

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

SECOND SECTION

DECISION

Application no. 19628/05
Gülbahar GÜNDÜZ
against Turkey

The European Court of Human Rights (Second Section), sitting on 10 July 2012 as a Chamber composed of:

Françoise Tulkens, *President,*
Danutė Jočienė,
Isabelle Berro-Lefèvre,
András Sajó,
Işıl Karakaş,
Paulo Pinto de Albuquerque,
Helen Keller, *judges,*

and Françoise Elens-Passos, *Deputy Section Registrar,*

Having regard to the above application lodged on 18 May 2005,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Gülbahar Gündüz, is a Turkish national, who was born in 1972 and lives in Istanbul. She was represented before the Court by Ms E. Keskin and Mrs F. Karakaş Doğan, lawyers practising in Istanbul.

2. The Turkish Government ("the Government") were represented by their Agent.

The circumstances of the case

3. The facts of the case, as submitted by the parties and as they appear from the documents submitted by them, may be summarised as follows.

4. The applicant is a member of the now defunct People's Democratic Party (DEHAP).

5. At 3.30 a.m. on 15 June 2003 the applicant went to Gazi Police Station in Istanbul and told the police officers there that at around 9.00 a.m. on 14 June 2003 she had been abducted by four men claiming to be police officers, kept in a room, and subjected to ill-treatment by them. She had been released at 10.00 p.m. the same day. She told the police officers that, after her release, she had gone to a hospital where a report had been drawn up. According to the medical report she gave to the police officers, there were a large number of ecchymosed areas, cuts, bruises, scratches and cigarette burns on her head and body.

6. The same day the police chief of the Gazi Police Station referred her to a specialist branch of the Forensic Medicine Institute for further medical examinations. There the applicant told the doctors that she had been forced to perform oral sex on one of her abductors. She added that she did not know whether her abductors had also raped her because she had been unconscious most of the time. The doctors took swabs from the applicant and suggested that she go to another specialist branch of the Forensic Medicine Institute to have medical examinations with a view to establishing whether or not she had been raped.

7. On 17 June 2003 the Gazi Police Station chief informed the Gazi Prosecutor (hereinafter "the prosecutor") about the incident, and added that their investigation into the incident was continuing. The police chief also stated in his letter that they had tried to contact the applicant but that the telephone number she had given them belonged to someone else and that they had thus been unable to contact her.

8. The same day the prosecutor summoned the applicant to his office in order to take a detailed statement from her concerning her allegations. However, on 23 June 2003 police officers informed the prosecutor that the applicant refused to go to the prosecutor's office. A lawyer representing the applicant also told the prosecutor the same day that all the information in her client's possession had already been given to the prosecutor's office and that questioning the applicant further about the incident would unduly stress her.

9. The applicant's legal representatives submitted a detailed complaint to the prosecutor on 18 June 2003. In the petition the applicant described the incident and informed the prosecutor that she had been unable to see the faces of her abductors. At the time of her abduction she had been talking on her mobile phone and two men had forced her into a waiting car in which there were two other men. She added that she had been unable to see the

number plate of the car. She was also unable to describe the vehicle other than by saying that it was light-coloured. Whilst in the car she had passed out and when she regained consciousness she was in a dark room. She gave the prosecutor a description of the room and its contents, and alleged that her abductors had detained her in that room against her will, subjected her to ill-treatment, and sexually assaulted her. Her abductors had also asked her about DEHAP's activities. At the end of her ordeal she had been blindfolded, put in a vehicle and taken to a motorway junction where she was released at 10.00 p.m. the same day.

10. On 19 June 2003 the clothes the applicant had been wearing on the day of the incident were sent to the Forensic Medicine Institute. The Institute was asked to examine the stains on some of the clothes.

11. The following day the prosecutor asked for the applicant to be examined by a psychiatrist at the Forensic Medicine Institute with a view to assessing and documenting the psychological trauma to which the applicant was subjected.

12. On various dates the police informed the prosecutor that they were continuing with their search for the perpetrators.

13. On 4 July 2003 the prosecutor urged the applicant's lawyers to ensure her attendance at his office and to take her to the Forensic Medicine Institute for further examinations.

14. On 7 July 2003 the Forensic Medicine Institute stated in a report that no sperm had been found in the swabs taken from the applicant on 16 June 2003. Nevertheless, this did not exclude that the applicant had been raped. It was also stated in the same report that the stains on her clothes were blood. An injury in her mouth mentioned in earlier medical reports was consistent with her allegation that she had been forced to perform oral sex on one of her abductors (see paragraph 6 above).

15. On 8 July 2003 the prosecutor prepared a report, stating that all his attempts to speak to the applicant had been futile.

16. On 14 July 2003 the prosecutor instructed the police to continue to look for eyewitnesses to the applicant's abduction.

17. On 15 July 2003 the prosecutor questioned the applicant, who gave a detailed account of her ordeal. The prosecutor also instructed the police to set up a specialist police team to look for the abductors.

18. It appears from a report drawn up at the Forensic Medicine Institute on 14 November 2003 that on 16 June 2003 the applicant was diagnosed with acute stress disorder, caused by her ordeal.

19. Police officers investigating the incident informed the prosecutor on various dates that their search for eyewitnesses to the abduction had been unsuccessful but that they would continue with their searches.

20. In the course of the investigation the prosecutor asked all chief prosecutors in Istanbul to inform him whether a detention place as described by the applicant existed in their respective jurisdictions. According to the responses he received, no such place of detention existed.

21. The investigation to find the abductors continued until the expiry of the prescription period on 14 June 2011.

COMPLAINTS

22. The applicant complained under Article 3 of the Convention that she had been subjected to ill-treatment amounting to torture, either by agents of the State or persons acting in collusion with the State.

23. She maintained under Article 5 § 1 of the Convention that she had been unlawfully deprived of her liberty and that none of the guarantees listed under Article 5 §§ 2 and 4 had been observed.

24. The applicant complained under Articles 6 and 13 of the Convention about the manner the investigation into her allegations of ill-treatment had been handled by the authorities.

THE LAW

25. The applicant maintained her allegations and argued that no effective investigation had been conducted to find the abductors.

26. The Government submitted that there was no evidence to prove that the applicant had been abducted or detained by agents of the State. They maintained that an effective investigation had been conducted by their authorities into the allegations made by the applicant.

27. In their observations submitted to the Court on 16 June 2009 the Government submitted that the applicant had failed to exhaust domestic remedies. In that connection they submitted that the criminal investigation into the applicant's allegations was still continuing. They further submitted that the applicant had failed to exhaust civil and administrative remedies.

28. In response to the Government's reference to the criminal investigation which was pending at the time of the submission of their observations, the Court observes from the documents submitted to the Court by the Government that the investigation was to continue until the expiry of the prescription period on 14 June 2011 (see paragraph 21 above).

29. Furthermore, the Court does not deem it necessary to determine whether the applicant has complied with the obligation to exhaust domestic remedies, since it considers that her complaints are in any event manifestly ill-founded for the following reasons and must be declared inadmissible.

30. The Court notes at the outset that the veracity of the applicant's allegations that she was abducted and subjected to ill-treatment and sexual assaults has not been contested at the national level. Indeed, having regard to the applicant's consistency in recounting the events both at the national level and in her application form submitted to the Court, as well as to the medical reports detailing her injuries, the Court sees no reason to doubt that the applicant was indeed abducted and subjected to her ordeal by men who identified themselves as police officers.

31. The Court also considers that the applicant's injuries which are detailed in the medical reports were sufficiently serious to amount to ill-treatment within the meaning of Article 3 of the Convention.

32. In light of the above the Court finds that the applicant's allegations were "arguable" (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998-VIII), and thus required the authorities to conduct an effective investigation capable of leading to the identification and punishment of those responsible. The Court reiterates in this connection that this obligation exists even if ill-treatment is administered by private individuals (see, in particular, *Ay v. Turkey*, no. 30951/96, §§ 59-60, 22 March 2005).

33. The national authorities conducted an investigation to find the perpetrators and took the steps detailed above. The Court has examined those steps from the standpoint of the requirements of an effective investigation required under Article 3 of the Convention (see *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, §§133-137, ECHR 2004-IV (extracts)), and it does not discern any shortcomings.

34. It observes, in particular, that the authorities started the investigation promptly, even before the applicant submitted to them a detailed complaint petition on 18 June 2003 (see paragraph 9 above). The police chief investigating the incident informed the relevant prosecutor about the incident and the prosecutor took over the investigation. The prosecutor subsequently set up a specialist police team (see paragraph 17 above), and contacted all his opposite numbers in Istanbul to seek their assistance (see paragraph 20 above).

35. For a period of almost one month the applicant refused to go to the prosecutor's office to make a detailed statement because she feared that doing so would unduly stress her (see paragraph 17 above). The prosecutor took into account the applicant's vulnerability as a victim of serious ill-treatment, and did not allow her unwillingness to talk about the incident to affect the investigation adversely (see, *mutatis mutandis*, *Aksoy v. Turkey*, 18 December 1996, §§97-98, *Reports* 1996-VI). He continued to follow up the leads in his possession and urged the applicant's lawyers to take the applicant to the Forensic Medicine Institute for further examinations (see paragraphs 11 and 13 above).

36. A number of examinations were made by the Forensic Medicine Institute, both at the request of the applicant and at the request of the prosecutor. The applicant was medically examined and her injuries were detailed in medical reports, together with an expert opinion as to the cause of the injuries. Swabs taken from the applicant and the clothes she was wearing at the time of her abduction were examined for any clues (see paragraphs 5-6, 10, 14 and 18 above)

37. The investigating authorities also searched, albeit unsuccessfully, for any eyewitnesses to the abduction, and tried to find the place of detention described by the applicant (see paragraphs 12, 19 and 20 above).

38. In sum, the Court finds that all the leads given to the authorities were investigated diligently and in an independent and impartial manner. The national authorities did all that could be reasonably expected of them to find the abductors. Moreover, the applicant and her lawyers, who had effective access to the investigatory procedure, did not refer to any specific aspects of the investigation which they considered flawed.

39. The Court concludes, therefore, that the national authorities conducted an effective investigation into the allegations and that the fact that the investigation did not yield any results does not mean that the authorities can be reproached. In this connection the Court reiterates that the obligation to conduct an effective investigation is not an obligation of result but of means, and that not every investigation can come to a successful conclusion (*Mikheyev v. Russia*, no. 77617/01, § 107, 26 January 2006 and the cases cited therein).

40. Although, as pointed above, the Court is prepared to accept that the applicant was abducted, detained and subjected to ill-treatment and sexual assaults by men claiming to be police officers (see paragraph 30 above), it is unable to establish, on the basis of the evidence in the file, whether or not the men were indeed police officers. The Court deems it important to stress in that respect that its inability does not derive from any defects in, or inconclusiveness of the investigation (see, *a contrario*, *Osmanoğlu v. Turkey*, no. 48804/99, § 53, 24 January 2008, and *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, § 178, 24 February 2005).

41. In light of the above the Court concludes that the applicant's complaints that she was abducted, detained against her will, and subjected to ill-treatment and sexually assaulted by agents of the State or by persons acting in collusion with the State, is devoid of a factual basis.

42. Having further regard to its conclusion that an effective investigation was conducted into her allegations, the Court finds that the applicant's complaints under Articles 3, 5, 6 and 13 of the Convention are manifestly ill-founded and must be rejected in accordance with Article 35 § 3 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President