

Complaint Summary of the Lawsuit to End Racially Discriminatory Police Questioning

I. SUMMARY OF THE REQUESTS TO THE COURT

1. State Compensation for Racially Discriminatory Police Questioning

(1) The State and the Tokyo Metropolitan Government shall jointly and severally pay to Plaintiff Maurice and Plaintiff Matthew 3,300,000 JPY, plus interest thereon at the rate of 3 percent per annum.

(2) The State and the Aichi Prefecture shall jointly and severally pay to the Plaintiff Zain 3,300,000 JPY, plus interest thereon at the rate of 3 percent per annum.

2. Request for Confirmation of Illegality Regarding Systemic Practice of Racially Discriminatory Police Questioning

We seek confirmation that it is illegal for police officers under the authority of the Tokyo Metropolitan Government and the Aichi Prefecture to stop and question the plaintiffs solely on the basis of their race, color, nationality, or ethnic origin, on the grounds that they fall under Article 2(1) of The Police Duties Execution Act.

3. Request for Confirmation of the State's Obligation to Control and Supervise Police Operations for the Prevention of Racially Discriminatory Police Questioning

We seek confirmation that the National Police Agency, as an administrative agency of the State, is obligated to direct and supervise prefectural police so that they do not stop and question the plaintiffs solely on the basis of race, color, nationality, or ethnic origin, on the grounds that they fall under Article 2(1) of The Police Duties Execution Act.

II. SUMMARY OF FACTS: THE PLAINTIFFS' ACCOUNTS OF RACIAL PROFILING

1. Plaintiff Maurice

Plaintiff Maurice is an African American man from the South of the United States. He is black and his hair is styled in locs, which are common among African and Black

people around the world. During the approximately 10 years that he has lived in Japan, he has been questioned by the police 16 to 17 times.

In one of these encounters, on April 13, 2021, he was driving a motorcycle, on his way from home to a nearby home center. He stopped at a traffic light and as the light turned green and he was about to ride off, police officers came onto the road and asked him to stop. He could not think of any offense he committed, including traffic violations.

At the police's request, he showed his driver's license and his residence card. The police officers asked questions that had nothing to do with driving, such as where he was from and what he did for a living. Plaintiff Maurice asked why he was stopped when all he did was just going straight, but the police officers gave no convincing answer.

Shortly after Plaintiff Maurice started recording with his smartphone, the police stopped questioning him. He did not receive any traffic tickets.

2. Plaintiff Matthew

Plaintiff Matthew is a native of the Pacific Islands. He is of Indian descent and has brown skin. Since he began living in Japan in 2002, he has been questioned by the police at least 70 times, and probably close to 100 times, including four times when he was questioned twice in one day.

In one of these encounters, on October 21, 2021, he was driving a car when a police patrol car that was facing him and waiting to make a right turn suddenly made a U-turn when it saw plaintiff Matthew in the driver's seat.

The police asked him to show his driver's license. When his wife, who was in the car with him, asked “did he commit a traffic violation?”, “is he a suspicious individual?”, one of the policemen said no and added, "It's rare to see a foreigner driving around here." He did not provide any other reason for stopping and questioning him.

3. Plaintiff Zain

Plaintiff Zain is a Japanese citizen of Pakistani parents. Plaintiff Zain has been questioned by the police at least 15 times since he moved to Nagoya in 2016, in his late teens, to attend a technical college. He has also experienced being questioned twice in one day.

In one of these encounters, in April 2023, he was in front of his home in Nagoya, smoking a cigarette, when police officers who had just passed him came back to talk to

him. They asked questions such as, "Your Japanese is very good," "Do you have a residence card?" He told the officers that he was a Japanese citizen, but the officers continued to ask more questions and demanded to inspect his belongings. The police did not provide any reason as to why he had to endure such questioning.

III. THE INSTITUTIONAL PRACTICE OF RACIALLY DISCRIMINATORY POLICE QUESTIONING

1. What Is Racial Profiling?

The UN Committee on the Elimination of Racial Discrimination defines racial profiling as “the practice of police and other law enforcement relying, to any degree, on race, colour, descent or national or ethnic origin as the basis for subjecting persons to investigatory activities or for determining whether an individual is engaged in criminal activity.”

In Japan, it became a systemic practice that the police stop and question individuals on the sole basis of race, color, nationality, or ethnic origin, considering that this satisfies the criteria laid down in Article 2(1) of The Police Duties Execution Act. Such practice constitutes racial profiling.

2. The Existence of this Institutional Practice Is Supported by the Results of a Fact-Finding Investigation and Other Documentation

(1) Results of a Large-Scale Fact-Finding Investigation

The Tokyo Bar Association's Committee on Protection of Foreigners' Human Rights conducted a survey on racial profiling in 2022.

According to the survey, 62.9% of the respondents experienced being questioned by the police in the past five years, and 76.9% of them said they were questioned even despite the existence of any suspicious reasons under The Police Duties Execution Act. Many respondents said that the attitude and language of the police officers became arrogant as soon as they found out that they were foreigners, and a respondent replied that they had a mentally breakdown after being yelled at “You foreigners should go back to your own countries, there is no such thing as human rights for foreigners!”

(2) Police manuals and documents

Various documents for police officers, including materials used to train police officers, instruct and recommend the conduct of police questioning based on appearance, such as racial features. There is also an interview with a former police officer who stated that he had conducted racial profiling.

For example, a field training manual of the Aichi Prefectural Police for junior police officers states the following:

“For foreigners - use the Immigration Control Act, drug offenses, the Firearms Control Act, etc. Anything works!!”

“Seek support, chase them, and thoroughly inspect their belongings!”

“For those who appear to be foreigners at first glance and those who do not speak Japanese, firmly believe that they have, without exception, committed some sort of illegal act (...) and conduct thorough investigation and search of personal belongings.”

(3) Warning from the U.S. Embassy and Media Reporting

In January 2021, a video of a mixed-race man who was subjected to racial profiling in Tokyo station on the grounds that "many people with dreadlocks are drug users" drew public attention. On December 6 of the same year, the U.S. Embassy in Japan issued a warning on Twitter to advise U.S. citizens to notify them about any suspected incident of racial profiling by the Japanese police. Besides, there have been many other reports of racial profiling cases.

IV. ALLEGED VIOLATIONS

1. Violation of Article 14 of the Constitution

Article 14(1) of the Constitution prohibits discriminatory treatment under the law unless it is based on reasonable grounds.

Using race, nationality, skin color, or ethnic origin as the basis for differential treatment causes profound harm as it confers a lower social status to some individuals and communities and generates stigma against them. It leads to psychological burden, invades privacy, and undermines human dignity and identity.

There is no necessity or reasonableness in questioning individuals based solely on their “foreign looking” appearance. Such practice violates Article 14(1) of the Constitution as it constitutes unreasonable differential treatment.

2. Violation of Article 13 of the Constitution

Article 13 of the Constitution guarantees the right not to be unnecessarily questioned by the police, as a component of the right to respect for private life. Repeatedly targeting and questioning specific individuals in an unconditional manner constitutes an excessive intrusion into private life.

The systemic practice of racially discriminatory police questioning is, by its very nature, devoid of reasonableness, necessity, and appropriateness. There is no room for justification, no matter the choice of standard of review.

This practice is illegal and unconstitutional because it infringes on the right not to be unnecessarily questioned by the police, which is guaranteed under Article 13 of the Constitution.

3. Violation of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

Japan has ratified the Convention on the Elimination of All Forms of Racial Discrimination. Article 2(1) of the Convention stipulates that "States 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."

The systemic practice of discriminatory police questioning constitutes racial discrimination against individuals and groups of foreign origin and violates Article 2(1) of the Convention.

4. Violation of the International Covenant on Civil and Political Rights (ICCPR)

Japan has ratified the ICCPR. Its Article 26 protects the right to equal protection by law without discrimination on any grounds such as race and color. The institutional practice of racial profiling is nothing but discrimination based on race or color, and runs counter to Article 26 of the ICCPR.

5. Abuse of Discretionary Power

Article 2(1) of the Police Duties Execution Act requires the existence of sufficient probable cause to suspect that the person to be questioned has committed or is about to commit a crime, judging reasonably on the basis of unusual behavior and/or other surrounding circumstances. The existence of grounds for suspicion cannot be determined solely on the basis of race, color, nationality, or ethnic origin. The systemic practice of racially discriminatory police questioning is illegal in that it is an abuse of discretion in the exercise of police power.

V. THE PLAINTIFFS' CLAIM FOR STATE COMPENSATION SHOULD BE GRANTED

1. Act Performed by a Public Employee in the Course of Their Duties

Public officials conducted the police questioning at issue during their duties, which means that the court can rule the police questioning as unconstitutional or illegal based on the State Redress Act.

2. Illegality

(1) Illegality of Police Questioning Encountered by Each Plaintiff

a. Mr. Maurice

Mr. Maurice was stopped and questioned by police officers while riding a motorcycle and waiting at a traffic light. There was no suspicion of a traffic violation. The police officers asked him to present his driver's license and residence card and questions unrelated to driving, such as "What do you do for a living?" It appears clear that the police officers asked him to show his residence card, which had nothing to do with driving, and questioned him due to his "foreign appearance."

b. Mr. Matthew

Mr. Matthew was driving his car straight ahead when he was ordered to stop and questioned by police officers. He was simply driving and had no suspicious circumstances existed.

When his wife, a passenger in the car, asked if he had committed any traffic violation, the officer replied, "No", "It's rare to see a foreigner driving in this area."

c. Mr. Zain

Mr. Zain was smoking in front of his house when he was approached by police officers and got questioned. Although Mr. Zain told he was a naturalized Japanese, a police officer proceeded with the questioning asking to show his residence card and searched his belongings.

d. Conclusion

These police questioning are unconstitutional and illegal since it appears clear that they were conducted based solely on race, skin color, or ethnic origin, rather than objective evidence or individual behavior.

(2) Unconstitutionality and Illegality of the Systemic Practice of Racially Discriminatory Police Question

The Tokyo Metropolitan Government and the Aichi Prefectural Police have practiced, at institutional level, racially discriminatory police questioning, which is unconstitutional and illegal. Individual cases of police questioning also amount to violations of the law and the Constitution.

(3) Responsibility of the State

Under Article 16(2) of the Police Act, the State has the obligation to direct and supervise prefectural police. As required under the Convention on the Elimination of All Forms of Racial Discrimination, Japan has "the obligation to review their policies, laws and regulations" and "the obligation to take positive measures to eliminate discrimination through laws, policies and institutions" to eliminate racially discriminatory police questioning. The Japanese government's failure to comply with these obligations is unlawful.

3. Intention and Negligence

The conduct of the Tokyo Metropolitan Government, the Aichi Prefecture, and the State is to be found willful or negligent.

VI. DAMAGES

Discrimination based on race, nationality, color, or ethnic origin causes profound harm, as it confers a lower social status to some individuals and communities and generates stigma against them. Those who experienced racial profiling feel that society does not accept them, making them feel alienated from society. Especially for those who have lived for a long time in Japan, such as permanent residency holders or Japanese citizens of foreign descent like the plaintiffs, the repeated and continuous encounters with racially discriminatory police questioning trigger severe psychological damage, such as a loss of identity. The psychological damage suffered by the plaintiffs is tremendous, and the necessary compensation is not less than 3,000,000 JPY for each plaintiff.

VII. THE REQUEST FOR DECLARATION OF ILLEGALITY SHOULD BE GRANTED

Unless the practice of racially discriminatory police questioning is eliminated, plaintiffs will continue to suffer the same kind of damage over and over again. In order to eliminate the systemic practice of racial profiling, the court should declare this practice illegal. Since this complaint satisfies the admissibility criteria and, in substance, the practice of racially discriminatory police questioning is unconstitutional and illegal, the request for a declaration of illegality should be granted.

VIII. THE REQUEST FOR DECLARATION OF THE GOVERNMENT'S DUTY TO CONTROL AND SUPERVISE POLICE OPERATIONS SHOULD BE GRANTED

Unless the National Police Agency supervises prefectural police departments to abolish this practice, plaintiffs will continuously suffer from the same kind of illegal police questioning. This complaint satisfies the admissibility criteria. In substance, considering that the Japanese government has an obligation to correct the systemic practice of racially discriminatory police questioning under Article 2 of ICERD, the request for declaration should be granted.