

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

THIRD SECTION

CASE OF SHERSTOBITOVA v. RUSSIA

(Application no. 14697/18)

JUDGMENT

STRASBOURG

29 March 2022

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



In the case of Sherstobitova v. Russia,

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

María Elósegui, *President,*
Andreas Zünd,
Frédéric Krenc, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 14697/18) 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") on 21 March 2018 by a Moldovan national, Ms Liliya Sherstobitova, born in 1985 and living in Podolsk ("the applicant") who was represented by Mr D.I. Fridman, a lawyer practising in Krasnodar;

the decision to give notice of the complaint under Article 8 of the Convention to the Russian Government ("the Government"), initially represented by Mr G. Matyushkin and Mr M. Galperin, former Representatives of the Russian Federation to the European Court of Human Rights, and later by their successor in this office, Mr M. Vinogradov;

the decision of the Moldovan Government not to exercise their right to intervene in the proceedings (Article 36 § 1 of the Convention);

the parties' observations;

Having deliberated in private on 8 March 2022,

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

SUBJECT MATTER OF THE CASE

1. On 18 September 2017 the Prikubanskiy District Court in Krasnodar fined the applicant, who was married to a Russian national, 2,000 roubles (about 30 euros) for overstaying the term of authorised stay in Russia by several days and ordered her removal, which implied automatic five-year re-entry ban. The applicant's appeals against the removal, in which she stressed disproportionality of the sanction and its disruptive effect on her family life, were to no avail. The courts left those complaints unexamined until the Supreme Court of Russia examined her appeal and lifted the removal order.

2. In its decision of 3 September 2018 annulling the removal order, the Supreme Court referred to the applicant's personality, the lack of immigration infractions by her, her marriage to a Russian national living in Russia and the insignificant period of her unauthorised stay in Russia. The court stated in general terms that there was a violation of her right to respect for family life, but it did not suggest any form of redress for the difficulties endured by her in connection with the imposition of the sanction. Meanwhile, in September

2017, while the applicant's appeals were pending, she was deported from Russia.

3. On 3 October 2018 the applicant re-entered Russia and in January 2019 she was granted a residence permit there. In November 2020 she obtained Russian nationality.

4. According to the applicant, her removal was a disproportionate punishment for a minor administrative violation and the domestic courts failed to examine her complaints of its adverse effect on her family life.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

5. According to the Government, the applicant lost victim status in the proceedings before the Court as her removal had been annulled, and she had re-entered Russia.

6. According to the applicant, she was still a victim of the alleged violation.

7. The Court observes that the removal order was annulled, and the applicant re-entered Russia. Therefore, it is clear that the circumstances complained of no longer persist. At the same time, the Court notes that the applicant's complaint concerns essentially her deportation in September 2017 and the scope of the ensuing practical difficulties she had encountered in her family life until October 2018 as a result. The Court further notes that the thirteen-month period during which the applicant was unable to re-enter Russia (compare to *Ustinova v. Russia*, no. 7994/14, § 36, 8 November 2016) distinguishes the present case from those in which the applicants were effectively able to remain in the country for the entire duration of the proceedings and where no attempts were made to remove them or otherwise restrict them in the enjoyment of their family life (see *Shvalia and Kostycheva v. Russia* (dec.), nos. 46280/14 and 75781/14, 8 March 2016, and *Borisov v. Lithuania*, no. 9958/04, § 112, 14 June 2011).

8. The Court reiterates that the adoption of a measure favourable to the applicant by the domestic authorities will deprive the applicant of victim status only if the violation is acknowledged expressly, or at least in substance, and is subsequently redressed (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 178 et seq. and § 193, ECHR 2006-V, and *Brumărescu v. Romania* [GC], no. 28342/95, § 50, ECHR 1999-VII). In these circumstances, while the first criterion, namely acknowledgment of a violation, has been met, the Court cannot find that the effects of the alleged violation have been sufficiently redressed.

9. The Court therefore concludes that the applicant can still be considered a victim. It also notes that the application is neither manifestly ill-founded nor

inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

10. The relevant general principles have been summarized in *Guliyev and Sheina v. Russia*, no. 29790/14, §§ 46-52, 17 April 2018.

11. Having regard to the finding of the Supreme Court (see paragraph 2 above), the Court considers that it is not necessary to re-examine in detail the merits of the complaint. It suffices to find that, as established by that court, the domestic decisions which served as the ground for the applicant's deportation and exclusion had failed to strike a fair balance required under Article 8.

12. There has accordingly been a violation of Article 8 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

13. The applicant claimed 8,000 euros (EUR) in respect of non-pecuniary damage and EUR 1,675 euros in respect of costs and expenses.

14. The Government submitted that the claims were excessive.

15. Having regard to the documents in its possession, the Court awards the applicant EUR 3,000 in respect of non-pecuniary damage and EUR 1,675 as claimed for costs and expenses, plus any tax that may be chargeable on those amounts.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State, at the rate applicable at the date of settlement:
      (i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,675 (one thousand six hundred and seventy-five 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;

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

Done in English, and notified in writing on 29 March 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	María Elósegui President