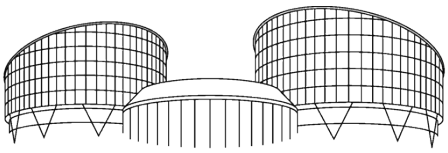

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KAYKHANIDI v. RUSSIA

(Application no. 32185/02)

JUDGMENT

STRASBOURG

10 October 2013

This judgment is final but it may be subject to editorial revision.

In the case of Kaykhanidi v. Russia,

The European Court of Human Rights (First Section), sitting as a Committee composed of:

Khanlar Hajiyev, *President,*
Julia Laffranque,
Dmitry Dedov, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 17 September 2013,

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

PROCEDURE

1. The case originated in an application (no. 32185/02) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mrs Marina Ilyinichna Kaykhanidi ("the applicant"), on 8 August 2002.

2. The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. On 9 May 2006 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant, Mrs Marina Ilyinichna Kaykhanidi, is a Russian national who was born in 1979 and now lives in Berlin.

5. Since 1996 the applicant studied at the Moscow State Linguistic University (the MSLU). In 2000 she obtained a traineeship with the Humboldt University in Berlin. She went to Germany for several months and, consequently, abandoned her courses at the MSLU. She claims that she returned to Moscow in September 2000 and resumed her studies in the MSLU. However, in May 2001 she was sent down from this university for repetitive non-attendance and failure to pass the exams.

6. On 17 July 2001 the applicant challenged her dismissal before the court. On 20 December 2001 the Cheremushkinskiy District of Moscow granted her claim. The court established that the applicant had been dismissed without having been heard about the reasons of her absences. On

this ground the court found the dismissal unlawful and ordered the MSLU to reinstate her as a student.

7. The MSLU appealed, but on 20 February 2002 the Moscow City Court upheld the decision in favour of the applicant.

8. On 28 February 2002 the MSLU brought a supervisory review application. On 13 June 2002 the Presidium of the Moscow City Court quashed the lower courts' decisions. As to the fact that the applicant had not been heard before having been dismissed, the Presidium found that the MSLU dean tried to contact the applicant, but to no avail, since she was outside Russia. The court obtained information from the border police about the applicant's absences from the Russian territory. According to that information, the applicant was outside Russia for at least seven weeks during the study time. Further, the court obtained information from the Humboldt University which confirmed that starting from April 2001 the applicant had been enrolled at that University as a full-time student. The Presidium also held that the lower courts applied the law incorrectly and decided to remit the case to the first instance court for a fresh examination.

9. After the transmittal of the case to the first instance court the applicant amended her initial complaint, claiming from the MSLU 600,000 Russian roubles (RUB) as non-pecuniary damages.

10. On 19 March 2003 the Cheremushkinskiy District Court of Moscow discontinued the proceedings. The court found that the complaint was introduced under the provisions of the law of 1993, which provided for the judicial review of administrative actions. However, after the enactment of the new Code of Civil Proceeding on 1 February 2003, such claims should have been examined under the rules of "contentious proceedings" (*исковое производство*). The court advised her to re-introduce her complaint within the contentious proceedings. On 16 May 2003 the Moscow Regional Court upheld the decision of 19 March 2003.

11. The applicant re-introduced her claim; however, she did not follow the instructions of the courts. The courts at two instances again refused to examine her action.

II. RELEVANT DOMESTIC LAW

12. For relevant provisions of the Russian law on supervisory review see *Ryabykh v. Russia* (no. 52854/99, ECHR 2003-IX).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AS REGARDS SUPERVISORY REVIEW

13. The applicant complained about the quashing, by way of supervisory review, of the court final decision of 20 December 2001 in her favour. Article 6 of the Convention reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

14. The Government argued that Article 6 § 1 was inapplicable in the instant case, as the applicant's claim to declare the order of the President of the MSLU on her dismissal from the MSLU was covered by the sphere of public relations and that the result of these proceedings was not directly decisive for her civil rights.

15. The Government asserted that even if the Court decides to apply Article 6, the quashing of the judgment in applicant's favour did not contravene the principle of legal certainty for the following reasons. First, the supervisory-review application had been lodged by a party to the proceedings. Moreover, the supervisory review application had been lodged eight days after entry into force of the judgment of 20 December 2001. The Government also noted that the ground for quashing the judgment aimed at correcting fundamental defect, namely, a breach of substantive law by the lower courts. Finally, the Government asserted that the supervisory instance court had delivered a new decision by which the case had been remitted for a fresh examination.

16. The applicant maintained her complaint.

A. Admissibility

17. The Court reiterates that according to its well-established case-law the applicability of the civil limb of Article 6 § 1 requires the existence of "a genuine and serious dispute" over a "civil right" which can be said, at least on arguable grounds, to be recognised under domestic law. It may relate not only to the actual existence of a right but also to its scope and the manner of its exercise. Moreover the result of the proceedings must be directly decisive for the right in question (see, for example, *Benthem v. the Netherlands*, 23 October 1985, § 32, Series A no. 97; *Rolf Gustafson v. Sweden*, 1 July 1997, § 38, *Reports of Judgments and Decisions* 1997-IV; and *Skärby v. Sweden*, 28 June 1990, §§ 27 – 30, Series A no. 180-B).

18. The Court reiterates its constant case-law that disputes regarding the right to education and namely the right to higher education fall within the

scope of Article 6 (see *Lukach v. Russia* (dec.), no. 48041/99, 16 November 1999; *Eren v. Turkey* (dec.), no. 60856/00, 6 June 2002; *E. H. v. Greece* (dec.), no. 42079/98, 12 October 2000; and *Emine Araç v. Turkey*, no. 9907/02, §§ 16 – 26, ECHR 2008). Article 6 § 1 is therefore applicable in the instant case.

19. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. This part of the application must therefore be declared admissible.

B. Merits

20. According to the Court's case-law one of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, among other things, that where the courts have finally determined an issue, their ruling should, in principle, not be called into question (see *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII).

21. This principle insists that no party is entitled to seek re-opening of the proceedings merely for the purpose of a rehearing and a fresh decision of the case. Higher courts' power to quash or alter binding and enforceable judicial decisions should be exercised for correction of fundamental defects. The mere possibility of two conflicting views on the subject is not a ground for re-examination. Departures from that principle are justified only when made necessary by circumstances of a substantial and compelling character (see *Ryabykh v. Russia*, cited above, § 52; *Kot v. Russia*, no. 20887/03, § 24, 18 January 2007; and *Dovguchits v. Russia*, no. 2999/03, § 27, 7 June 2007).

22. The Court has to assess whether in the present case the quashing of the final judgment in the applicant's favour by way of supervisory review was justified by the circumstances and whether a fair balance between the interests of the applicant and the need to ensure the proper administration of justice has been achieved.

23. The Court is not persuaded by the Government's argument that the supervisory-review application had been lodged by a party to the proceedings. The Court reiterates that this distinction is not of crucial importance for its analysis (see *Kot v. Russia*, cited above, § 28, and *Nelyubin v. Russia*, no. 14502/04, § 27, 2 November 2006).

24. As regards the Government's argument that the supervisory review application had been lodged only eight days after entry into force of the final judgment, the Court considers that it was the absence of any time-limit in respect of the possible reopening of the case which created the uncertainty for the litigants. The fact that it took the authorities eight days to instigate the review in the present case does not affect this fundamental

problem of uncertainty (see *Sutyazhnik v. Russia*, no. 8269/02, § 29, 23 July 2009).

25. As to the third argument of the Government relating to the grounds for quashing, in the Court's opinion the fact that the Presidium disagreed with the assessment made by the first-instance and appeal courts was not, in itself, an exceptional circumstance warranting the quashing of a binding and enforceable judgment and re-opening of the proceedings on the applicant's claim (see *Dovguchits v. Russia*, cited above, § 30, and *Kot v. Russia*, cited above, § 29). In the present case the lower courts have found the fundamental procedural defect of disciplinary proceedings as the MSLU did not inform the applicant and decided to dismiss her *in absentia*, but the Presidium ignored this defect.

26. Lastly, the Court is not convinced by the Government's position that the supervisory instance court had not adopted a new decision but had remitted the case for a fresh examination. The Court considers that this fact did not by itself efface the effects of legal uncertainty the applicant had to endure after the court decisions in her case had been quashed (see *Klimenko v. Russia*, no. 11785/02, § 23, 18 January 2007). The developments in the proceedings that followed are of no relevance as there existed no domestic remedies capable of remedying the impairment of the principle of legal certainty brought about by the use of the supervisory-review procedure (see *Chernitsyn v. Russia*, no. 5964/02, § 35, 6 April 2006, and *Sardin v. Russia* (dec.), no. 69582/01, ECHR 2004-II).

27. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 6 § 1 of the Convention on account of the quashing of the judgments given in the applicant's case by way of supervisory-review proceedings.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AS REGARDS ACCESS TO COURT

28. The applicant complained about the refusal of the domestic courts to examine her action against the MSLU. She relied on Article 6 of the Convention.

29. The Government asserted that the domestic courts' refusal to consider the merits of applicant's case complied with the law. The courts clarified that the applicant had a right to settle the dispute in contentious proceedings. However the applicant failed to have recourse to this kind of procedure.

30. The Court notes that this part of the application shall be declared admissible. However, having regard to its finding under Article 6 as regards supervisory review, the Court does not deem it necessary in the present case to make a separate finding under Article 6 with regard to the access to court.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

31. The applicant also complained under Article 8, Article 2 of Protocol No. 1, Article 2 § 2 of Protocol No. 4.

32. Having regard to all the material in its possession, and insofar as these complaints come within the Court's competence, it finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. The applicant claimed lost earnings in the amount of 87,200 United States dollars (USD) (possible salary which she could have received); 30,403 euros (EUR) and USD 99,410 in respect of actual damage (financial aid from her parents); and EUR 10,000 in respect of non-pecuniary damage.

35. The Government argued stating that the applicant had failed to substantiate her claim as regards lost earnings therefore they could not be reimbursed. As to the reimbursement for the pecuniary support provided by her family, according to the Government, it could not be recovered either. The Government further considered the applicant's claim in respect of non-pecuniary damage as manifestly excessive and unreasonable.

36. As regards the claim in respect of pecuniary damage, the Court reiterates that a clear causal link must be established between the damage and the violation found. A merely tenuous or speculative connection between the two is not enough. In the instant case the Court does not discern any connection between the alleged pecuniary damage and the found violation of applicant's rights.

37. As regards the claim for non-pecuniary damage, the Court considers that the applicant suffered distress and frustration resulting from the quashing of the judicial decisions in her favour by way of supervisory-review proceedings. However, the particular amount claimed is excessive. Making its assessment, the Court awards the applicant EUR 2,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on this amount.

B. Costs and expenses

38. The applicant claimed that her legal and postage expenses amounted to EUR 36 and 5,764 Russian roubles (RUB).

39. The Government stated that only the sums of EUR 36.30 and RUB 4,839 had been confirmed by the documents.

40. According to the Court's case-law, an applicant is entitled to reimbursement of his or her 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 present case, the applicant submitted receipts supporting her claims in respect of postal expenses for the amounts of EUR 36.30 and RUB 4,839. These sums do not appear excessive or unreasonable. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the applicant the sum of EUR 177, plus any tax that may be chargeable on that amount.

C. Default interest

41. The Court considers it appropriate that the default interest rate 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 complaints concerning the quashing of the judgment in the applicant's favour by way of supervisory review and the lack of access to court admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention with regard to the quashing of the judgment in the applicant's favour by way of supervisory review;

3. *Holds* that there is no need to make a separate finding under Article 6 of the Convention as regards the lack of access to court;

4. *Holds*

   (a) that the respondent State is to pay the applicant, within three months the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:

      (i) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 177 (one hundred and seventy seven euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 October 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Khanlar Hajiyev
President