FIFTH SECTION

CASE OF KARCHEVA AND SHTARBOVA v. BULGARIA

(Application no. 60939/00)

JUDGMENT

STRASBOURG

28 September 2006

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 Karcheva and Shtarbova v. Bulgaria,

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

Mr P. LORENZEN, *President*,
Mrs S. BOTOUCHAROVA,
Mr K. JUNGWIERT,
Mr R. MARUSTE,
Mr J. BORREGO BORREGO,
Mrs R. JAEGER,
Mr M. VILLIGER, *judges*,
and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 4 September 2006,

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

PROCEDURE

1. The case originated in an application (no. 60939/00) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Bulgarian nationals, Ms Mimi Vasileva Karcheva (the "first applicant") and Ms Sofia Petrova Shtarbova (the "second applicant"), on 31 May 2000.

2. The applicants were represented by Mr M. Ekimdjiev and Ms S. Stefanova, lawyers practising in Plovdiv.

3. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Karadjova, of the Ministry of Justice.

4. On 10 January 2005 the Court decided to communicate the application to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

5. On 1 April 2006 this case was assigned to the newly constituted Fifth Section (Rule 25 § 5 and Rule 52 § 1).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

6. The first applicant was born in 1963 and the second applicant in 1992. They both live in Plovdiv.

7. In 1982 the first applicant married Mr S. They had three children, the last of them was the second applicant.

8. Sometime in 1993 divorce proceedings were initiated before the Plovdiv District Court.

9. Mr S. then initiated an action against the first applicant challenging the paternity of the second applicant. He submitted his action to the Plovdiv District Court on 4 August 1993, which forwarded it to the Plovdiv Regional Court where it was received and registered on 9 August 1993.

10. On an unspecified date, the divorce proceedings were suspended by the Plovdiv District Court pending the outcome of the paternity proceedings.

A. The first hearing of the case

11. The Plovdiv Regional Court conducted nine hearings between 3 November 1993 and 6 June 1995, scheduled two to five months apart. During this period the court heard witnesses, gathered evidence and obtained two experts' opinions. A gynaecological examination and a blood-type test were also conducted. The second applicant joined the proceedings on 21 January 1994.

12. Of the hearings conducted, one was adjourned from 3 November 1993 to 21 January 1994 at the request of the first applicant due to illness, the following two were postponed from 17 May to 30 November 1994 because a court-appointed expert failed to appear and a fourth hearing, scheduled for 4 April 1995, was postponed to 6 June 1995 due to the defective summoning of a court-appointed expert.

13. In a judgment of 11 July 1995 the Plovdiv Regional Court found in favour of the applicants and dismissed the action of Mr S. as unproven. On 10 August 1995 the latter filed an appeal against this judgment with the Supreme Court.

14. A hearing was held before the Supreme Court on 1 March 1996.

15. In a judgment of 20 March 1996 the Supreme Court quashed the judgment of the Plovdiv Regional Court of 11 July 1995 and undertook to hear the case itself. It ordered that another gynaecological examination be conducted, but delegated the appointment of an expert and the organisation of the said examination to the Plovdiv District Court. At the request of Mr S., the Supreme Court also ordered that a DNA test be conducted, instructed him to deposit the necessary fees and set a date for the parties to give blood samples.

B. The second hearing of the case

1. Proceedings before the Supreme Court

16. Mr S. did not deposit the required fees, as instructed by the Supreme Court in its judgment of 20 March 1996.

17. At a hearing of 4 December 1996, which Mr S. failed to attend, the Supreme Court once again ordered him to deposit the necessary fees.

18. Mr S. once again failed to deposit the required fees and did not attend the next appointment for a DNA test on 7 February 1997.

19. Accordingly, the applicants were also unable to give blood samples.

20. On 7 October 1997 the first applicant petitioned the Supreme Court to find that Mr S. had lost interest in the performance of the medical tests and to proceed with the hearing of the case as it stands. The applicant made a similar request on 13 February 1998, as a result of which the case was transferred to the Plovdiv District Court to organise the gynaecological examination.

2. Proceedings before the Plovdiv District Court

21. In response to the request of the Supreme Court to organise the gynaecological examination, the Plovdiv District Court conducted eight hearings between 2 March and 18 December 1998, which were scheduled approximately one to two months apart.

22. On 2 March 1998 the Plovdiv District Court, in camera, appointed a DNA specialist, apparently to conduct the DNA test, and instructed the parties to present themselves for such an examination on 6 April 1998. They failed to present themselves on the designated date.

23. The hearing of 17 April 1998 was adjourned because the parties and the court-appointed expert failed to attend it for undisclosed reasons. The court also invited the parties to present themselves to give blood samples.

24. The parties again failed to give blood samples on the designated date. They also failed to attend the next hearing on 19 June 1998, as did the court-appointed expert. As a result, the Plovdiv District Court instructed each of them to pay additional court fees for protracting the proceedings. The hearing was adjourned and a new date was designated for the parties to give blood samples.

25. The parties attended the next hearing on 24 July 1998. On that date, the court established that it should not have been organising the DNA test, but the gynaecological examination. It therefore dismissed the expert as he could not assist the court in this respect and sought the assistance of the local medical academy to designate an appropriate specialist. It also quashed its previous decision for the parties to pay additional fees for protracting the proceedings.

26. On an unspecified date, the Plovdiv District Court appointed a new expert to perform the gynaecological examination.

27. The hearings of 25 September and 16 October 1998 were postponed because the new court-appointed expert failed to attend them, the first time without just cause and the second time because she was not in the country. The subsequent hearing of 27 November 1998 was also adjourned, but due to improper summoning of the representative of the second applicant.

28. The last hearing before the Plovdiv District Court was conducted on 18 December 1998 when it accepted the results of the gynaecological examination and then transferred the case to the recently created Supreme Court of Cassation.

29. Meanwhile, on an unspecified date, the divorce proceedings between the first applicant and Mr S. had resumed. They concluded with a judgment of 11 December 1998 of the Plovdiv District Court which approved a separation agreement concluded between the two. The said agreement provided, *inter alia*, that custody of their first two children would remain with Mr S., while custody of the second applicant would remain with the first. Child support payments were also agreed to be provided by each of the parents for those children who were not living with them.

3. Proceedings before the Supreme Court of Cassation

30. The paternity proceedings continued before the Supreme Court of Cassation. On 22 February 1999 the said court, in camera, designated a time and place for the parties to give blood samples for the purpose of performing the DNA test, which was still outstanding.

31. The first applicant informed the court on 30 March 1999 that they had been unable to give blood samples, as instructed by the court, because the second applicant had fallen ill. She petitioned the court to designate a new date for giving blood samples.

32. The next hearing on 28 May 1999 was adjourned because of the defective summoning of the second applicant.

33. The hearing of 6 October 1999 was also adjourned as none of the parties had been properly summoned. The Supreme Court of Cassation also designated a new date in November 1999 for them to give blood samples.

34. At the last hearing on 12 April 2000 Mr S. withdrew his request for a DNA test. As a result, the Supreme Court of Cassation considered the case ready for decision and withdrew to rule on its merits.

35. In a final judgment of 10 May 2000 the Supreme Court of Cassation found in favour of the applicants and dismissed the action of Mr S. as unsubstantiated.

THE LAW

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

36. The applicants complained that the length of the paternity proceedings had been incompatible with the "reasonable time" requirement, laid down in 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..."

37. The Government contested that assertion and argued that the case was complex as it required the hearing of witnesses and the performance of various types of medical and other analyses. While recognising the importance of the paternity proceedings to the second applicant, they claimed that, as defendants in the proceedings, the applicants had not shown any particular interest in concluding them quickly. The Government claimed that their attitude changed only after the divorce proceedings concluded in 1998, which dealt with the issue of custody and child-support payments.

The Government further submitted that there were no unreasonable delays attributable to the authorities and that the courts had processed the case expeditiously. They argued, however, that the applicants and Mr S. had contributed significantly to the delays in the proceedings, both by failing to attend court hearings and by missing appointments with medical specialists. In particular, the Government noted Mr S.'s prolonged failure to pay the required fees for performing the examinations he had requested before the Supreme Court.

Finally, the Government noted the approach of the domestic courts to impose additional fees on the parties to the proceedings when they considered that they were unreasonably protracting them, as was undertaken by the Plovdiv District Court.

38. The applicants disagreed with the Government and argued that the case was simple as it required the hearing of a small number of witnesses and the conducting of examinations which were not complicated to organise and perform.

They challenged the assertion of the Government that they had shown interest in the completion of the proceedings only after the divorce proceedings had ended. To the contrary, the applicants argued that they had always acted diligently and with the aim of attaining an expedient completion of the said proceedings and had petitioned the courts on more than one occasion to dismiss the action of Mr S.

In addition, they argued that the authorities had contributed to the length of the proceedings as a result of the adjournments of hearings due to

defective summons, the failure of the Supreme Court to sanction Mr S. for his failure to timely deposit the required fees for the DNA test, the wrong appointment of a DNA expert by the Plovdiv District Court and the overall lack of diligence in scheduling and conducting hearings by the courts.

In conclusion, the applicants stressed the importance of the proceedings for them and claimed that the authorities had failed to provide the required diligence in processing the case expeditiously.

A. Period to be taken into consideration

39. The Government argued that the period to be taken into consideration began on 9 August 1993 when the Plovdiv Regional Court registered the legal action of Mr S. and ended with the final judgment of the Supreme Court of Cassation of 10 May 2000.

40. The applicants, on the other hand, considered that the period began on 4 August 1993 when Mr S. deposited his legal action with the Plovdiv District Court. They agreed with the end date of the period to be taken into consideration.

41. The Court finds that the applicants' complaint relates to the length of the paternity proceedings which began on 4 August 1993, when the Plovdiv District Court received the legal action of Mr S., and ended on 10 May 2000 with the final judgment of the Supreme Court of Cassation. It also notes that the second applicant joined the proceedings on 21 January 1994 (see paragraph 11 above). The proceedings therefore lasted six years, nine months and seven days for the first applicant and six years, three months and nineteen days for the second applicant, during which time the case was examined by two levels of jurisdiction.

B. Admissibility

42. The Court notes that it has previously recognised that an action contesting paternity is a matter of family law and, accordingly, that Article 6 of the Convention is applicable in its "civil" law part (see *Rasmussen v. Denmark*, judgment of 28 November 1984, Series A no. 87, p. 13, § 32). It further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention nor is it inadmissible on any other grounds. It must therefore be declared admissible.

C. Merits

43. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case and the conduct of the applicant and the relevant authorities (see, among many

other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII). In addition, only delays attributable to the State may justify a finding of a failure to comply with the "reasonable time" requirement (see *H. v. France*, judgment of 24 October 1989, Series A no. 162-A, pp. 21-22, § 55). However, in cases relating to civil status, what was at stake for the applicant is also a relevant consideration and special diligence is required in view of the possible consequences which the excessive length of proceedings may have, notably on enjoyment of the right to respect for family life (*Laino v. Italy* [GC], no. 3158/96, § 18, ECHR 1999-I).

44. In view of what was at stake for the second applicant in the present case, that is her right to have her paternity established 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 *Mikulić v. Croatia*, no. 53176/99, § 41, ECHR 2002 I).

45. Returning to the specifics of the case, the Court finds that the paternity proceedings were of moderate complexity as they did not involve the hearing of numerous witnesses nor were complex medical and other analyses required or undertaken (see paragraphs 11and 15 above).

46. In respect of the conduct of the applicants, the Court finds that there were only minor delays attributable to them as a result of adjournments of hearings and failures to present themselves for medical appointments due to illnesses, which prolonged the proceedings by not more than three to four months (see paragraphs 12 and 31 above).

47. As to the conduct of the authorities, the Court observes that the Plovdiv Regional Court conducted hearings at regular intervals of two to five months apart (see paragraph 11 above). The appeal proceedings before the Supreme Court involved only one hearing conducted seven months after the appeal was filed (see paragraphs 13 and 14 above). As a result, the first hearing of the case was concluded within two years, seven months and sixteen days (see paragraphs 9 and 13 above).

The second hearing of the case by the Supreme Court and, subsequently, the Supreme Court of Cassation which replaced it, took much longer and was completed within a little over four years in spite of the fact that, in effect, it involved only one level of jurisdiction (see paragraphs 13 and 35 above). The Court recognises that part of the delay over the given period was caused by Mr S. who did not attend a hearing (see paragraph 17 above), missed a medical appointment (see paragraph 18 above) and failed to timely deposit the fees required for the DNA test (see paragraphs 16 and 18 above). However, it considers that this fails to completely explain and excuse the almost complete inactivity in the proceedings between 20 March 1996 and 13 February 1998 (see paragraphs 15-20 above). Moreover, Mr S.'s actions do not release the domestic courts of their responsibility to take the necessary actions and to diligently and expeditiously process

paternity cases by, for example, cancelling the medical tests whose performance Mr S. was evidently hampering and proceeding to hear the case as it stood.

The Court further recognises that a delay was caused by the failure of two court-appointed experts to attend hearings (see paragraphs 23, 24 and 27 above), but notes the domestic court's failure to sanction the conduct of the said experts and to provide for their regular attendance at hearings.

Finally, the Court notes that there were delays directly attributable to the authorities as a result of the adjournments of several hearings due to the defective summoning of various parties and experts and as a result of the erroneous appointment of a DNA specialist by the Plovdiv District Court, irrespective of the fact that some of the parties also failed to attend hearings over the same period (see paragraphs 12, 21-26, 27, 32 and 33 above).

48. Considering all the circumstances, the Court finds that the "reasonable time" requirement of Article 6 § 1 of the Convention was breached in the present case on account of the authorities' failure to show special diligence in bringing an expeditious conclusion of the paternity case against the applicants, which lasted over six years and nine months for the first applicant and over six years and three months for the second applicant.

There has accordingly been a breach of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

49. The applicants also complained that they lacked effective remedies to speed up the paternity proceedings. They relied on Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

50. The Government disagreed with the applicants and claimed that they could have attempted to speed up the proceedings by making use of the "complaint about delays" under Article 217a of the Code of Civil Procedure, which they contended provided an effective remedy against lengthy proceedings.

51. The applicants disagreed with the Government's assertion and submitted that the "complaint about delays" could not have expedited the proceedings and that it did not provide for the possibility to obtain compensation for any such delays. Moreover, it had been introduced only in July 1999.

52. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

53. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under

Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI).

54. The Court notes that in similar cases against Bulgaria it has found that a complaint based on the direct applicability of the Convention in Bulgarian law is not an effective remedy and neither is a "complaint about delays" under Article 217a of the Code of Civil Procedure (see *Rachevi v. Bulgaria*, no. 47877/99, § 100, 23 September 2004). In addition, it does not appear that Bulgarian law provides any other means of redress whereby a litigant could obtain the speeding up of civil proceedings (see *Rachevi*, cited above, § 101). Finally, as regards compensatory remedies, the Court has also not found it established that in Bulgarian law there exists the possibility to obtain compensation or other redress for excessively lengthy proceedings (see *Rachevi*, cited above, § 103). The Court sees no reason to reach a different conclusion in the present case.

55. Accordingly, there has been a violation of Article 13 of the Convention in that the applicant had no domestic remedy whereby he could enforce his right to a "hearing within a reasonable time" as guaranteed by Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

56. The applicants also complained that that the excessive length of the paternity proceedings and the lack of an effective remedy related thereto amounted to an unjustified interference with their right to respect of their family life.

They relied on Article 8 of the Convention, which provides, as relevant:

> "1. Everyone has the right to respect for his private and family life...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

57. The Government argued that no separate issue arose under this provision as a result of the alleged excessive length of the paternity proceedings. The applicants disagreed.

58. The Court reiterates that it has held on numerous occasions that paternity proceedings fall within the scope of Article 8 of the Convention (see, for example, *Rasmussen*, cited above, § 33 and *Keegan v. Ireland*, judgment of 26 May 1994, Series A no. 290, p. 18, § 45). However, having regard to its finding of violation in respect of Articles 6 § 1 and 13 of the Convention (see paragraphs 48 and 55 above), the Court, while finding this complaint to be admissible, considers that it is not necessary to examine

whether, in this case, there has also been a violation of Article 8 (see, among other authorities, *Laino*, cited above, § 25).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. 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

60. The first applicant claimed 4,000 Bulgarian levs (BGN – approximately 2,051 euros (EUR)) as compensation for the non-pecuniary damage arising out of the excessive length of the paternity proceedings. She claimed that she had been frustrated and aggravated by their excessive length which had had a direct relevance on the outcome of the divorce proceedings prior to the conclusion of the separation agreement in 1998.

The second applicant, meanwhile, claimed BGN 6,000 (approximately EUR 3,076) as compensation for the non-pecuniary damage arising out of the excessive length of the paternity proceedings. She noted that she was a child at the time and, in so far as the case related to her civil status and directly reflected on her relationship with her father, the domestic courts had failed to show the special diligence in processing such cases.

Each of the applicants also claimed BGN 3,000 (approximately EUR 1,538) as compensation for the non-pecuniary damage arising out of the interference with their right to respect of their family life resulting from the excessive length of the paternity proceedings.

Lastly, the applicants each claimed BGN 2,000 (approximately EUR 1,025) as compensation for the non-pecuniary damage arising out of the lack of effective remedies to speed up the paternity proceedings.

In total, therefore, the applicants claimed BGN 20,000 (approximately EUR 10,256) as compensation for the non-pecuniary damage.

61. The Government stated that these claims were excessive and did not correspond to the size of the awards made by the Court in previous similar cases.

62. The Court considers that it is reasonable to assume that the applicants suffered distress and frustration on account of the unreasonable length of the paternity proceedings and the lack of any remedies in this respect. Moreover, it notes that what was at stake for the second applicant was significant as it related to her civil status.

Accordingly, taking into account the circumstances of the case, and making its assessment on an equitable basis, the Court awards the first applicant the sum of EUR 2,400 and the second applicant EUR 2,800 as compensation for the non-pecuniary damage arising out of the excessive length of the proceedings.

B. Costs and expenses

63. The applicants claimed EUR 1,645 for 23.5 hours of legal work of their lawyers on the proceedings before the Court, at an hourly rate of EUR 70. In addition, they claimed EUR 62 for translation of documents, EUR 30 for stationery and EUR 15 for postal expenses of their lawyers. They submitted a legal fees agreement, a timesheet and postal receipts.

64. The Government stated that the claim was excessive, that the hourly rate of EUR 70 for the work performed by the applicants' lawyers was determined arbitrarily and that the claim for expenses for translation of documents and for stationery were not supported by receipts to evidence that they had actually been incurred.

65. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the instant case, the Court considers that the hourly rate of EUR 70 is excessive and that a reduction of the same is appropriate (see, *a contrario*, *Anguelova v. Bulgaria*, no. 38361/97, § 176 *in fine*, ECHR 2002-IV; *Nikolov v. Bulgaria*, no. 38884/97, § 111, 30 January 2003; *Toteva v. Bulgaria*, no. 42027/98, § 75, 19 May 2004 and *Rachevi*, cited above, § 111, where the Court found an hourly rate of EUR 50 reasonable). The Court notes that the applicants failed to present supporting documents in respect of the allegedly incurred expenses for translation of documents and for stationery.

Having regard to all relevant factors, the Court considers it reasonable to award the sum of EUR 1,200 covering costs and expenses for the proceedings before the Court, plus any tax that may be chargeable on that amount.

C. Default interest

66. The Court considers it appropriate that the default interest 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

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the paternity proceedings;

3. *Holds* that there has been a violation of Article 13 of the Convention on account of the lack of effective remedies for excessive length of civil proceedings;

4. *Holds* that there is no need to separately examine the application under Article 8 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay to the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into Bulgarian levs at the rate applicable on the date of settlement:
      (i) in respect of non-pecuniary damage – EUR 2,400 (two thousand four hundred euros) to the first applicant and EUR 2,800 (two thousand eight hundred euros) to the second applicant;
      (ii) EUR 1,200 (one thousand two hundred euros) in respect of costs and expenses;
      (iii) any tax that may be chargeable on the above amounts;
   (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;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 28 September 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President