

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

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 10/10
by Elisabeth BRUNNER
against Turkey

The European Court of Human Rights (Second Section), sitting on 6 December 2011 as a Chamber composed of:

Françoise Tulkens, *President,*
Danutė Jočienė,
Dragoljub Popović,
András Sajó,
Işıl Karakaş,
Guido Raimondi,
Paulo Pinto de Albuquerque, *judges,*

and Françoise Elens-Passos, *Deputy Section Registrar*

Having regard to the above application lodged on 26 December 2009,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Elisabeth Brunner, is an Austrian national who was born in Austria and lives in Istanbul. She was represented before the Court by Mrs G. Altay and Mr H. Karakuş, lawyers practising in Istanbul.

The facts of the case, as submitted by the applicant, may be summarised as follows.

The applicant describes herself as a human rights activist and a worker in Turkey.

According to her submissions, on 18 April 2004 she was kidnapped by four people while she was on her way to attend a seminar. She claims that these people harassed her, threatened her with death to induce her to act as a spy for them and to give away the names of her international collaborators, and stubbed out cigarettes on her arms when she refused to do so. She then lost consciousness on receiving a blow to the head.

The following day, 19 April 2004, the applicant requested that criminal proceedings be opened against her alleged kidnappers; she claimed that they were police officers. She also requested to be examined at the Forensic Medicine Institute.

On the same day the applicant applied to the Human Rights Association, where she was examined by several doctors. The report drawn up afterwards indicates that the blisters caused by cigarette burns and soft-tissue lesions on her body coincided with her description of the events.

On 27 April 2005 the Tuzla public prosecutor took the applicant's statement.

After a period during which her requests for information were all refused by the public prosecutor, on 17 April 2008 the applicant issued another request for information about the progress of the investigation. On 23 June 2008 the Tuzla public prosecutor responded to her request, indicating that the investigation was still pending and the perpetrators of the offence were being sought. The applicant was also informed that she would be notified of further developments as they occurred.

COMPLAINTS

The applicant complained under Articles 3, 5, 6 and 13 of the Convention that she had been kidnapped and ill-treated by certain people, who she said were police officers. She contended that the medical report drawn up after the events confirmed her claims. She also argued that the public prosecutor had failed to conduct an effective investigation, despite that medical report.

THE LAW

Relying upon Articles 3, 5, 6 and 13 of the Convention, the applicant alleged that she had been ill-treated by people she said were police officers, and complained that the investigation into the matter was ineffective.

The Court notes first of all that both complaints should be assessed from the standpoint of Article 3 alone. It further considers that it should first examine whether the applicant has complied with the six-month rule

contained in Article 35 § 1 given that although the acts complained of occurred in 2004, the application with the Court was lodged in 2009.

The Court recalls that the purpose of the six-month rule is to promote security of law and to ensure that cases raising issues under the Convention are dealt with within a reasonable time. Furthermore, it ought also to protect the authorities and other persons concerned from being under any uncertainty for a prolonged period of time (see, *Bulut and Yavuz v. Turkey*, no. 73065/01, 28 May 2002).

According to the established case-law, if no remedies are available or if they are judged to be ineffective, the six-month time-limit, in principle, runs from the date of the act complained of. Special considerations could apply in exceptional cases where an applicant first avails himself of a domestic remedy and only at a later stage becomes aware, or should have become aware, of the circumstances which make that remedy ineffective. In such a situation, the six-month period might be calculated from the time when the applicant becomes aware, or should have become aware, of these circumstances (see *Bayram and Yıldırım v. Turkey* (dec.), no. 38587/97, ECHR 2002-III; and *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 157, 18 September 2009).

The Court observes that in the present case, the alleged abduction of the applicant took place on 18 April 2004 and that she lodged a complaint with the public prosecutor's office immediately after the events. According to the applicant's submissions, she issued several requests to the public prosecutor for information about the progress of the investigation, the last one being on 17 April 2008. She received no response to her requests until 23 June 2008, when the public prosecutor informed her that a search for the perpetrators was in progress and that she would be notified of any further developments.

The Court considers that, notwithstanding the terms of the public prosecutor's reply dated 23 June 2008, the applicant must have become aware of the alleged ineffectiveness of the investigation into the case by that time, as no concrete progress had been made in the investigation for more than four years. The Court also takes note of the fact that after the public prosecutor's reply, the applicant waited for a further year and a half before lodging her application with the Court, during which period she was not informed of any concrete measures having been taken in order to further the investigation. Having regard to the fact that at the time of lodging the application, almost five and a half years had elapsed without any positive measures in the investigation, the Court is convinced that, in the circumstances of the present case, the applicant must have become aware of the ineffectiveness of the investigation more than six months before she lodged the application with the Court.

In the light of the foregoing, the Court holds that the application should be rejected for non-compliance with the six-month time-limit within the meaning of Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Françoise Elens-Passos Deputy Registrar	Françoise Tulkens President