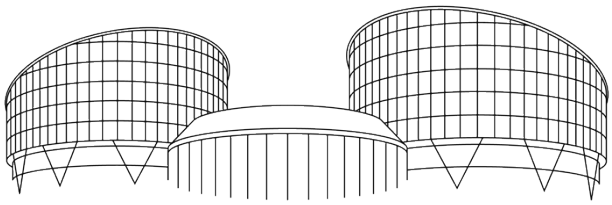

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

DECISION

Application no. 45175/04
Nina Vasilyevna SHEFER
against Russia

The European Court of Human Rights (First Section), sitting on 13 March 2012 as a Chamber composed of:

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Erik Møse, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having regard to the above application lodged on 1 December 2004,

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 Nina Vasilyevna Shefer, is a Russian national who was born in 1969 and lives in Barnaul, Altay Region. The Russian Government ("the Government") are represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

The circumstances of the case

2. The facts of the case, as submitted by the parties, may be summarised as follows.

3. By the judgment of 16 March 2004 the justice of peace of the 4th Court Circuit of the Zheleznodorozhniy District of Barnaul awarded the applicant damages in the total amount of 1,193.60 Russian roubles (RUB) against Mr K. The writ of execution for the abovementioned amount was issued on 31 May 2004.

4. On 10 June 2004 the Zheleznodorozhniy District Bailiffs' Service returned the unenforced writ of execution to the applicant because the document did not contain the information on the date and place of birth of the debtor and his place of work.

5. The applicant complained about the bailiff's actions to court. On 27 July 2004 the Zheleznodorozhniy District Court of Barnaul allowed the complaint in part. The court ruled the bailiff's actions unlawful, annulled the decision to return the writ of execution and ordered the bailiff to institute enforcement proceedings. On 15 September 2004 the Altay Regional Court, acting on appeal, found that the writ of execution had indeed been defective and that the bailiff could have returned it for correction to the court, but not to the applicant. The appeal court removed the order to institute enforcement proceedings upholding the rest of the judgment. The applicant did not re-submit the writ of execution to the bailiffs' service as it was prescribed by the domestic law.

6. On 9 March 2011 the justice of peace of the 4th Court Circuit of the Zheleznodorozhniy District of Barnaul, acting on the applicant's claim, ordered indexation of the recovered amount to RUB 2,417.60 (61 euros (EUR)).

7. It appears that the judgment has not been enforced to date.

COMPLAINT

8. The applicant complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 about non-enforcement of a judgment against a private party.

THE LAW

9. The applicant contended that the national authorities failed to provide her adequate legal assistance in enforcement of the judgment of against a

private party and therefore acted contrary to Article 6 § 1 of the Convention, which in so far as relevant provides:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

10. The applicant further alleged that the failure to enforce the judgment in her favour constituted a violation of Article 1 of Protocol No. 1, which reads in the relevant part:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions..."

11. On 12 January 2011 the Court communicated the complaint relating to the failure of the State to provide adequate legal assistance in enforcement of the judgment against a private party to the respondent Government.

12. In their submissions the Government argued that the applicant in the present case did not suffer any significant disadvantage as defined in Article 35 of the Convention, as amended by Protocol No. 14, and that, consequently, the complaint was inadmissible.

13. The applicant disagreed with the Government's contention and stated that she indeed suffered a significant disadvantage.

14. The Court will first determine whether the applicant has complied with Article 35 of the Convention, as amended by Protocol No. 14 which entered into force on 1 June 2010.

15. The Protocol added a new admissibility requirement to Article 35 which, in so far as relevant, provides as follows:

> "3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:
>
> (...)
>
> (b) the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal."

16. Under this provision the Court should examine whether the applicant suffered a significant disadvantage, whether respect for human rights would in any event require an examination of the case, and whether the case was duly considered by a domestic tribunal (see among others *Korolev v. Russia* (dec), no. 25551/05, 1 July 2010; *Rinck v. France* (dec.), no. 18774/09, 19 October 2010; *Kiousi v. Greece* (dec.), no. 52036/09, 20 September 2011; *Savu v. Romania* (dec.), no. 29218/05, 11 October 2011).

17. The Court notes at the outset that no formal hierarchy exists between the three elements of Article 35 § 3 (b) mentioned above. However, the question of whether the applicant has suffered a "significant disadvantage" is at the core of this admissibility criterion (see among others *Ladygin*

v. Russia (dec.), no. 35365/05, 30 August 2011), while the remaining two elements are intended to be safeguard clauses (see Explanatory Report to Protocol No. 14, CETS No. 194, § 81-82).

18. The general principle *de minimis non curat praetor* underlies the logic of Article 35 § 3 (b), which strives to warrant consideration by an international court of only those cases where violation of a right has reached a minimum level of severity. Violations which are purely technical and insignificant outside a formalistic framework do not merit European supervision (see *Korolev v. Russia,* cited above, and *Adrian Mihai Ionescu v. Romania* (dec.), no. 36659/04, 1 June 2010). The assessment of this minimum level is, in the nature of things, relative and depends on all the circumstances of the case (see *Ladygin v. Russia*, cited above).

A. Did the applicant suffer a significant disadvantage?

19. In the cases considered by the Court after Protocol No. 14 had entered into force the severity of a violation was assessed taking account of both the applicant's subjective perceptions and what is objectively at stake in a particular case (see among others *Holub v. the Czech Republic* (dec.), no. 24880/05, 14 December 2010, and *Burov v. Moldova* (dec.), no. 38875/03, §§ 26-29, 14 June 2011).

20. In respect of the objective significance of a case the Court is conscious that the impact of a pecuniary loss must not be measured in abstract terms; even modest pecuniary damage may be significant in the light of the person's specific condition and the economic situation of the country or region in which he or she lives (see *Korolev v. Russia,* cited above).

21. In respect of the subjective significance of a case, the Court is ready to accept that individual perceptions encompass not only the monetary aspect of a violation, but also the general interest of the applicant in pursuing the case (see among others *Havelka v. Czech Republic* (dec.), no. 7332/10, 20 September 2011).

22. Considering the present case, the Court at the outset notes that the judicial award in question is of relatively insignificant amount of RUB 1,193.60 (EUR 34). Even indexation of the award to RUB 2,417.60 (EUR 61) in 2011 does not warrant an alternative conclusion. In the Court's view, there are no grounds to conclude that the enforcement of the judgment in question was objectively significant for the applicant.

23. The applicant's insistence on pursuing the case before this Court may have been prompted by her subjective perception of the weight of the allegedly endured loss. It is beyond any doubt that in certain specific circumstances an issue otherwise insignificant may be a fundamental question of principle for an individual (see *Giuran v. Romania*, no. 24360/04, § 22, 21 June 2011). Whether an issue indeed constitutes a

question of principle or is otherwise important for an individual needs to be ascertained by the Court within the context of a specific case.

24. In evaluation of the subjective significance of the proceedings for the applicant the Court cannot fail but notice that she did not re-submit the writ of execution to the bailiffs' service after the judgment of the Altay Regional Court on 15 September 2004. Repeated submission of the writ of execution was the only avenue for the enforcement of the judicial award to proceed and the applicant should have been reasonably aware of it.

25. The Court finds it decisive that the applicant did not re-submit her writ of execution until the present moment, effectively being inactive for a period of more than seven years. The interest of an individual may not be confined to subjective perceptions and sentiments alone and has to be manifested by at least an effort to employ reasonable means conducive to the desired outcome. Hence, notwithstanding the applicant's claims before the Court her conduct demonstrates apparent absence of significant interest in the outcome of the proceedings.

26. Furthermore, in the present case the applicant's relevant submissions are limited to the general references to her "modest salary" and subsistence minimum in the Russian Federation. Considering the fact that no specific arguments relevant to her personal circumstances were presented, the Court concludes that the applicant did not reasonably substantiate that her financial situation was such that the outcome of the case would have been subjectively significant for her. Equally the present case taken as a whole does not disclose the existence of the question of principle for the applicant. Neither did she claim the existence of such question.

27. Therefore, the Court concludes that in the circumstances of the case the applicant did not suffer any objective significant disadvantage as a result of the alleged violation of the Convention due to insignificance of the amount in question. Nor, in the light of her prolonged inactivity, was she able to demonstrate that the enforcement proceedings were subjectively significant to her.

B. Does respect for human rights require examination of the case?

28. The second element contained in Article 35 § 3 (b) compels the Court to examine the case in any event if respect for human rights so requires. This would apply where a case raises questions of a general character affecting the observance of the Convention.

The Court observes that an obligation of a State to provide adequate legal assistance in enforcement of the judgments against private parties has been already addressed in judgments against Russia (see e.g. *Kunashko v. Russia*, no. 36337/03, 17 December 2009, and *Kesyan v. Russia*, no. 36496/02, 19 October 2006). The examination of this application on the merits would not bring any new element to the Court's existing case-law. Hence, the

Court concludes that respect for human rights does not require examination of this case.

C. Was the case duly considered by a domestic tribunal**?**

29. The last element to be examined by the Court is whether the applicant's case was duly considered by a domestic tribunal. Qualified by the drafters of Protocol No. 14 as a safeguard clause (see Explanatory Report, § 82, cited above), its purpose is to ensure that every case receives a judicial examination whether at the national level or at the European level, in other words, to avoid a denial of justice. The clause is also consonant with the principle of subsidiarity, as reflected notably in Article 13 of the Convention, which requires that an effective remedy against violations be available at the national level (see *Korolev v. Russia*, cited above).

30. The facts of the present case taken as a whole do not disclose denial of justice. The applicant's complaint about return of the writ of execution by the bailiff was considered by the domestic courts on two levels of jurisdiction and the domestic courts partly ruled in favour of her claims. Therefore, the applicant's case was duly considered by a domestic tribunal within the meaning of Article 35 § 3 (b).

D. Conclusion

31. In the light of the foregoing, the Court finds that the present application should be declared inadmissible in accordance with Article 35 § 3 (b) of the Convention, as amended by Protocol No. 14. This conclusion obviates the need to consider if other admissibility criteria have been complied with.

For these reasons, the Court unanimously

Declares the application inadmissible.

André Wampach
Deputy Section Registrar

Nina Vajić
President