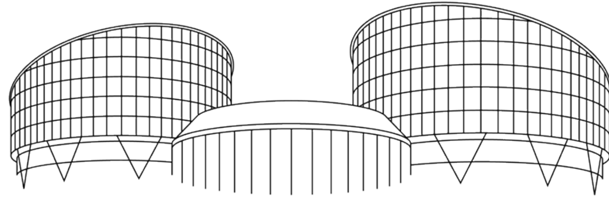

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF B.S. v. SPAIN

(Application no. 47159/08)

JUDGMENT
[Extracts]

STRASBOURG

24 July 2012

FINAL

24/10/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

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COUNCIL OF EUROPE CONSEIL DE L'EUROPE

In the case of B.S. v. Spain,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Josep Casadevall, *President,*
Corneliu Bîrsan,
Alvina Gyulumyan,
Egbert Myjer,
Ineta Ziemele,
Luis López Guerra,
Nona Tsotsoria, *judges,*
and Marialena Tsirli, *Section Deputy Registrar,*

Having deliberated in private on 3 July 2012,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 47159/08) against the Kingdom of Spain lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Ms B.S. (“the applicant”), on 29 September 2008.

2. The President of the Chamber decided, of his own motion, not to disclose the identity of the applicant (Rule 47 § 3 of the Rules of Court).

3. The applicant was represented by Ms V. Waisman, a lawyer practising in Madrid. The Spanish Government (“the Government”) were represented by their Agent, Mr F. Irurzun Montoro, State Counsel.

4. On 25 May 2010 the Court decided to give notice of the application to the Government. It was also decided that the Chamber would rule on the admissibility and merits at the same time (Article 29 § 1 of the Convention).

5. Both the applicant and the Government filed written observations. Observations were also received from the European Social Research Unit (ESRH) at the Research Group on Exclusion and Social Control (GRECS) at the University of Barcelona and from the AIRE Centre, which had been given leave by the President to take part in the proceedings as third-party interveners (Article 36 § 2 of the Convention and Rule 44 § 2).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant, who is of Nigerian origin, was born in 1977 and has been lawfully resident in Spain since 2003.

A. 1st episode: events of 15 and 21 July 2005

7. On 15 July 2005 the applicant was on the public highway in the El Arenal district near Palma de Mallorca, where she worked as a prostitute, when two officers of the national police force asked to see her identity and then ordered her to leave the premises, which she did immediately.

8. The applicant alleged that later the same day, after returning to the same place, she had noticed the same police officers coming towards her and had attempted to flee. The police officers had caught up with her, struck her on the left thigh and on her wrists with a truncheon and again demanded to see her identity papers. She alleged that during the altercation, which had been witnessed by a number of people including two taxi drivers and the security guards of a nearby discotheque, one of the police officers had insulted her, saying things like "get out of here you black whore". She was released after presenting her papers to the police officers.

9. Again according to the applicant, on 21 July 2005 the same police officers stopped her again and one of them hit her on the left hand with his truncheon.

10. That day the applicant lodged a formal verbal complaint with Palma de Mallorca investigating judge no. 8 and went to hospital to have her injuries treated. The doctors observed inflammation and mild bruising of the left hand.

11. The file was allocated to Palma de Mallorca investigating judge no. 9, who decided to open a judicial investigation and requested an incident report from the police headquarters. In his report of 11 October 2005 the chief of police of the Balearic Islands explained that police patrols were common in the district concerned on account of the numerous complaints of theft or physical attacks regularly received from the local residents and the resulting damage done to the district's image. He added that foreign female citizens present in the area often attempted to escape from the police because the latter's presence hindered them in their work. In the present case the applicant had attempted to avoid inspection by the police but had been stopped by the officers, who had asked her to show her papers without at any time making any humiliating remarks or using physical force. With regard to the identity of the officers, the head of police indicated that the ones who had stopped and questioned the applicant the first time were from

the patrol formed by the police officers *Rayo 98* and *Rayo 93* (code names given to the officers). Contrary to the applicant's assertions, those who had stopped her on 21 July 2005 belonged to a different patrol, called *Luna 10*.

12. In a decision of 17 October 2005 Palma de Mallorca investigating judge no. 9 issued a provisional discharge order and decided to discontinue the proceedings on the ground that there was insufficient evidence that an offence had been committed.

13. That decision was served on the applicant or her representative on 23 April 2007, at the latter's request.

14. The applicant applied to Palma de Mallorca investigating judge no. 9 to have the decision reversed, and subsequently appealed. She complained of the discriminatory attitude of the police officers and requested that various evidence-gathering measures be taken, such as identification of the officers in question and taking witness statements from the persons who had been present during the incidents. In a decision of 10 June 2007, investigating judge no. 9 refused to reverse his decision on the grounds that the applicant's allegations had not been corroborated by objective evidence in the file. The judge observed that

> "the medical report [provided by the applicant] contains no date and, in any event ... mentions only inflammation and bruising of the hand, with no mention of any injury to the thigh.
>
> [The facts submitted] merely show that the applicant repeatedly failed to obey police orders given in the course of their duties, designed to prevent the shameful spectacle of prostitution on the public highway."

15. An appeal by the applicant was examined by the Balearic Islands *Audiencia Provincial*, which gave a decision on 16 October 2007 allowing the appeal in part, setting aside the discharge order and ordering proceedings for a minor criminal offence to be instituted before the investigating judge against the two police officers, who had been identified on the basis of the information contained in the report drawn up by the police headquarters.

16. In the context of those proceedings the applicant asked to be able to identify the officers through a two-way mirror. Her request was rejected on the grounds that this was an unreliable method of identification given the length of time that had already elapsed since the incidents and the fact that the officers in question had been wearing helmets throughout, as the applicant had acknowledged. No evidence against the accused was taken during the trial.

17. On 11 March 2008 investigating judge no. 9 gave judgment at the end of a public hearing during which evidence was heard from the police officers charged, who were not formally identified by the applicant. In his judgment the judge observed that during the judicial investigation an incident report had been requested from the police headquarters according

to which the officers involved had stated that no incident had occurred when they had stopped and questioned the applicant. The judge drew attention to the fact that the medical report provided by the applicant did not specify the date on which it had been drawn up. Furthermore, the findings in the report were not conclusive as to the cause of the injuries. Lastly, the judge reproduced verbatim the grounds of the decision of 10 June 2007 relating to the applicant's conduct and the purpose of the intervention by the police and concluded that her allegations were not objectively corroborated. In the light of those arguments, the judge acquitted the police officers.

18. The applicant appealed. She challenged the refusal to allow her to identify the perpetrators through a two-way mirror and criticised the fact that the only investigative measure taken by the investigating judge in response to her complaint had been to request a report from the police headquarters.

19. In a judgment of 6 April 2009, the Palma de Mallorca *Audiencia Provincial* dismissed her appeal and upheld the investigating judge's judgment. It pointed out that the right to use a range of evidence-gathering measures did not include the right to have each and every proposed measure accepted by a court. In the instant case identification through a two-way mirror would not have added anything to the evidence on the file.

20. Relying on Articles 14 (prohibition of discrimination), 15 (protection of physical integrity) and 24 (right to a fair trial) of the Constitution, the applicant lodged an *amparo* appeal with the Constitutional Court. In a decision of 22 December 2009, the Constitutional Court dismissed the appeal on grounds of a lack of constitutional basis for the complaints raised.

B. 2nd episode: events of 23 July 2005

21. The applicant was stopped and questioned again on 23 July 2005. On the same day she went to the casualty department of a public medical centre, where the doctor observed abdominal pain and bruising on the hand and knee.

22. On 25 July 2005 she lodged a criminal complaint with Palma de Mallorca investigating judge no. 2, alleging that one of the police officers had struck her on the hand and knee with a truncheon and that the officers had singled her out on account of her racial origin and had not stopped and questioned other women carrying on the same activity. She also stated that she had subsequently been taken to the police station, where she had refused to sign a statement drawn up by the police saying that she admitted having resisted police orders. Referring to the incidents that had occurred during the first episode, the applicant requested the removal of the police officer who had assaulted her and that her complaint be joined to the one previously lodged with investigating judge no. 8. Neither of her requests was granted.

23. The case was allocated to Palma de Mallorca investigating judge no. 11, who decided to open a judicial investigation. The applicant requested certain evidence-gathering measures, including obtaining from the police the identification numbers of the officers who had been on duty on 15 and 23 July. In the alternative, should that information not permit identification of the police officers responsible, the applicant requested that all the police officers who had patrolled the area during those days be summoned so that they could be identified through a two-way mirror. Her request was rejected.

24. In the course of the judicial investigation, investigating judge no. 11 requested an incident report from the police headquarters.

25. A report by the Balearic Islands chief of police dated 28 December 2005 explained, firstly, that the applicant had admitted working as a prostitute in the area in question, which was an activity that had given rise to numerous complaints from local residents. In that connection he considered that the sole purpose of the applicant's complaints (including the one of 15 July) had been to allow her to pursue her occupation unhindered by the police. With regard to the identity of the officers in question, the chief of police observed that the computer records had not registered any intervention on 23 July; only those of 15 and 21 July had been recorded in respect of that area.

26. On 22 February 2006 investigating judge no.11 issued a provisional discharge order and decided to discontinue the proceedings on the grounds that there was insufficient evidence that an offence had been committed.

27. The applicant sought to have that decision reversed by the judge and subsequently appealed. The judge dismissed her request by a decision of 31 July 2006. Subsequently, the Palma de Mallorca *Audiencia Provincial* dismissed her appeal on 7 March 2007. The *Audiencia* referred both to the report of the police headquarters in which there was no record of an intervention by the police on the alleged date and the statements in the report regarding the applicant's true motives in lodging her complaints. It also considered that the medical report supplied by the applicant did not enable the cause of the injuries to be unequivocally established.

28. Relying on Articles 10 (right to dignity), 14 (prohibition of discrimination), 15 (right to physical and mental integrity) and 24 (right to a fair trial) of the Constitution, the applicant lodged an *amparo* appeal with the Constitutional Court. In a decision of 14 April 2008, the Constitutional Court dismissed the appeal on grounds of a lack of constitutional basis for the complaints raised.

...

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

29. The applicant complained, firstly, that the national police had both verbally and physically abused her when they had stopped and questioned her. She alleged that she had been discriminated against on account of her skin colour and her gender, whereas other women with a "European phenotype" carrying on the same activity in the same area had not been approached by police. The applicant also complained about the language used by Palma de Mallorca investigating judge no. 9, who, in his decision of 10 June 2007, had referred to the "shameful spectacle of prostitution on the public highway". Relying on the provisions of Article 3, the applicant alleged that the domestic courts' investigation of the events had been inadequate.

30. The provisions relied on are worded as follows:

Article 3

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 14

"The enjoyment of the rights and freedoms set forth in [the] 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."

...

B. The merits

1. Effectiveness of the investigations carried out by the national authorities

a) The parties' submissions

i. The Government

31. The Government disputed, at the outset, the seriousness of the injuries sustained by the applicant and pointed out that their cause had not been proved.

32. The Government also submitted that the police interventions in the area in question had not in any way targeted the applicant personally or discriminated against her, but had been preventive security measures designed to respond to public alarm caused by prostitution and to combat networks operating in the Balearic Islands which exploited immigrant women, in particular in the El Arenal district in which the applicant carried on her activity. The Ministry of the Interior had already implemented measures to combat such networks under Institutional Law no. 1/1992 on the protection of urban security. The Government observed in that connection that whilst prostitution was not in itself a criminal offence in Spain, forced prostitution was an offence under the Criminal Code.

33. With regard to the incidents of 15 and 21 July 2005, the Government noted that the applicant's allegations had been the subject of a judicial investigation by Palma de Mallorca investigating judge no. 9, during which the only investigative measure requested by the applicant had been an identity parade of the police officers behind a two-way mirror. Besides the fact that the applicant had not lodged a complaint against the officers, the rejection of her request was justified, in the Government's submission, on the grounds that the officers had already been identified by the police authorities. Those proceedings had been concluded by the judgment of 11 March 2008, delivered after a public hearing, acquitting the officers in question.

34. With regard to the second episode – of 23 July 2005 – the Government observed that this had been examined by Palma de Mallorca investigating judge no. 11. After assessing the police and medical reports provided, the judge had decided to discontinue the proceedings for want of sufficient evidence. That decision had been upheld by the *Audiencia Provincial*.

35. The Government pointed out that the procedural obligation imposed on the States with regard to Article 3 of the Convention was an obligation of means and not of result. In their submission, the investigative procedures brought before the two investigating judges were sufficient to consider that the Spanish State had fulfilled its obligations, irrespective of the fact that the police officers were ultimately not convicted.

ii. The applicant

36. The applicant considered that the manner in which the investigation had been carried out before the domestic courts amounted to a breach of the State's procedural obligations under Article 3. In her submission, the courts had not adequately dealt with her request for certain investigative measures regarding the incidents she had alleged, such as an identity parade of the officers behind a two-way mirror which would have enabled her to recognise the police officers involved. The applicant complained that the State shifted the obligation to investigate on to her and imposed the burden

of proving the alleged offence on her, whereas according to the Strasbourg Court's case-law, it was incumbent on the State to prove that particular treatment was not discriminatory.

37. The applicant added that she had not lodged a complaint against the police officers who had appeared before the courts because they were not the officers who had stopped and questioned her; this showed that the investigation had been ineffective as it had not enabled the officers responsible to be identified and, if appropriate, punished. In that connection she complained that she had not been informed of the means used to identify the officers in question. Further confirmation of the lack of an effective investigation could be seen in the fact that the only measure taken by the domestic courts to identify the perpetrators had been a request for a report from the Balearic Islands chief of police, who was the immediate superior of the persons involved. That had clearly been insufficient.

38. Lastly, the applicant pointed out that the United Nations Human Rights Committee had already found a violation by Spain on grounds of discrimination, which was proof that discrimination against immigrant black women was a structural problem in the country. In the present case she considered that the attitude and conduct of both the police and the courts had clearly been motivated by their prejudices and complained about the comments of Palma de Mallorca investigating judge no. 9, which she regarded as clearly discriminatory in their reference to the "shameful spectacle of prostitution" and to the fact that the applicant's complaint was based on "fallacious" grounds in that her conduct had merely reflected her repeated failure to obey orders given by the police in the course of their duties.

b) The Court's assessment

39. The Court considers that where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, 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. Such an investigation, as with one under Article 2, should be capable of leading to the identification and punishment of those responsible (see, regarding Article 2 of the Convention, *McCann and Others v. the United Kingdom*, 27 September 1995, § 161, Series A no. 324; *Kaya v. Turkey*, 19 February 1998, § 86, *Reports of Judgments and Decisions* 1998-I; *Yasa v. Turkey*, 2 September 1998, § 98, *Reports* 1998-VI; and *Dikme v. Turkey*, no. 20869/92, § 101, ECHR 2000-VIII). Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, 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 (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports* 1998-VIII).

40. The Court considers it necessary to rule first on the question of the applicability of Article 3 of the Convention to the facts of the case and in particular to address the Government's argument debating the severity of the injuries in the present case. The Court reiterates that the assessment of the minimum level of severity is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some instances, the sex, age and state of health of the victim (see *Labita v. Italy* [GC], no. 26772/95, § 120, ECHR 2000-IV). In that connection the Court notes that the presence of injuries was recorded on the applicant's person. The medical reports revealed the presence of a number of bruises and inflammation of the hands and knee. Those findings are consistent with the allegations made by the applicant to the police in her complaints of 21 and 23 July 2005. Added to this are the alleged racist and degrading remarks made to her. Accordingly, the Court is of the view that the conduct in question falls within the scope of Article 3 of the Convention.

41. With regard to the investigation procedure before the domestic courts, the Court notes that in the present case the applicant complained twice of having suffered ill-treatment: firstly on 21 July 2005, when she lodged a formal verbal complaint with Palma de Mallorca investigating judge no. 8, and secondly on 25 July 2005, when she complained to Palma de Mallorca investigating judge no. 2 of being hit on the hand and knee with a truncheon by one of the police officers during the incidents of 23 July 2005.

42. The Court observes that the applicant's complaints were indeed investigated. It remains to be assessed whether the investigation was carried out diligently and whether it was "effective". With regard to the investigations carried out by the authorities following the allegations of ill-treatment, the Court observes that, according to the information provided, the applicant requested a number of evidence-gathering measures, namely, organisation of an identity parade of the officers responsible using a two-way mirror or obtaining from the police the identification numbers of the officers who had been on duty on 15 and 23 July. When examining those requests, investigating judges nos. 9 and 11, who had jurisdiction to examine the criminal complaints lodged by the applicant, merely requested incident reports from the police headquarters and based themselves exclusively on the report by the headquarters when issuing a discharge order. The Court observes in that connection that the report had been prepared by the Balearic Islands chief of police, who was the immediate superior of the officers in question.

43. The Court also refers to the proceedings for a minor criminal offence instituted before Palma de Mallorca investigating judge no. 9 against the two police officers who, according to the information contained in the report of the police headquarters, had stopped and questioned the applicant on 15 and 21 July 2005 (see paragraphs 14 and 15 above). In that connection it notes that during the public hearing on 11 March 2008 the defendants were not formally identified by the applicant. In the Court's view, that hearing cannot be regarded as sufficient to satisfy the requirements of Article 3 of the Convention, as it did not succeed in identifying the officers involved. The domestic courts dismissed the applicant's requests for an identity parade to be held behind a two-way mirror on account of the time that had elapsed since the altercations and the fact that it would be very difficult to recognise the officers because they had been wearing helmets at the time. In the Court's opinion, the applicant's request was not a superfluous one in identifying the police involved in the incidents and establishing who was responsible, as required by the Court's case-law (see, among other authorities, *Krastanov v. Bulgaria*, no. 50222/99, § 48, 30 September 2004; *Çamdereli v. Turkey*, no. 28433/02, §§ 28-29, 17 July 2008; and *Vladimir Romanov v. Russia*, no. 41461/02, §§ 79 and 81, 24 July 2008)

44. The Court notes, further, that the medical reports provided by the applicant refer to inflammation and bruising on the left hand following the first incident and to abdominal pain and bruising to the hand and knee regarding the incident of 23 July 2005. Neither investigating judge no. 9 nor no. 11 nor the *Audiencia Provincial* investigated that point further, but simply disregarded the reports on the grounds that they were undated or not conclusive as to the cause of the injuries. The Court considers that the information contained in those reports called for investigative measures to be carried out by the judicial authorities.

45. Furthermore, the investigating judges did not take any measures to identify or hear evidence from witnesses who had been present during the altercations; nor did they investigate the applicant's allegations regarding her transfer to the police station, where the police had allegedly attempted to make her sign a statement admitting that she had resisted orders.

46. The Court also considers that the Government's submission that the incidents had taken place in the context of the implementation of preventive measures designed to combat networks trafficking in immigrant women in the area cannot justify treatment contrary to Article 3 of the Convention.

47. In the light of the foregoing factors, the Court is not satisfied that the investigations carried out in the present case were sufficiently thorough and effective to satisfy the aforementioned requirements of Article 3. In conclusion, the Court considers that there has been a violation of Article 3 of the Convention under its procedural limb.

...

II. ALLEGED VIOLATION OF ARTICLE 14 TAKEN IN CONJUNCTION WITH ARTICLE 3 OF THE CONVENTION

48. The applicant also alleged that she had been discriminated against as evidenced by the racist remarks made by the police officers, namely, "get out of here you black whore". She submitted that other women in the same area carrying on the same activity but with a "European phenotype" had not been stopped by the police. Article 14 of the Convention provides:

> "The enjoyment of the rights and freedoms set forth in [the] 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."

49. The Government disputed that submission.

A. Admissibility

50. The Court observes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It finds, moreover, that no other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

a) The Government

51. The Government disputed that submission, arguing that the applicant had not provided a shred of evidence to support her allegation that she had been discriminated against on account of being a prostitute or the fact that she was of African origin. They observed that the police operations in the district in question targeted, without distinction, all prostitutes working in the area, extending equally to women of European origin.

b) The applicant

52. The applicant, for her part, submitted that her position as a black woman working as a prostitute made her particularly vulnerable to discriminatory attacks and that those factors could not be considered separately but should be taken into account in their entirety, their interaction being essential for an examination of the facts of the case.

53. In the applicant's submission, it was clear that the repeated inspections to which she had been subjected and the racist and sexist insults made against her and the response of the domestic courts to her complaints

proved that there had been discrimination and a failure by the State to comply with its positive obligation to carry out an effective investigation.

54. The applicant considered that the State had exercised its public-security powers improperly and degradingly and that their actions had been disproportionate in nature. Both their actions and the decisions of the domestic courts had been discriminatory.

55. In conclusion, the applicant considered that she had been the victim of structural problems of discrimination present in the Spanish judicial system, as a result of which there had been no effective investigation of her complaints.

c) The third-party interveners

56. The European Social Research Unit (ESRH) at the Research Group on Exclusion and Social Control (GRECS) at the University of Barcelona referred to studies that had been carried out into intersectional discrimination, that is, discrimination based on several different grounds such as race, gender or social origin. Those studies showed that an analysis of the facts taking account of only one of the grounds was approximate and failed to reflect the reality of the situation. The ESRH gave examples of a number of initiatives taken at European level to obtain recognition of multiple discrimination; however, a binding legal text – though strongly recommended – did not yet exist.

57. The AIRE Centre, for their part, invited the Court to recognise the phenomenon of intersectional discrimination, which required a multiple-grounds approach that did not examine each factor separately. It gave an overview of the innovations in this area in the European Union and in various States such as the United Kingdom, the United States and Canada.

2. *The Court's assessment*

58. The Court considers that where the State authorities investigate violent incidents, they have an additional obligation to take all reasonable measures to identify whether there were racist motives and to establish whether or not ethnic hatred or prejudice may have played a role in the events. Admittedly, proving racial motivation will often be extremely difficult in practice. The respondent State's obligation to investigate possible racist overtones to a violent act is an obligation to use best endeavours and not absolute. The authorities must do what is reasonable in the circumstances to collect and secure the evidence, explore all practical means of discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of racially induced violence (see, *mutatis mutandis*, *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 160, ECHR 2005-VII). Lastly, the Court reiterates that the onus is on the Government to produce evidence establishing facts that cast doubt on the victim's account (see

Turan Cakir v. Belgium, no. 44256/06, § 54, 10 March 2009, and *Sonkaya v. Turkey*, no. 11261/03, § 25, 12 February 2008).

59. Furthermore, 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 3 of the Convention, but may also be seen as implicit in their responsibilities under Article 14 of the Convention to secure respect without discrimination for the fundamental value enshrined in Article 3. Owing to the interplay of the two provisions, issues such as those in the present case may fall to be examined under one of the two provisions only, with no separate issue arising under the other, or may require examination under both Articles. This is a question to be decided in each case on its facts and depending on the nature of the allegations made (see *Nachova and Others*, cited above, § 161).

60. In the instant case the Court has already observed that the Spanish authorities violated Article 3 of the Convention by failing to carry out an effective investigation into the incident. It considers that it must examine separately the complaint that there was also a failure to investigate a possible causal link between the alleged racist attitudes and the violent acts allegedly perpetrated by the police against the applicant (see, *mutatis mutandis*, *Turan Cakir v. Belgium*, cited above, § 79).

61. The Court notes that in her complaints of 21 and 25 July 2005 the applicant mentioned the racist remarks allegedly made to her by the police, such as "get out of here you black whore", and submitted that the officers had not stopped and questioned other women carrying on the same activity but having a "European phenotype". Those submissions were not examined by the courts dealing with the case, which merely adopted the contents of the reports by the Balearic Islands chief of police without carrying out a more thorough investigation into the alleged racist attitudes.

62. In the light of the evidence submitted in the present case, the Court considers that the decisions made by the domestic courts failed to take account of the applicant's particular vulnerability inherent in her position as an African woman working as a prostitute. The authorities thus failed to comply with their duty under Article 14 of the Convention taken in conjunction with Article 3 to take all possible steps to ascertain whether or not a discriminatory attitude might have played a role in the events.

63. There has accordingly been a violation of Article 14 of the Convention taken in conjunction with Article 3 in its procedural aspect.

...

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only

partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

65. The applicant claimed 30,000 euros (EUR) for the non-pecuniary damage which she had sustained as a result of being humiliated by the ill-treatment she had complained of. The applicant also asked the Court to compel the Government to draw up a check-list that the domestic courts would be obliged to follow in the event of allegations of discrimination such as hers. Lastly, in accordance with the principle of *restitutio in integrum*, she requested that the proceedings be reopened before the Spanish courts.

66. The Government challenged that claim on the grounds that a finding of a violation was sufficient. With regard to drawing up a check-list, the Government reiterated that, in accordance with the Court’s case-law, the member States were free to choose the measures they considered the most appropriate to redress a finding of a violation.

67. With regard to the specific measures requested by the applicant, the Court reiterates that its judgments are essentially declaratory in nature and that, in general, it is primarily for the State concerned to choose, subject to supervision by the Committee of Ministers, the means to be used in its domestic legal order in order to discharge its obligation under Article 46 of the Convention (see, among other authorities, *Assanidze v. Georgia* [GC], no. 71503/01, § 202, ECHR 2004-II; *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII; and *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, § 20, ECHR 2001). The Court considers that the present case is not one of those in which, exceptionally, with a view to helping the respondent State to fulfil its obligations under Article 46, the Court will seek to indicate the type of measure that might be taken in order to put an end to a systemic situation it has found to exist and in which it may propose various options and leave the choice of measure and its implementation to the discretion of the State concerned (see *Broniowski v. Poland* [GC], no. 31443/96, § 194, ECHR 2004-V).

68. With regard to the claim in respect of non-pecuniary damage, the Court considers that, having regard to the violations found in the present case, the applicant should be awarded compensation for non-pecuniary damage. Ruling on an equitable basis, as required by Article 41 of the Convention, it decides to award the sum claimed, namely, EUR 30,000.

B. Costs and expenses

69. The applicant also claimed EUR 31,840.50 for the total costs and expenses incurred before the domestic courts and before the Court. The supporting documents submitted accounted for only EUR 1,840.50.

70. The Government asked the Court to reject the claim.

71. According to the Court's case-law, an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicant and are reasonable as to quantum. In the instant case, and having regard to the documents available to it and to its case-law, the Court considers the sum of EUR 1,840.50 in respect of all costs and expenses to be reasonable and awards that amount to the applicant.

C. Default interest

72. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

...

2. *Holds* that there has been a violation of Article 3 under its procedural limb;

...

4. *Holds* that there has been a violation of Article 14 taken in conjunction with Article 3 of the Convention;

...

6. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 30,000. (thirty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,840.50 (one thousand eight hundred and forty euros and fifty centimes), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in French, and notified in writing on 24 July 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marielena Tsirli	Josep Casadevall
Deputy Registrar	President