number 3204/05 was assigned to the *Juzgado de Instrucción número 11 de Palma de Mallorca*, a first instance court. The *Juzgado de Instrucción número 11 de Palma de Mallorca* requested a written statement about the police stops suffered by Ms. Solomon on the 23<sup>rd</sup> July, 2005, to the superior of the alleged offenders, the Chief of Police of national police of Palma de Mallorca. This report was dated December 28, 2005. (See Annex 16) This time, the same Chief of Police denied that Ms. Solomon was stopped at all on 15<sup>th</sup> July or on the 21<sup>st</sup>, – he failed to mention the 23<sup>rd</sup> of July, the date of the second aggression – thus producing a statement that was in contradiction with the first statements presented by the same Chief of Police in the first case number 3468/2005.

20. The judgment of the *Juzgado de Instrucción número 11 de Palma de Mallorca* was delivered on February 22, 2006. (See Annex 17) As in the first case number 3468/2005, the only evidence considered by the court was the above mentioned written statement by the same Chief of Police of the national police of Palma de Mallorca. The judgment stated that there was not enough evidence that a crime was committed and thus, in accordance with the criminal rules of procedure (*artículo 641-1º de la Ley de Enjuiciamiento Criminal*) the case was dismissed (with leave to appeal).

21. The dismissal by the *Juzgado de Instrucción número 11 de Palma de Mallorca* of the second complaint 3204/05 was appealed by the applicant in timely fashion, on June 1, 2006, to the same first instance court, as is required by the procedures. (See Annex 18) The appeal argued the violation of Article 24 of the Spanish Constitution, which affirms the right to an effective remedy, mentioning both national and international law. The judge, acting as the appeal court, concluded that there was a lack of evidence of a criminal offence on July 31, 2006. (See Annex 19)

22. The above mentioned decision issued by the *Juzgado de Instrucción número 11 de Palma de Mallorca* was appealed to the *Audiencia Provincial de Palma de Mallorca*, arguing the same allegations that in appeal presented before the *Juzgado de Instrucción número 11 de Palma de Mallorca*. The date of this appeal is the same as the previous one as the rules of procedure allow for an automatic appeal. The *Audiencia Provincial de Palma de Mallorca* declared the appeal inadmissible on March 7, 2007. (See Annex 20) The judgment of the *Audiencia Provincial* stated that the lower court's decision was correct given that there were insufficient facts to prove the claim.

23. Thus the applicant appealed to the Constitutional Court (*Tribunal Constitucional*) – the last instance court in Spain, on April 4, 2007. (See Annex 21) The appeal argued the violation of Article 24 of the Spanish Constitution, which affirms the right to an effective remedy; violation of Article 14 of the Spanish Constitution, which includes the right not to be discriminated against; violation of Article 10 of the Spanish Constitution, which protects the right to dignity; and violation of Article 15 of the Spanish Constitution, protecting the right to moral and physical integrity. The appeal presented all arguments and jurisprudence based both on Spanish and international law.

24. On April 21, 2008, the Constitutional Court notified Ms. Solomon that the court would not review the case because they did not consider that the complaint filed by the applicant raised constitutional issues, with no further explanation. (See Annex 22) Consequently they did not examine the allegations.

### **III. STATEMENTS ALLEGED VIOLATION(S) OF THE CONVENTION AND / OR PROTOCOLS AND OF RELEVANT ARGUMENTS**

15. The applicant seeks the redress of the Court for the following violations of Convention Rights:

#### **ARTICLE 3 IN CONJUNCTION WITH ARTICLE 14**

1. **The actions of the State police officers violated Ms. Solomon's rights under Article 3 of the ECHR** which establishes that "No one shall be subjected to torture or to inhuman or degrading treatment or punishment." The applicant was subjected to inhuman and degrading treatment with the stops, the detention, insults, threats and physical harm produced by the police officers of the national police of Palma de Mallorca. These actions were motivated by discrimination on the basis of race, sex and social status – thus also producing a violation of Article 3 in conjunction with Article 14. Furthermore, the Spanish authorities' continued failure to undertake a thorough, fair and effective investigation into the circumstances surrounding the discriminatory stops also constitute a violation of Article 3 alone and in conjunction with Article 14.

2. **The European Convention of Human Rights establishes an absolute protection against torture, inhuman or degrading treatment.** As the Court has stated on many occasions, Article 3 "enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct."<sup>1</sup> There is no provision for exceptions and there is no permissible derogation.

3. **The victim's right to be free from discrimination was violated by the facts described above.** Article 14 of the Convention establishes that "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status." In the case at hand, the applicant has suffered discrimination based on several grounds -- race, gender and social status. Racial discrimination is a particular evil to which international and comparative law accords priority in combating and redressing. The prohibition of racial discrimination is recognized in all major international and regional human rights instruments<sup>2</sup>

---

<sup>1</sup> *Labita v. Italy*: application No. 26772/95. Paragraph 119. ECHR, 2000; *Chahal v. the United Kingdom*: application No. 22414/93. Paragraph 79. ECHR, 1995.

<sup>2</sup> Article 1 of *Protocol No. 12* to the ECHR, entered into force on April 1, 2005, holds that "the enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status." Article 21 of the *Charter of Fundamental Rights of the European Union* holds that "[a]ny discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age



and has become a *jus cogens*, or peremptory norm, of international law, as recognized by this Court as well as other international, regional, and national human rights bodies: “Non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights.”<sup>3</sup> At the same time, discrimination based on gender is also prohibited. In *Burghartz v. Switzerland*, the Court reiterates the firmly established idea that the advancement of the equality of the sexes is today a major goal in the member States of the Council of Europe; this means that very weighty reasons would have to be put forward before a difference of treatment on the sole ground of sex could be regarded as compatible with the Convention.<sup>4</sup> The Court has gone one step further in relation to the prohibition of sex

---

or sexual orientation shall be prohibited;” *International Covenant on Civil and Political Rights* (“ICCPR”), Article 2(1): Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status; Article 26: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status;” *International Convention on the Elimination of All Forms of Racial Discrimination* (“ICERD”), Article 2: State Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races. ...” Article 1(3) of the *United Nations Charter* (“UN Charter”) includes among the purposes of the United Nations “promoting and encouraging respect for human rights and for fundamental freedoms from all without distinction as to race, sex, language or religion...” Article 55(c) of the UN Charter commits the United Nations to promote non-discrimination. Article 2 of the *Universal Declaration of Human Rights* (“the Declaration”) states that “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, political or other opinion, national or social origin, property, birth or other status” and further states that “no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-governing or under any other limitation of sovereignty.” Article 7 of the Declaration holds, “All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.” See also the *International Covenant on Economic, Social and Cultural Rights* (“the ICESCR”), Article 2(2): “[t]he States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. See also the *African Charter on Human and Peoples’ Rights*, Chapter 1, Article 2 (“Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status”); the *American Convention on Human Rights*, Articles 1(1) (“The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth or any other social condition”) and 24 (“All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law”).

<sup>3</sup> UN Human Rights Committee, *General Comment No. 18: Non-Discrimination: 10/11/1989*, UN Doc. A/45/40, para. 1. See also the Inter-American Court of Human Rights, *Juridical Conditions and Rights of the Undocumented Migrants, Advisory Opinion* (09/17/2003) OC-18/03, Inter-Am. Ct. H.R. (Ser. A), No. 18 (2003), para. 101: “the principles of equality before the law, equal protection before the law and non-discrimination belong to *jus cogens*, because the whole legal structure of national and international public order rests on it and is a fundamental principle that permeates all laws. Nowadays, no legal act that is in conflict with this fundamental principle is acceptable, and discriminatory treatment of any person, owing to gender, race, color, language, religion or belief, political or other opinion, national, ethnic, or social origin, nationality, age, economic situation, property, civil status, birth, or any other status is unacceptable... At the existing stage of the development of international law, the fundamental principle of equality and non-discrimination has entered the realm of *jus cogens*.”

<sup>4</sup> *Burghartz v. Switzerland: application No. 16213/90*. Paragraph 27. ECHR, 1994.

discrimination, calling on the member states “to eradicate all discrimination on grounds of sex.”<sup>5</sup> Social status discrimination can be discrimination based on a person’s social status or the perception of such status. For example a person can be discriminated against based on social origin, homelessness, perceived migratory status, activities that are denominated as “morally repugnant”, employment status, or HIV/AIDS situation. Discrimination based on social status is prohibited under the Convention.

**4. In order for all the Convention rights to be guaranteed free of discrimination on any ground, it is crucial that special care must be taken when rights are denied due to compound or intersectional discrimination as is the case presented here.** Compound discrimination is when discrimination occurs on the basis of two or more grounds at the same time and where one ground multiplies or intensifies in the same instance the discrimination experienced on another ground. Intersectional discrimination is when several grounds operate simultaneously and interact in a manner that is impossible to separate them. If the multiple layers of discrimination are not taken into account, the real effect of the discriminatory acts may not be adequately evaluated. It is essential to consider the different grounds of discrimination and the ways in which these grounds interact because those experiencing these complex forms of discrimination are too often among those in the most vulnerable, marginalized and disadvantaged situations, and thus are more prone to suffer violation of their rights including the ability to have access to justice.

#### **The discriminatory ill treatment derived from the police stops**

5. In its recent case *Stoica v. Rumania* the Court explains that “[I]ll-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 (...) The Court has considered treatment to be “inhuman” because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering. It has deemed treatment to be “degrading” because it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them.”<sup>6</sup> The Court has also held that in order to determine if certain treatment amounts to a violation of Article 3, it is necessary to evaluate “all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim.”<sup>7</sup> The case law of the ECHR clearly affirms that when differential treatment is exercised in such a manner that it denotes “any contempt or lack of respect for the personality of the applicants” or is designed to “humiliate or debase,” it violates Article 3 of the European Convention of Human Rights.<sup>8</sup>

**6. In relation to Article 14, the Court’s jurisprudence clearly states that “not every difference in treatment will amount to a violation of this Article.”** It must be established that other persons in an analogous or relevantly similar situation enjoy preferential treatment

---

<sup>5</sup> *Ünal Tekeli v. Turkey*: application No. 29865/96. Paragraph 59. ECHR, 2004.

<sup>6</sup> Application No. 42722/02. Paragraph 60. ECHR, 2008.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Abdulaziz, Cabales and Balkandali v. UK*: Application No. 9214/80; 9473/81; 9474/8.1 Paragraph 91. ECHR, 1985.

and that this distinction is discriminatory.”<sup>9</sup> The case-law of the Court explains that a treatment is discriminatory within the meaning of Article 14 “if it has no objective and reasonable justification. The existence of such justification must be assessed in relation to the principles which normally prevail in democratic societies (...) Article 14 is likewise violated when it is clearly established that there is no “reasonable relationship of proportionality between the means employed and the aim sought to be realized. In other words, the notion of discrimination includes in general cases where a person or group is treated, without proper justification, less favourably than another, even though the more favourable treatment is not called for by the Convention.”<sup>10</sup>

**7. In the present case, Ms. Solomon suffered degrading and inhuman treatment, in violation of Article 3 of the Convention in conjunction with Article 14, whilst she was stopped and assaulted by the police on the street and when she was detained.** The ill treatment suffered by the applicant meets the minimum level of severity required by this Court’s case-law. The ill treatment occurred on repeated occasions and caused both bodily injury and intense mental suffering. The physical abuse is documented by the medical reports presented by Ms. Solomon. The officers treated Ms. Solomon with contempt, clearly demonstrated by the racial slur iterated while they inflicted physical abuse on the applicant. The actions of the police officers were clearly meant to humiliate and debase Ms. Solomon and in fact Ms, Solomon was degraded by these acts, as the actions arose in her a feeling of fear – demonstrated by her attempts to run away from the officers the second time they approached her; anguish and inferiority.

**8. This violation of Article 3 was clearly founded on race, sex and social status discrimination.** Although not every difference in treatment amounts to a violation of Article 14, in the present case, the actions of the police officers amounts to discrimination as there is no objective or reasonable justification for the differential treatment. The ill treatment clearly aimed to debase and humiliate Ms. Solomon. This non justifiable gendered form of racial and social status discrimination is evident from the facts of the case. Ms. Solomon was stopped while other women in the same area with “European phenotype” were not. Similarly, the police officers treated Ms. Solomon in a humiliating and degrading manner, including uttering a racist and sexist slur while subjecting her to the physical ill treatment. The police officers discriminatory ill treatment was based on the assumption that she was soliciting prostitution – which is not illegal in Spain; an assumption made based on her race and sex. This case is emblematic of the humiliating and degrading treatment by police officers of women that they assume to be prostitutes; all with complete impunity. Unfortunately, these incidences are symptomatic of the racism and sexism faced by ethnic minority women at the hands of state agents. As the European Commission against Racism and Intolerance has explained “ethnic minorities are disproportionately subject by law enforcement officials throughout the country stops, requests for identification and searches. The groups most

---

<sup>9</sup> Op. cit., note 5. Paragraph 49.

<sup>10</sup> Ibid. Paragraphs 50-51.

heavily affected by these practices of ethnic profiling are reported to be (...) and sub-Saharan Africans.”<sup>11</sup>

**The discriminatory ill treatment derived from the lack of investigation**

9. **Due to the complete lack of investigation at every level of the responding State’s judicial apparatus, Ms. Solomon is suffering an on-going violation of Article 3 (alone and in conjunction with Article 14)**, in addition to the violation of Article 3 and 14 that occurred with the two police stops and assaults. In the matter of *Assenov and others v. Bulgaria* the Court stated that “where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the State unlawfully and in breach of Article 3, that provision, read in conjunction with the State’s general duty under Article 1 of the Convention to ‘secure to everyone within their jurisdiction the rights and freedoms defined in ..[the] Convention’, requires by implication that there should be an effective official investigation (...) capable of leading to identification and punishment of those responsible. Even if this were not the case, the general legal prohibition of torture and inhuman and degrading treatment and punishment, despite its fundamental importance, would be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity.”<sup>12</sup> This basic idea that the State has an obligation to effectively investigate allegations of ill treatment was repeated in *Labita v. Italy*<sup>13</sup> and in *Satik v. Turkey*.<sup>14</sup>

10. **In the present case, the Applicant has raised an arguable claim of serious ill treatment at the hands of the national police – in fact the claim is of multiple aggressions by the same police agent.** This claim was filed in the appropriate matter and thus should have led to an effective official investigation as required by the Convention and the applicable jurisprudence of this Court. Nonetheless, no such investigation was ever held.

11. **The Court has found that an investigation pursued by the national authorities in a case alleging torture and degrading treatment, which relied exclusively on a detailed medical report, did not amount to an effective investigation and thus constituted a violation of Article 3 of the Convention** in *Martínez Sala and others v. Spain* (original in French).<sup>15</sup> The jurisprudence of the Court has clearly stated that due to the positive obligation that States have to carry out an effective investigation when there is an arguable claim of ill-treatment in the hands of State authorities; the lack of such investigation amounts in itself to a breach of Article 3.<sup>16</sup>

---

<sup>11</sup> *Third report on Spain: Adopted on 24 June 2005*. European Commission against Racism and Intolerance: February 2006. Paragraph 18.

<sup>12</sup> Application No. 90/1997/874/1086. Paragraph 102. ECHR, 1998 (internal citations omitted).

<sup>13</sup> Application No. 26772/95. Paragraph 131. ECHR, 2000.

<sup>14</sup> Application No. 31866/96. Paragraph 62. ECHR, 2001.

<sup>15</sup> Application No. 58438/00. Paragraphs 159-160. ECHR, 2004.

<sup>16</sup> See also, *Shananghan v. UK* establishing that “The investigation must also be effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances (e.g. *Kaya v. Turkey* judgment, cited above, p. 324, § 87) and to the identification and punishment of those responsible. This is not an obligation of result, but of means.” Application No. 37715/97. Paragraph 90. ECHR, 2001.

12. **In the case of Ms. Solomon, the lack of an effective investigation in itself constitutes a violation of Article 3.** The actions of the state to “investigate” were reduced to requesting a report from the Chief of Police – which in no way could be considered impartial given the fact that the Chief of Police was the superior of the alleged aggressor. In fact, the response of the Chief of Police makes clear that he believes that women who are presumed to be engaged in prostitution are not entitled to equality under the law; allowing police officers that harass women in this situation, such as Ms. Solomon, to do so with total impunity. No other action was taken by any national court to investigate the allegations of discriminatory ill treatment despite repeated requests by the Applicant that such an investigation be instigated. As in *Martinez*, the reliance on the report by the Chief of Police as the only means of investigation in a case where there are serious allegations of ill treatment in the hands of the State authorities in itself amounts to a breach of Article 3.

13. **The violation suffered by Ms. Solomon of Article 3 due to the lack of investigation must also be examined in conjunction with Article 14 since there are clear indications that this violation is also motivated by racial, gender and social status discrimination.** In the admissibility decision of *Menson and others v. UK* the Court established that when an attack has racial motivations, it is particularly important to carry out an independent and vigorous investigation.<sup>17</sup> Furthermore, in *Nachova and others v. Bulgaria* the Court held for the first time that “Racial violence is a particular affront to human dignity and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction. It is for this reason that the authorities must use all available means to combat racism and racist violence, thereby reinforcing democracy’s vision of a society in which diversity is not perceived as a threat but as a source of its enrichment.”<sup>18</sup> In this landmark case, the Grand Chamber stated that “the authorities’ duty to investigate the existence of a possible link between racist attitudes and an act of violence is an aspect of their procedural obligations arising under Article 2 of the Convention, but may also be seen as implicit in their responsibilities under Article 14 of the Convention taken in conjunction with Article 2.”<sup>19</sup> Moreover, the Court explained that “any evidence of racist verbal abuse being uttered by law enforcement agents in connection with an operation involving the use of force against persons from an ethnic or other minority is highly relevant to the question whether or not unlawful, hatred-induced violence has taken place. Where such evidence 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>20</sup>

14. **Racist remarks should be taken into account as an aggravating factor in the examination of applicants’ complaint under Article 3** as stated in the case of *Moldovan and others v. Romania* where the Court developed its concern for racist based ill-treatment, and considered that discrimination based on race can of itself amount to degrading treatment within the meaning of Article 3.<sup>21</sup> Furthermore, in *Bekos v. Greece* the Court stated that the

---

<sup>17</sup> Decision as to the admissibility of Application No. 47916/99. Paragraph 1. ECHR, 2003.

<sup>18</sup> Applications No. 43577/98 and 43579/98. Paragraph 145. ECHR, 2005.

<sup>19</sup> Op. cit., note 9 Paragraph 161.

<sup>20</sup> Ibid., paragraph 164.

<sup>21</sup> Application No. 41138/98 and 64320/01. Paragraph 111. ECHR, 2005.

failure of the justice system to investigate allegations of degrading treatment when denounced by a member of an ethnic minority group also constitutes a violation under Article 3 of the Convention.<sup>22</sup> In this case, a violation was found due to the authorities' failure to meet their duty "to take all possible steps to investigate whether or not discrimination may have played a role in the events."<sup>23</sup>

**15. In the case at hand, the lack of investigation into Ms. Solomon's allegations of serious ill treatment are plagued with indications of race, sex and social status discrimination.** As was mentioned above, the report produced by the Chief of Police in response to the court's request evidenced gender discrimination. Furthermore, the judge's comments that the police officers were merely trying to "avoid the shameful spectacle of prostitution" clearly demonstrates the judge's biased and discriminatory views which impeded the proper administration of justice. Since poor and ethnic minority women are presumed to be engaged in prostitution, it can be concluded that these discriminatory views cannot be separated from discrimination based on race, gender and social status.

**16. The standards set by the Court for the type of investigation that must be conducted when allegations of ill treatment are combined with race and gender discrimination were clearly not followed in this case.** As explained above, after both stops, Ms. Solomon filed police complaints accompanied with medical reports. Nonetheless, the judges failed to investigate the allegations. When the complaint reached the first instance court, the judge limited his actions to requesting a written report from the superior of the accused in both cases. In the first case (3468/05) in front of the *Juzgado de Instrucción número 9 de Palma de Mallorca*, the report submitted by the Chief of Police was in itself discriminatory as it stated that Ms. Solomon was stopped on July 21<sup>st</sup> due to the troublesome situation produced by the concentration of "these women" in a tourist area – implying that her mere presence, not illegal in any way; was enough of a reason to repeatedly stop her. The report also explains that the women tried to avoid identification because it "makes their job more difficult, as it frightens away the men that are tempted to use their services." (*se dificulta el 'trabajo' de las mujeres allí reunidas, al ahuyentar a los posibles varones que son tentados, por su presencia, a usar de sus servicios*). That is, the Chief of Police is not only justifying the harassment of the women, he is blaming them for the discriminatory actions of the police agents. In the second case (3204/05), pending in front of the *Juzgado de Instrucción número 11 de Palma de Mallorca*, the same Chief of Police that in the first case denied that Ms. Solomon was stopped at all on 15<sup>th</sup> July or on the 21<sup>st</sup>, – he failed to mention the 23<sup>rd</sup> of July, the date of the second aggression – thus producing a statement that was in contradiction with the first statements presented by the same Chief of Police in the first case on October 11, 2005. This blatant contradiction was never taken into consideration by any of the courts.

**17. Despite repeated requests by Applicant's counsel to investigate the allegations the court did not conduct any of the requested investigation.** Amazingly, in all of the

---

<sup>22</sup> Application No. 15250/02. Paragraph 52. ECHR, 2006.

<sup>23</sup> Application No. 15250/02. Paragraph 75. ECHR, 2006.

decisions issued –due to numerous appeals filed by Ms. Solomon, there was never any mention of the discriminatory racial insults or of the blatantly sexist acts by the police agents. On the contrary, in the first case number 3468/2005, pending in front of the *Juzgado de Instrucción número 9 de Palma de Mallorca* the judgment stated that the police conduct was completely justified.

**18. Discrimination is also clearly visible in the language used by the judge** from the *Juzgado de Instrucción número 9 de Palma de Mallorca*. On two different occasions (judgment from October 17, 2005; and judgment March 11, 2008), the judge made a value judgment regarding Ms. Solomon that clearly manifested a discriminatory opinion against women exercising prostitution. In fact, despite the fact that the case was not about prostitution, the judge included his personal opinion on the matter, declaring that there existed a “shameful spectacle of prostitution in the public space” (*bochornoso espectáculo de la prostitución*) and accused the applicant of filing the complaint with “spurious motives.” The judge argues that the case merely demonstrated the applicant’s repeated disobedience to police requests produced within the exercise of their duties. His claim was that the actions of the police had no other aim than to impede the “shameful spectacle of prostitution in the public space.” That is, he alleged that the applicant had obstructed police officers in their duty to clear the street of prostitution. Here, it is important to note that prostitution is not codified in the criminal code nor had the applicant been charged with any crime. The language of the judgment shows complete disregard for the intersectional discrimination faced by minority women, including when they complain of ill treatment. Thus, the response of the State – in particular of the judicial system – constitutes in itself a violation of Article 3 alone and in conjunction with article 14 since it has left Ms. Solomon without any effective recourse to reparation or to an effective remedy for the initial violation of her Convention rights.

**19. Both racial and gender discrimination present in the stops as well as the Applicant’s difficulties in accessing justice are representative of structural discrimination present in Spain.** The European Commission against Racism and Intolerance stated in his 2005 report on Spain that he “has received consistent reports according to which noncitizens, Roma, and Spanish citizens of immigrant background who have fallen victims of police misconduct only rarely file formal complaints. When complaints are filed there is reported to be little investigation of incidents, and little transparency on the results of these investigations within the police. As already noted in ECRI’s second report, counter-charges are frequently brought or threatened against those indicating their intention of lodging a complaint of police misconduct. It is also reported that, unlike the complaints filed by alleged victims of police misconduct, such counter-charges are as a rule successful and dealt with swiftly.”<sup>24</sup>

**20. The discrimination faced by Ms. Solomon in conjunction with her ill treatment is discrimination based on her race, her gender and her social status.** The Applicant is

---

<sup>24</sup> *Third report on Spain: Adopted on 24 June 2005*. European Commission against Racism and Intolerance. February, 2006. Paragraph 88.

facing intersectional and compound discrimination which must be recognized in order to understand how the discrimination is present in the violation of all the Convention rights included here.

#### **ARTICLE 6 IN CONJUNCTION WITH ARTICLE 14**

21. **The State has and continues to violate Ms. Solomon Article 6 right to a fair trial, taken both alone and together with Article 14**, in relation to her exclusion from the judicial process and the failure of the judicial system to undertake an investigation once a complaint of differential and degrading treatment was lodged and supported by medical evidence. Although the rights of the victims are not explicitly included in Article 6, which states that “everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law,” the jurisprudence of the Court has clearly established that Article 6 has evolved to include protection of victims’ rights in criminal proceedings. Furthermore, Spain’s legislation has incorporated the figure of “private prosecution,” that confers to the victim the right to be a party to the criminal proceeding.<sup>25</sup> In the case at hand, Ms. Solomon has followed the required procedure to be a party to the complaints – as a “private prosecutor” and thus she is entitled to all the rights recognized under Article 6 of the Convention.

22. **Under Spanish law, there is also special concern regarding victims’ procedural rights.**<sup>26</sup> As stated in the European Council Framework Decision of March 15, 2001, the ruling principles are: protection and respect to the victim’s dignity, the victim’s right to declare, to be informed, to understand and be understood, to be protected at the different stages of the proceedings; and also the right to reparation recognized by the European Council Directive relating to compensation to crime victims of April 29, 2004.

23. **There is a breach of Article 6 as to both claims presented by the Applicant.** As was explained in the facts, there were two separate claims made of racial and sexist violence by the police. In case number 3468/2005, there clearly exists a breach of Article 6 given the investigative judge’s failure to conduct a full investigation. In fact, the only action taken by the judge was to request a report from the Chief of Police (the superior of the accused police officers) regarding the applicant’s detention. Furthermore, when the trial was set, the judge summoned police officers as defendants whom were not in any way connected to the case. The outcome, of course, was that the applicant was not able to identify them as her aggressors. In his decision on the appeal, this same judge deviates from the facts of the case – which were an accusation of police violence against a civilian – to include his personal opinion regarding prostitution, an act which is not in the criminal code in Spain. The judge’s comments, in fact, were a manner of attempting to justify the acts of the police officers,

---

<sup>25</sup> Article 101 of the Rules of Criminal Procedure.

<sup>26</sup> There exists a procedural rule that imposes a duty on all public prosecutors regarding the rights of victims. For example, it requires that criminal proceedings take into account the victim’s rights and not focus exclusively on the defendant’s rights. *Instrucción 8/2005 sobre el deber de información en la tutela y protección de las víctimas en el proceso penal.*



which was “to avoid the shameful spectacle of prostitution.” These comments are in themselves in violation of Article 6 in conjunction with Article 14 as the judge is making his decision based on discriminatory views regarding the Applicant. That is, the decision in an extension of the discrimination faced by the applicant based on her race, her sex and her social status. The judge is in fact looking to blame the victim, merely for her identity as a black, African, immigrant woman. The judge claims that the applicant had “spurious motives” for filing the criminal complaint – thus attempting to put the blame on her for the racist, sexist violence of her aggressors.

**24. There is also a blatant failure to fully investigate the allegations made by Ms. Solomon** in the judgment of the *Juzgado de Instrucción Número 11 de Palma de Mallorca*, delivered on February 22, 2006, regarding case number 3204/05. The applicant was never heard by the court. As with the other case, the only action of the judge was to request a written report from the Chief of Police regarding Ms. Solomon’s detention. In addition to this, the court never answered the applicant’s written request of the 14<sup>th</sup> of October, 2005, which included a request for an identity line-up, that the batch numbers of those officers working on the day of the assault be located and seeking permission to amend her complaint to include more information.

**25. From the moment Ms. Solomon filed the two complaints -- that were never unified despite her attorney’s request -- she was denied her right to a fair trial as guaranteed by Article 6 of the Convention.** Ms. Solomon was excluded from the judicial proceedings, including a denial of all her requests in relation to the investigation. In this case, discrimination based on race, gender and social class come together to produce a form of spatialized justice.

#### **ARTICLE 8 IN CONJUNCTION WITH ARTICLE 14**

**26. The applicant has also suffered a violation of her right to privacy** found in Article 8 which protects “the right to respect for his private and family life, his home and his correspondence.” As the Court explained in *X & Y v. The Netherlands*, the right to privacy extends to the right to physical and moral integrity.<sup>27</sup>

**27. In this case, Ms Solomon’s physical and moral integrity were violated by the State through the actions of the police officers.** Ms. Solomon was legally in a public space. The police officers questioned Ms. Solomon and subjected her to verbal and physical assaults with the intent to humiliate her in violation of her the right to privacy protected by the Convention. What is more, during the second aggression she was forced to go to the police station where the State agents attempted to force her to sign a declaration stating that she had resisted police authority. Ms. Solomon was not being accused of committing any illegal act and thus the officers’ insistence that she sign this declaration was clearly further harassment that sought to justify their actions. This behavior is in clear violation of Article 8 as it is an

---

<sup>27</sup> Application No. 8978/80. Paragraph 22. ECHR, 1985.

invasion of her privacy and her autonomy and is tantamount to conducting an unauthorized search.

28. **The repeated identity checks were calculated to impede the applicant's movements, and were a deliberate attempt to exclude her from public spaces and to violate her privacy and physical integrity, on the basis that the applicant is a woman of colour**, which violates Article 8 alone and also in conjunction with Article 14. As stated in her second complaint, other women of "European phenotype" standing in the same area were not asked to leave and were not assaulted. It is important to remember that under Spanish national law, prostitution is not illegal and there are no prohibitions on a woman's right to be in an area where it is known that prostitution is practiced. However, the actions of the officers were meant to prevent the applicant from exercising her right to privacy and were based prima facie, on moral repugnance towards the applicant for being both female and a person of colour.

#### **ARTICLE 13 IN CONJUNCTION WITH ARTICLE 14**

29. **The applicant also seeks redress under Article 13**, which guarantees that "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity." Furthermore, the applicant request that the Court consider Article 13 in conjunction with Article 14.

30. **Under Article 13 individuals must have access to an effective remedy** "before a national authority in order both to have his claim decided and, if appropriate, to obtain redress"<sup>28</sup> as was held in *Silver and others v. United Kingdom*. Thus, this article clearly obliges member states to have domestic mechanisms in place that can provide for an effective remedy to repair for any violations of the rights embodied in the European Convention. As stated in *Cobzaru v. Romania*, Article 13 "guarantees the availability, at the national level, of a remedy to enforce the substance of Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order (...) The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be "effective" in practice as well as in law; in particular, its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State (see *Tekdağ v. Turkey*, no. 27699/95, §95, 15 January 2004)."<sup>29</sup>

31. **An effective remedy includes that "in addition to payment of compensation where appropriate, the conduct of a thorough and effective investigation capable of leading to identification and punishment of culprits",<sup>30</sup> including effective access to the**

---

<sup>28</sup> Application No. 5947/72; 6205/73; 7052/75; 7061/75; 7107/75; 7113/75; 7136/7. Paragraph 113. ECHR, 1983.

<sup>29</sup> Application No 48254/99. Paragraph 80. ECHR, 2007.

<sup>30</sup> Application No 57/1996/676/866. Paragraph IV. ECHR, 1997.

**investigatory procedure for the complainant**<sup>31</sup> as established by *Aydin v. Turkey*. This affirmation was also established in *Aksoy v. Turkey*, where the Court stated that a prompt and impartial investigation is implicit in the notion of an effective remedy.<sup>32</sup> The authorities' actions and omissions not to carry a thorough and effective investigation prevented the Applicant from using the means of remedy available by law.

**32. In this case, Ms. Solomon has not had the opportunity to vindicate the violation of her rights in any court and thus she has not had access to an effective remedy, and much less the ability to receive adequate reparation.** The applicant suffered a violation of Article 3 in conjunction with Article 14 and then the judicial system did not investigate these allegations despite the obligation to do so, continuing the violation of Article 3. None of the courts that had an opportunity to review the complaints (due to the numerous appeals) provided Ms. Solomon with a forum in which to seek vindication for the violation of her fundamental rights which were violated in a discriminatory fashion. On the contrary, she has suffered sex and racial discrimination when trying to vindicate her rights at the hands of the courts, and no access to justice has been possible because of the negligent actions of the police officers and the magistrates.

**In conclusion,**

A gendered form of race discrimination is evident from the facts in the case. That is, Ms. Solomon was stopped while women with "European phenotype" in the area were not stopped; an assumption was made that Ms. Solomon was engaged in solicitation for the purposes of prostitution -- an assumption made based on her race and gender taken as a whole; the police officer uttered a racial slur while assaulting Ms. Solomon, a slur that references her race and gender. Gendered racism is also evident in the police's and the court's responses to prostitution. The report submitted by the Chief of Police makes clear that women who are presumed to be engaging in prostitution are not entitled to equality under the law. Police officers may harass such women with impunity. The same response is evident in the judge's comment that the police officers were merely trying "to avoid the shameful spectacle of prostitution." Since poor and racial minority women are presumed to be engaging in prostitution, it is reasonable to conclude that these discriminatory responses to prostitution cannot be untangled from race, gender and social status. It is important to note that race, gender and social status come together in this case to produce a form of spatialized justice. Racial minority women who are in an area of prostitution may expect to enjoy fewer rights in law. This is the gendered form of the race discrimination that operates when police can harass with impunity any racial minority man found in high crime areas. Ms. Solomon's Convention rights were violated upon on the basis of race, gender and social status.<sup>33</sup>

---

<sup>31</sup> *Ibid.*, paragraph 103.

<sup>32</sup> Application No 100/1995/606/694. Paragraph 98. ECHR, 1995.

<sup>33</sup> RAZACK, Sherene. "Gendered Racial Violence and Spatialized Justice: The Murder of Pamela George", *Canadian Journal of Law and Society*, 2000. Vol. 15. No. 2. P. 91-130.

#### ***IV. STATEMENT RELATIVE TO ARTICLE 35 & 1 OF THE CONVENTION***

16. Final decision (date, court or authority and nature of decision)

##### **CASE NUMBER 3204/05:**

The Final decision regarding case number 3204/05 was announced by the Constitutional Court of Spain on April 14, 2008, and notified on April 21 of the same year. (See Annex 22) This decision finalized the legal process and is the last instance of the judicial system in Spain.

17. Other decisions (list in chronological order, giving date, court or authority and nature of decision for each of them)

##### **CASE NUMBER 3468/2005:**

The applicant filed a complaint on July 21, 2005, in front of a first instance court, the *Juzgado de Instrucción número 9 de Palma de Mallorca*. (See Annex 1) The first instance court issued a judgment on October 17, 2005, (See Annex 4), and the applicant's legal representative received notification on April 26, 2007 after the applicant's legal representatives requested the notification. (See Annex 5)

The decision of the court of first instance was appealed to same court (as required by the rules of procedure) on April 26, 2007. (See Annex 6) The judge issued his decision on June 10, 2007. (See Annex 7) This second decision was then appealed to the *Audiencia provincial de Palma de Mallorca*. The date of this appeal is the same as the previous one as the rules of procedure allow for an automatic appeal.

The *Audiencia Provincial de Palma de Mallorca* announced a resolution on October 16, 2007, (See Annex 10), and considered partially the appeal and found that there has been an assault that amounted to a misdemeanor. As a result of the decision the first instance court was ordered to hold a trial. The applicant was cited for the trial, where the police officers that were called by the state were not the ones that had assaulted Ms. Solomon. The first instance court issued a decision the 11<sup>th</sup> of March, 2008, stating that since the police officers had not been identified no criminal charges could be applied. (See Annex 11)

This last decision of the first instance court was appealed again on April 8, 2008 to the *Audiencia Provincial de Palma de Mallorca*. (See Annex 12) The first case is still pending, however, considering the developments of the case we can affirm that the results will not lead to an effective investigation. At the same time, pursuant to national law<sup>34</sup> the first complaint

---

<sup>34</sup> Ley Orgánica 2/1979. 3 Octubre. Tribunal Constitucional. Article 50.1(b).

3468/05 can no longer be appealed to the Constitutional Court, due to the fact that this complaint includes the same facts as the previous complaint filed before the same court and therefore the Constitutional Court would be obligated to return the same verdict.

Non juridical proceedings tried by Ms. Solomon's legal representation regarding case number 3468/2005

Ms. Solomon's legal representative submitted a non juridical complaint to the national governing institution of the judicial branch (*Consejo General del Poder Judicial*) on October 7, 2008, (See Annex 8), denouncing the judgment emitted by the first instance judge on June 10, 2007. The complaint argued that the judgment utilized discriminatory language, failing to perform his judicial duty, and denounces the use of unnecessary, inappropriate, offensive and disrespectful expressions in the judgment. The complaint was admitted on January 20, 2009, (See Annex 9), and is still pending resolution.

**CASE NUMBER 3204/05:**

The applicant has pursued and exhausted all domestic legal avenues available to her in case number 3204/05.

The applicant filed a complaint on July 25, 2005, in front of a first instance court, the *Juzgado de Instrucción número 11 de Palma de Mallorca*. (See Annex 14) The first instance court reached its judgment and declared the complaint inadmissible on February 22, 2006. (See Annex 17)

The decision of the first instance court was appealed to the same court (as required by the rules of procedure) on June the 1, 2006, (See Annex 18); the judge delivered his decision rejecting the appeal on July 31, 2006. (See Annex 19) This second decision was then appealed to the *Audiencia Provincial de Palma de Mallorca*.

The *Audiencia Provincial de Palma de Mallorca* rejected the appeal on March 7, 2007. (See Annex 20) The applicant appealed the decision of the *Audiencia Provincial de Palma de Mallorca* to the Constitutional Court on April 4, 2007. (See Annex 21) On April 21, 2008, the Constitutional Court denied the appeal. (See Annex 22)

In accordance with Article 35 (1) of the Convention, within six months of the exhaustion of domestic remedies, Ms. Solomon's legal representatives submitted a letter to the European Court of Human Rights (hereinafter "ECHR") announcing her intention to file this complaint to the ECHR.

Non juridical proceedings tried by Ms. Solomon's legal representation regarding case number 3204/05

During the time that the applicant was involved in the national litigation Ms. Solomon's legal representative filed two non juridical complaints to the national governing institution of the

judicial branch (*Consejo General del Poder Judicial*), and to the National Ombudsman (*Defensor del Pueblo*), both of them on November 21, 2006. (See Annexes 23 and 24) These complaints denounced the violation of the right to due process, taking into account the complete lack of investigation by the judicial system of the allegations of racial and gender violence. Both complaints were rejected. The *Consejo General* argued there was no any irregularity or delay in the process, (See Annex 25), and the *Defensor del Pueblo* explained that while there was a case pending at the courts they could not intervene. (See Annex 26)

18. Is there or was there any other appeal or other remedy available to you which you have not used? If so, explain why you have not used it.

No, there was no other appeal or other remedy available to the applicant.

## **V. STATEMENT OF THE OBJECTION OF THE APPLICATION**

19. The applicant seeks a declaration from the Court that she suffered violations of the aforementioned articles alone and in conjunction with Article 14. The applicant also requests that the Spanish courts be instructed to carry out an effective investigation into her allegations.

Ms. Solomon requests that standard of investigation that is required of the State when there are allegations of racial discrimination also be applied when there are allegations of sex discrimination in the present case. That is, that the standard set by the court for racial discrimination in *Nachova and others v. Bulgaria* also apply to other forms of discrimination.

The applicant also seeks measures to dismantle discriminatory systematic ethnic and sex profiling regarding the presence of black women in public spaces in Spain, and the endemic racism of the national court system. What is more, the applicant seeks the recognition of the Court regarding the multiple or intersectional discrimination faced by women of colour, both of which should be tackled by national legislation.

The applicant further seeks an adequate financial remedy under Article 41 of the Convention, as stated in the section III “Statement alleged violation(s) of the Convention and/or Protocols and of relevant arguments.”

## **VI. STATEMENTS CONCERNING OTHER INTERNATIONAL PROCEEDINGS**

20. Have you submitted the above complaints to any other procedure of international investigation or settlement?

This complaint has not been submitted to any other procedure of international investigation or settlement.

**VII. LIST OF DOCUMENTS**

**(NO ORIGINAL DOCUMENTS,  
ONLY PHOTOCOPIES-  
DO NOT STAPLE, TAPE OR BIND DOCUMENTS)**

21. Annex 1 - Formal verbal complaint. July 21, 2005.

Annex 2 - Medical report. July 21, 2005.

Annex 3 - Written statement submitted by the Chief of Police of the national police of Palma de Mallorca. October 11, 2005.

Annex 4 - Decision of *Juzgado de Instrucción número 9 de Palma de Mallorca*. October 17, 2005.

Annex 5 - Written request to the *Juzgado de Instrucción número 9 de Palma de Mallorca*. April 3, 2007.

Annex 6 - Appeal in front of the *Juzgado de Instrucción número 9 de Palma de Mallorca*. April 26, 2007.

Annex 7 - Decision of *Juzgado de Instrucción número 9 de Palma de Mallorca*. June 10, 2007.

Annex 8 - Disciplinary complaint in front of the *Consejo General del Poder Judicial* against the Decision from June 10, 2007 of the *Juzgado de Instrucción número 9 de Palma de Mallorca*. October 7, 2008.

Annex 9 - Admission of the disciplinary complaint by the *Consejo General del Poder Judicial*. January 20, 2009.

Annex 10 - Decision of the *Audiencia Provincial de Palma de Mallorca*. October 16, 2007.

Annex 11 - Decision of the *Juzgado de Instrucción número 9 de Palma de Mallorca* about the trial. March 11, 2008.

Annex 12 - Appeal in front of the *Audiencia Provincial de Palma de Mallorca*. April 8, 2008.

Annex 13 - Medical report. July 23, 2005.

Annex 14 - Formal verbal complaint. July 23, 2005.



Annex 15 - Written request to the *Juzgado de Instrucción número 11 de Palma de Mallorca*. October 14, 2005.

Annex 16 - Written statement submitted by the Chief of Police of the national police of Palma de Mallorca. December 28, 2005.

Annex 17 - Decision of *Juzgado de Instrucción número 11 de Palma de Mallorca*. February 22, 2006.

Annex 18 - Appeal in front of the *Juzgado de Instrucción número 11 de Palma de Mallorca*. June 1, 2006.

Annex 19 - Decision of *Juzgado de Instrucción número 11 de Palma de Mallorca*. July 31, 2006.

Annex 20 - Decision of the *Audiencia Provincial de Palma de Mallorca*. March 7, 2007.

Annex 21 - Appeal in front of the Constitutional Court, April 4, 2007.

Annex 22 - Decision of the Constitutional Court. April 21, 2008.

Annex 23 - Non juridical complaint in front of the *Consejo General del Poder Judicial*. November 21, 2006.

Annex 24 - Non juridical complaint in front of the *Defensor del Pueblo*. November 21, 2006.

Annex 25 - Decision of the *Consejo General del Poder Judicial*. February 21, 2007.

Annex 26 - Decision of the *Defensor del Pueblo*. December 22, 2006.

**VIII. DECLARATION AND SIGNATURE**

*I hereby declare that, to the best of my knowledge and belief, the information I gave given in the present application form is correct.*

Date April 1, 2009