



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

THIRD SECTION

CASE OF SZARAPO v. POLAND

(Application no. 40835/98)

JUDGMENT

STRASBOURG

23 May 2002

FINAL

23/08/2002

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Szarapo v. Poland,

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

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Mr J. MAKARCZYK,
Mr P. KÜRIS,
Mr B. ZUPANČIČ,
Mr J. HEDIGAN,
Mr K. TRAJA, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 30 April 2002,

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

PROCEDURE

1. The case originated in an application (no. 40835/98) against the Republic of Poland lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Polish nationals, Ms Anna Szarapo and Ms Joanna Szarapo (“the applicants”), on 2 December 1997.

2. The Polish Government (“the Government”) were represented by their Agent, Mr Krzysztof Drzewicki of the Ministry of Foreign Affairs.

3. The applicants alleged that the civil proceedings in which they were involved exceeded a reasonable time.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

6. On 22 November 2001 the Chamber declared the application admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. On 17 November 1980 the first applicant lodged a claim, seeking that the paternity of the defendant be established in respect of the second applicant. The applicants also claimed child support. On 10 December 1986 the Zabrze District Court dismissed their claims. On 18 March 1987 the Katowice Regional Court dismissed the applicants' appeal. The applicants requested the Minister of Justice to lodge on their behalf an extraordinary appeal against the judgment. On 18 September 1987 the Minister of Justice lodged such an appeal with the Supreme Court, maintaining that the lower courts had committed serious errors of substantive law.

8. On 23 October 1987 the Supreme Court quashed the judgments and ordered the case to be reconsidered.

9. On 23 December 1991 the Zabrze District Court again dismissed the applicants' claims. On 12 May 1992, as a result of the applicants' appeal, the Katowice Regional Court quashed the judgment of 23 December 1991 and ordered the case to be reconsidered.

10. On 10 May 1993 the defendant informed the Zabrze District Court that he refused to undergo the DNA tests. Notwithstanding his refusal, three other dates (23 August, 9 September and 11 October 1993) were fixed for the purpose of these tests. The defendant did not report for the tests on any of these dates.

11. On 15 December 1993 the next hearing was held. The court fixed for the defendant a fourteen-day time-limit in which he was to take a final decision as to the DNA tests. In a letter of 27 December 1993 the defendant informed the court about his refusal to undergo them, submitting that the first applicant had on many occasions lied in the course of proceedings. He referred to the judgment of the Katowice Regional Court of 12 May 1992 in which it had been stated that the applicant had submitted inaccurate information as to her last menstruation before the pregnancy.

12. On 23 February 1994 the next hearing was held. During the hearing held on 23 March 1994 the court heard another witness and asked the defendant again whether he would undergo the DNA tests. He refused.

13. On 4 May and 7 June 1994 further hearings were held. The court questioned one witness and an expert who had been appointed earlier. The court again asked whether the defendant would agree to undergo the DNA tests and again he refused to do so. On the latter date he challenged one of the lay judges sitting on the court panel.

14. On 14 September 1994 another hearing was held. The defendant again refused to undergo the DNA tests and the court heard another witness. At the subsequent hearing, which was held on 26 October 1994, the court questioned the applicant and the defendant. At the hearing held on

30 November 1994 the defendant was absent. On 16 December 1994 the court decided to close the hearing and adjourned the delivery of the judgment until 28 December 1994.

15. On 28 December 1994 the Zabrze District Court dismissed again the applicant's claims. The court considered that the applicant's testimony contained contradictory information. It further noted that she had tried not to reveal to the court certain facts established in the course of the proceedings and relevant to the ruling in the case, such as the fact of spending a night in one room in the hotel "N" with another man during the period of possible conception. The defendant's testimony, on the other hand, was quite consistent.

16. On 8 March 1995 the applicant lodged an appeal against this judgment with the Katowice Regional Court.

17. The first hearing in the appellate proceedings was held before that court on 25 May 1995. On 8 June 1995 the Katowice Regional Court dismissed the applicant's appeal against the judgment, considering that her testimony was contradictory and that she had induced witnesses to give false testimony.

18. On 6 December 1995 the Minister of Justice again lodged an extraordinary appeal, considering that there had been serious errors of fact and law, in particular in that the court's conclusions as to the facts were incompatible with the evidence before it. It was argued that the defendant's repeated refusals to undergo the DNA tests should be assessed in a more critical manner in view of the fact that he was a physician and knew the value of such evidence in paternity proceedings.

As a result of the Minister's appeal, the contested judgment was quashed by the Supreme Court on 14 February 1996 and the case was remitted to the Zabrze District Court for reconsideration.

19. The first hearing in the proceedings took place on 28 October 1996 before the Zabrze District Court. The court ordered the defendant to take his final decision as regards the DNA tests within 21 days. On 9 May 1997 the next hearing was held. The witnesses summoned for that date failed to attend. The defendant was also absent due to his professional obligations. At the hearing held on 27 June 1997, the defendant was again absent. The applicant lodged a motion to have her claims secured by way of an interlocutory decision.

20. A next hearing took place on 25 November 1997 as the court encountered certain problems with locating and summoning witnesses called by the parties. The defendant again refused to undergo the DNA tests.

21. A next hearing was to take place on 22 December 1997, but it was adjourned as the parties were absent. The court decided to request the Warsaw District Court to hear two witnesses.

22. On 29 January 1998 another hearing was held. On 16 February 1998 the Warsaw District Court questioned one of the witnesses summoned by

the Zabrze District Court. The other witness did not comply with the summons both on that date and later on 6 April 1998, when the Warsaw District Court imposed a fine of 150 PLN on that witness. He was ultimately heard on 15 June 1998.

23. The defendant failed to attend two hearings before the Zabrze District Court, held on 7 and 27 April 1998. On 15 June 1998 the Zabrze District Court decided to secure the applicant's claims. The delay in deciding the motion of the applicant of 27 June 1997 resulted from the defendant's failure to provide the court with the certificates concerning his financial situation. On 15 December 1998 the defendant lodged an appeal against this decision.

24. On 16 October 1998 the second applicant informed the Zabrze District Court that she wished to join the proceedings as a plaintiff alongside her mother. Unexpectedly, on 16 November 1998 the defendant informed the court that he agreed to undergo the DNA tests. On 23 November 1998 the court decided to allow the DNA tests evidence and on 22 January 1999 the court dismissed the defendant's appeal against the decision of 15 June 1998, by which the applicants' maintenance claims had been secured.

25. The DNA tests were made on 21 January 1999 in the Forensic Medicine Department of the Silesian Medical Academy in Katowice. The results of the tests gave nearly hundred per cent certainty that the defendant was the father of the second applicant. The opinion was sent to the Zabrze District Court on 25 August 1999.

26. At the hearing held on 19 October 1999, the applicants' counsel proposed a friendly settlement. The hearing was adjourned until 7 December 1999. The hearing which was to be held on that date was adjourned as the presiding judge had fallen ill. At the hearing held on 3 February 2000 the parties negotiated the terms of the friendly settlement.

27. On 10 February 2000 the court gave a decision in which it established the paternity of the defendant and discontinued the proceedings regarding the child support due to a friendly settlement concluded between the parties in this respect.

II. RELEVANT DOMESTIC LAW AND PRACTICE

28. Articles 417 to 424 of the Code of Civil Procedure, as applicable at the material time, provided that an extraordinary appeal could be lodged against any final judicial decision with the Supreme Court by the Minister of Justice - the Prosecutor General, the President of the Supreme Court and the Ombudsman. An extraordinary appeal could be lodged on the ground that the decision was in flagrant breach of the law. A party to the proceedings could file a request to have such an appeal lodged with these authorities on his or her behalf. The Supreme Court, having examined the

extraordinary appeal at a public hearing, could dismiss it if no grounds for allowing it had been established. If the extraordinary appeal was allowed, the Supreme Court could set the decision under appeal aside and rule on the merits of the case, or reject the claim and discontinue the proceedings.

29. The case-law of the Supreme Court establishes a principle according to which the court should critically assess, in the light of all evidence available in the case, the refusal of the alleged father to undergo the biological tests, relevant for the establishing of paternity.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

30. The applicants complained that the civil proceedings to which they were parties, exceeded a reasonable time, in breach of Article 6 § 1 of the Convention, which reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

A. Period to be taken into consideration

31. The Court recalls that Poland recognised the competence of the European Commission of Human Rights to receive individual applications "from any person, non-governmental organisation or group of individuals claiming to be a victim of a violation of the rights recognised in the Convention through any act, decision or event occurring after 30 April 1993". According to Article 6 of Protocol No. 11 to the Convention, this limitation shall remain valid for the jurisdiction of the Court under that Protocol. It follows that the Court is not competent to examine complaints relating to violations of the Convention by acts, decisions or events that have occurred prior to 1 May 1993.

32. Hence, the Court notes that the proceedings began on 7 November 1980, when the applicants lodged their action with the Zabrze District Court. They have therefore lasted nineteen years and three months, but the period to be taken into consideration by the Court began on 1 May 1993, when the declaration whereby Poland recognised the right of individual petition took effect, and ended on 10 February 2000, the date on which the Zabrze District Court gave its judgment on the merits.

33. However, in cases where the Court can, by reason of its competence *ratione temporis*, only examine part of the proceedings, it may take into account, in order to assess the length, the stage reached in the proceedings at

the beginning of the period under consideration (see the Foti and Others v. Italy judgment of 10 December 1982, Series A no. 56, p. 18, § 53). The Court is therefore competent *ratione temporis* to examine the applicant's complaint insofar as it relates to the proceedings after 30 April 1993, taking into consideration the stage of the proceedings reached at this date. The Court notes that after 30 April 1993 the proceedings lasted six years, nine months and ten days.

34. The Court further observes that on 8 June 1995 the Katowice Regional Court gave a judgment on the merits in the applicant's case. Subsequently, on 6 December 1995 the Minister of Justice lodged an extraordinary appeal with the Supreme Court, which quashed the contested judgment on 14 February 1996. It is therefore necessary to examine whether the character of the proceedings instituted before the Supreme Court following the Minister's extraordinary appeal was such as to bring them within the ambit of Article 6 of the Convention.

35. The Court notes that it was within the powers of the Supreme Court to examine, and in fact it did examine, whether the contested judgment of the second-instance court was in conformity with the substantive law or ill-founded, or whether there had been a substantial breach of procedure. In the extraordinary appeal proceedings the Supreme Court was competent to quash or to uphold the judgment appealed against. These proceedings must therefore be regarded as having the same character as the original proceedings, held before the Zabrze District Court and the Katowice Regional Court. Consequently, they have to be taken into consideration for the purpose of examining whether the case was conducted in compliance with the requirement of Article 6 § 1 of the Convention as regards reasonable time (see *Obodyński v. Poland*, no. 33753/96, Dec. 2 February 1999).

B. The Court's assessment

36. The Government argued that the length of the proceedings was in compliance with the requirements of Article 6 § 1 of the Convention.

37. The applicants submitted that the length of the proceedings was excessive, in particular regard being had to the nature of their claim to have the second applicant's civil status established.

38. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities, and the importance of what is at stake for the applicant in the litigation (see, among other authorities, *Horvat v. Croatia*, no. 51585/99, § 52, 26 July 2001, to be published in the Court's official reports).

39. As to the complexity of the case, the Court notes that the case concerned the claim to have the paternity of the second applicant established. The nature of the factual issues to be considered by the courts appeared to be of certain degree of complexity, as is normal in cases of this character. However, nothing indicates that the case was of a particular complexity.

40. The Court further reiterates that particular diligence is required in cases concerning civil status and capacity. In view of what was at stake for the second applicant in the present case, i.e. her right to have her paternity claim confirmed or refuted and thus to have her uncertainty as to the identity of her natural father eliminated, the Court considers that the competent national authorities were required by Article 6 § 1 to act with particular diligence in ensuring the progress of the proceedings (see the *Bock v. Germany* judgment of 29 March 1989, Series A no. 150, p. 18, § 49; *Mikulic v. Croatia*, no. 53176/99, § 44, 7 July 2001).

41. In connection with the conduct of the authorities, the Court notes that the first judgment on the merits of the case was given in 1986. During the next thirteen years the case was three times considered by the Zabrze District Court, three times by the Katowice Regional Court, and two times by the Supreme Court.

42. The Court observes that the ruling in the case was essentially to be determined by the efficient assessment of evidence gathered during the proceedings. It is true that in the course of the proceedings the courts faced considerable difficulties in obtaining the defendant's consent to undergo the DNA tests. In 1993 the first-instance court scheduled three appointments for DNA tests, but the defendant did not attend any of those appointments. Later on, he refused four times to have the DNA test made. However, the Court notes that no arguments were advanced by the Government to show that under domestic law the courts were obliged to obtain that conclusive evidence and, therefore, to wait for the defendant's consent. On the contrary, the case-law of the Supreme Court adopted a principle according to which the courts should critically assess, in the light of all evidence available in the case, the refusal of the alleged father to undergo these tests.

43. Moreover, the courts had early on at their disposal other voluminous evidence, including, *inter alia*, testimony of witnesses, several expert opinions and two sets of biological tests, which gave a strong basis for a decision establishing the paternity of the defendant. The Court's attention has been drawn in this connection to the arguments relied on by the Minister of Justice in his extraordinary appeal of 6 December 1995. It was argued that the courts had committed serious errors as to the law in that the defendant's repeated refusals to undergo the DNA tests should have been assessed in a more critical manner. The Supreme Court, in its judgment of 14 February 1996, allowed that appeal.

44. In the Court's view, there are no grounds on which to consider that the applicants contributed to the length of proceedings.

45. In the light of the criteria laid down in its case-law and having regard to all the circumstances of the case, in particular to the overall duration of the proceedings, the Court considers that the length of the proceedings complained of failed to satisfy the reasonable time requirement. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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

47. The applicants sought an award of PLN 200,000 in compensation for the suffering they have endured as a result of the violation of the Convention. They argued that the proceedings, which lasted almost twenty years, caused them continuous stress and humiliation, as well as a prolonged uncertainty as to the second applicant's legal paternity.

48. The Government submitted that the applicants' claim was exorbitant and requested the Court to rule that the finding of a violation would constitute sufficient just satisfaction.

49. The Court accepts, having regard to the nature of the proceedings, that the applicants suffered damage of a non-pecuniary nature as a result of the length of the proceedings, which would not be sufficiently compensated by the finding of a violation of the Convention. Making an assessment on an equitable basis, as required by Article 41, the Court awards the applicant EUR 6,500 plus any tax that may be chargeable.

B. Costs and expenses

50. The applicants did not seek reimbursement of costs and expenses involved in the proceedings before the Court.

C. Default interest

51. According to the information available to the Court, the statutory rate of interest applicable in Poland at the date of adoption of the present judgment is 20 % per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 6,500 (six thousand five hundred euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the date of settlement;
 - (b) that simple interest at an annual rate of 20% shall be payable from the expiry of the above-mentioned three months until settlement;
3. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 23 May 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President