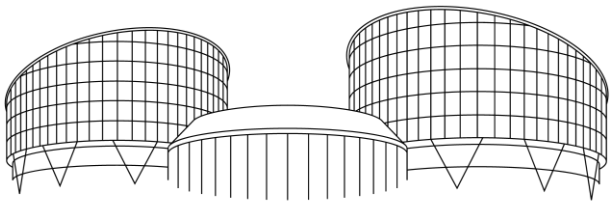

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

**CASE OF MUDRIC v. THE REPUBLIC OF MOLDOVA**

*(Application no. 74839/10)*

JUDGMENT

STRASBOURG

16 July 2013

*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 Mudric v. the Republic of Moldova,**

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

Josep Casadevall, *President,*
Alvina Gyulumyan,
Corneliu Bîrsan,
Ján Šikuta,
Luis López Guerra,
Nona Tsotsoria,
Valeriu Griţco, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 25 June 2013,

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

# PROCEDURE

1. The case originated in an application (no. 74839/10) against the Republic of Moldova lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Moldovan national, Ms Lidia Mudric ("the applicant"), on 21 December 2010.

2. The applicant, who had been granted legal aid, was represented by Ms D. Străisteanu, a lawyer practising in Chişinău. The Moldovan Government ("the Government") were represented by their Agent, Mr V. Grosu.

3. The applicant alleged, in particular, that the authorities had not discharged their positive obligations under Articles 3, 14 and 17 of the Convention to protect her from domestic violence and to punish her aggressor.

4. On 18 March 2011 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

5. Third-party comments were received from the Equal Rights Trust, a non-governmental organisation based in London, the United Kingdom, which had been given leave by the President to intervene in the procedure (Article 36 § 2 of the Convention and Rule 44 § 2 of the Rules of Court). The Government replied to those comments (Rule 44 § 5).

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1939 and lives in Lipcani.

### A. Private violence against the applicant and her complaints to the authorities

7. After divorcing her husband more than twenty-two years prior to the relevant events, the applicant was living in her own house next to that belonging to her former husband, A.M. On 31 December 2009 A.M. broke into her house and beat her up. He did the same on 19 February 2010, since which date he has remained in the applicant's house permanently, while the applicant has occasionally sought refuge with her neighbours.

8. The applicant obtained a medical report confirming that she had been beaten up on 19 February 2010. The applicant and her lawyer have made numerous complaints to the local police, the prosecutor's office and other authorities, asking for protection for the applicant and for A.M. to be punished. The first such complaint was made on 18 March 2010 and was addressed to the local police. She also complained to other authorities that the local police had been aware of the situation but had done nothing to protect her.

9. On 27 March 2010 the applicant was again beaten up by A.M. On 30 March 2010 the local police informed her that the events complained of had been confirmed, but that A.M. could not be punished as he was mentally ill.

10. On 9 June 2010 the Ocniţa police instituted criminal proceedings against A.M. for breaking into the applicant's house. According to the Government, on 24 June 2010 he was subjected to the preventive measure of an undertaking not to leave town.

### B. The initial court protection orders in the applicant's name

11. On 22 June 2010 a court adopted a protection order, deciding A.M.'s eviction and ordering him to stay away from the applicant and her house. However, that order was not enforced. On 17 July 2010 the applicant was again injured by A.M. in the yard of her house, as confirmed by the police and a medical report. She lodged a new complaint and on 23 July 2010 another court order was issued, similar to that of 22 June 2010. This order was not enforced either.

12. On 16 August 2010 criminal proceedings were instituted against A.M. for failure to abide by the protection order of 22 June 2010. This set of proceedings was subsequently joined to the one instituted on 9 June 2010.

13. On 26 August 2010, during the criminal proceedings, A.M. underwent a psychiatric examination. The medical commission established that he was suffering from chronic paranoid schizophrenia and recommended in-patient psychiatric treatment.

14. On 7 October 2010 a prosecutor submitted the case against A.M. to the court in order to determine whether A.M. should undergo mandatory psychiatric treatment. In his decision the prosecutor noted, *inter alia*, that A.M.'s medical history revealed that in 1965 he had suffered a blow to his head; from 1981 he had started to believe that his wife wanted to poison him and he had begun beating her; from June to September 1987 he had been treated as an in-patient in a psychiatric hospital and had been diagnosed with paranoid schizophrenia; he had been under psychiatric supervision since 1988 and had undergone psychiatric treatment five more times with the same diagnosis, the last treatment period having ending on 25 December 2004; and he had been monitored by the authorities as mentally ill and dangerous to society. The parties did not inform the Court of the outcome of the prosecutor's request.

15. In a letter dated 6 December 2010 the Ministry of Labour, Social Protection and Family stated that on 23 November 2010, Police Officers V.V. and R.P. from the local police station and a social assistant had visited the applicant's house and talked with her and A.M. The latter had refused to leave the house or to sign a document stating that he had been warned not to commit acts of violence against the applicant.

### C. The protection order of 16 December 2010

16. On 5 December 2010 the applicant was again beaten up by A.M. On 16 December 2010 she obtained a third court order, similar to the two already issued. The court noted, *inter alia*, that on 5 December 2010 A.M. had again beaten the applicant up and that the police had gone to her house the following day and had imposed an administrative sanction on him for intentional destruction of property. On 24 December 2010 the applicant's neighbour, E.C., gave a witness statement to the Ocniţa police officers. She described the many conflicts that A.M. had had with the applicant and the neighbours, the many visits by the police to the applicant's house to warn A.M. not to commit acts of violence towards the applicant, and the fact that the head of the local police had often been in contact with her about the situation in the applicant's house.

17. On 4 January 2011 the Ocniţa District Court found A.M. guilty of breaking into the applicant's house. Having regard to the findings of the medical commission, the court absolved A.M. of criminal responsibility

because he had committed the crime in a state of insanity. It also decided that A.M. should undergo mandatory psychiatric treatment.

18. On 14 January 2011 the applicant's lawyer asked for a copy of the decision of 4 January 2011, stating that she had not been informed of the hearing. Moreover, her client had been unaware of it until the morning of 4 January 2011, when she had been invited to attend court by the local police. Therefore, the applicant's procedural rights had been breached. On the same day the lawyer asked the local police and the social assistance service about the measures taken to enforce that court decision.

19. On 21 January 2011 the Ocniţa Police informed the applicant that they did not have the power to evict anyone and that it was the bailiff's job to do so.

20. On 24 January 2011 Ocniţa police officers escorted A.M. to a specialised psychiatric hospital for medical treatment.

21. On 31 January 2011 the Ocniţa prosecutor's office decided not to start a criminal investigation against Ocniţa Police Officers V.V. and R.P. in respect of an allegation by the applicant that they had been complicit in the private violence committed by A.M.

## II. RELEVANT NATIONAL AND INTERNATIONAL MATERIALS

### A. Relevant domestic law

22. The relevant provisions of Law no. 45 on the prevention of and combat against domestic violence (1 March 2007, "the Domestic Violence (Combat and Protection) Act 2007") read as follows:

**Section 15: Protective measures**

"1. The courts shall, within twenty-four hours of receipt of the claim, issue a protection order to assist the victim, by applying the following measures to the aggressor:

(a) an order to temporarily leave the common residence or to stay away from the victim's residence, without making any determination as to the ownership of jointly owned assets;

(b) an order to stay away from the victim;

(c) a prohibition on contacting the victim, his or her children or other dependants;

(d) an order not to visit the victim's place of work or residence;

(e) an order to pay maintenance for his or her children pending resolution of the case;

(f) an order to cover the costs incurred and to compensate for any damage caused as a result of his or her violent acts, including medical expenses and the cost of replacing or repairing any destroyed or damaged possessions;

(g) restrictions on the unilateral disposal of jointly owned assets;

(h) an order to undergo special treatment or counselling if the court determines that this is necessary to reduce or eliminate violence;

(i) an interim contact order for the aggressor to see his or her children below the age of majority;

(j) a prohibition on possessing and carrying weapons ...

3. The protective measures set out in subsection (1) above shall be applied for up to three months and may be discontinued upon the elimination of the threat or danger which caused the adoption of such measures and extended if a further claim is submitted or if the conditions set out in the protection order have not been complied with."

23. The relevant provisions of the Criminal Code read as follows:

**Article 179. Break-in.**

"(1) The unlawful entering or remaining in the domicile or residence of a person without the latter's consent or the refusal to leave at that person's request, as well as unlawful searches shall be punished by a fine of up to 300 conventional units or by unpaid work for the community during 100 to 200 hours, or a prison term of up to two years."

**Article 2011. Family violence.**

"(1) Family violence, that is the intentional action or inaction manifested physically or verbally, committed by a member of a family against another member of that family, and which caused physical suffering leading to light bodily harm or damage to health, or moral suffering, or to pecuniary or non-pecuniary damage, shall be punished by unpaid work for the community during 150 to 180 hours, or a prison term of up to two years.

(2) The same action:

(a) committed against two or more members of the family;

(b) which caused moderate bodily harm or damage to health

- shall be punished by unpaid work for the community during 180 to 240 hours, or a prison term of up to five years.

(3) The same action which:

(a) caused serious bodily harm or damage to health;

(b) provoked the victim's suicide or an attempt thereof;

(c) caused the victim's death

- shall be punished by a prison term of five to fifteen years."

**Article 320. Non-enforcement of a court decision.**

"(1) The intentional failure or avoidance from enforcing a court decision, if it was committed after an administrative sanction, shall be punished by a fine of 200 to 300 conventional units or by unpaid work for the community during 150 to 200 hours, or with a prison term of up to two years..."

24. Under Articles 152 and 155 of the Criminal Code, an action causing less severe bodily harm, as well as threatening with such harm, are offences punishable by periods of imprisonment or community work.

### B. Relevant international material

25. A summary of the relevant international materials concerning protection from domestic violence, including its discriminatory nature against women, has been made in the case of *Opuz v. Turkey* (no. 33401/02, §§ 72-86, ECHR 2009) and *Eremia v. the Republic of Moldova* (no. 3564/11, §§ 29-37, 28 May 2013, not yet final).

26. In its Recommendation Rec(2002)5 of 30 April 2002 on the protection of women against violence, the Committee of Ministers of the Council of Europe stated, inter alia, that member States should introduce, develop and/or improve where necessary national policies against violence based on maximum safety and protection of victims, support and assistance, adjustment of the criminal and civil law, raising of public awareness, training for professionals confronted with violence against women and prevention.

27. The Committee of Ministers recommended, in particular, that member States should penalise serious violence against women such as sexual violence and rape, abuse of the vulnerability of pregnant, defenceless, ill, disabled or dependent victims, as well as penalising abuse of position by the perpetrator. The Recommendation also stated that member States should ensure that all victims of violence are able to institute proceedings, make provisions to ensure that criminal proceedings can be initiated by the public prosecutor, encourage prosecutors to regard violence against women as an aggravating or decisive factor in deciding whether or not to prosecute in the public interest, ensure where necessary that measures are taken to protect victims effectively against threats and possible acts of revenge and take specific measures to ensure that children's rights are protected during proceedings.

28. With regard to violence within the family, the Committee of Ministers recommended that Member states should classify all forms of violence within the family as criminal offences and envisage the possibility of taking measures in order, inter alia, to enable the judiciary to adopt interim measures aimed at protecting victims, to ban the perpetrator from contacting, communicating with or approaching the victim, or residing in or entering defined areas, to penalise all breaches of the measures imposed on the perpetrator and to establish a compulsory protocol for operation by the police, medical and social services.

29. In its General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW/C/2010/47/GC.2), the

Committee on the Elimination of Discrimination against Women found that "States parties have a due diligence obligation to prevent, investigate, prosecute and punish ... acts of gender based violence".

30. In her report concerning the visit to Moldova from 4 to 11 July 2008 (document A/HRC/11/6/Add.4, 8 May 2009), the United Nations Special Rapporteur on violence against women, its causes and consequences noted, *inter alia*:

> "... patriarchal and discriminatory attitudes are increasing women's vulnerability to violence and abuse. In this context, domestic violence in particular is widespread, largely condoned by society and does not receive appropriate recognition among officials, society and women themselves, thus resulting in insufficient protective infrastructure for victims of violence. ...
>
> ... 19. Moldovan women suffer from all forms of violence. However, domestic violence and trafficking are major areas of concern. The two are intimately connected and are linked to women's overall subordinate position in society. ...
>
> 20. While reliable data and a systematic registering of cases on the nature and extent of the phenomenon is lacking, domestic violence is said to be widespread. According to a Ministry of Labour, Social Protection and Family report: "[...] At present, the frequency of domestic violence, whose victims are women and children, is acquiring alarming proportions. Unfortunately, it is very difficult for the State to control domestic violence since in most of the cases it is reported only when there are severe consequences of the violence, the other cases being considered just family conflicts.
>
> 21. Despite this acknowledgement, unless it results in serious injury, domestic violence is not perceived as a problem warranting legal intervention. As a result, it is experienced in silence and receives little recognition among officials, society and women themselves.
>
> 22. According to a survey conducted in 2005, 41 per cent of women interviewed reported encountering some form of violence within the family at least once during their lifetime. The survey revealed that psychological violence, followed by physical violence, is the most widely reported form of abuse in the family. Almost a third of the women interviewed indicated having been subjected to multiple forms of violence. The study notes that domestic violence runs across lines of class and education; however, women with a higher level of education or economic status may tend not to disclose incidents of violence. Sexual violence remains the least reported form of violence. This may be due to lack of recognition of sexual abuse within the family as a wrongdoing or the fear among victims that they will be held responsible and become outcasts.
>
> 23. The perpetrators of violence against women are often family members, overwhelmingly husbands or former husbands (73.4 per cent), followed by fathers or stepfathers (13.7 per cent) and mothers or stepmothers (7 per cent). Staff at the shelter in Chisinau indicated that husbands of many of the women who seek help at the shelter are either police officers or from the military, which makes it far more difficult for these women to escape the violent environment and seek divorce. ...
>
> 29. There are also a number of widely held misconceptions about violence against women which treat the problem as isolated cases concerning a particular group. These misconceptions are: (a) violence against women is a phenomenon that takes place in poor and broken homes; (b) victims of violence are inherently vulnerable women

needing special protection; (c) violent men are deviants who use alcohol and drugs or have personality disorders; (d) domestic violence involves all members of the household, including men. It has been my experience that such misunderstandings often result in misguided and partial solutions, such as rehabilitation programmes for abusers, restrictions over women in order to protect them or gender neutral solutions that overlook the causes of gender-based violence."

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

31. The applicant complained that the authorities had tolerated the ill-treatment to which she had been subjected in her home, and had failed to enforce binding court orders designed to offer her protection. She relied on Article 3 of the Convention, which reads as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

### A. Admissibility

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

### B. Merits

#### *1. The parties' submissions*

##### (a) The applicant

33. The applicant complained that the State had failed to discharge their positive obligation under Article 3 of the Convention to protect her from domestic violence and to prevent the reoccurrence of such violence. She was a particularly vulnerable person given that, at the age of 72, twenty-two years after divorcing A.M., she had to endure his physical and verbal attacks.

34. The applicant submitted that the authorities "had or ought to have had knowledge" of A.M.'s violence against her (see *Z. and Others v. the United Kingdom* [GC], no. 29392/95, § 73, ECHR 2001-V). Her neighbour, E.C., had confirmed being in frequent contact with the head of the local police in order to report any instances of domestic violence by A.M. (see paragraph 16 above). However, the only effective measure to

protect her from further violence had not been taken until 24 January 2011, more than a year after her first complaint had been made. Therefore, the authorities' reaction had not been swift, despite the urgency of the situation, and she had not been given immediate protection from the risk of further violence.

35. The applicant further contended that the respondent State had failed to ensure the timely enforcement of legislation that it had enacted specifically to protect victims of domestic violence, despite the repeated breach of protection orders by A.M. The Government had continued to treat her case as a minor episode in which she had only herself to blame for not making – or for withdrawing – criminal complaints or not providing evidence. However, the nature of domestic violence was such that it often went unreported; even when the crime was reported, the victim was susceptible to intimidation by her aggressor and was less inclined to continue pressing charges. Failure to take this into account and obliging the victim to institute or continue criminal proceedings in order to enforce court orders undermined the efficiency of the legislation designed to protect victims. The applicant asserted that, accordingly, the respondent State had encouraged A.M. to continue ill-treating her with impunity, while relying on his mental illness as an excuse for not enforcing the various protection measures in her favour.

**(b) The Government**

36. The Government submitted that the authorities had taken all reasonable measures to protect the applicant from the risk of violence and to prevent such violence from reoccurring. In particular, the domestic courts had issued protection orders and the police, together with the social assistance authorities, had regularly visited the applicant's house in order to check A.M.'s behaviour and to caution him against attacking the applicant. Two criminal investigations had been instituted against A.M. and a number of administrative sanctions had been imposed, and eventually he had been sent for mandatory medical treatment. The Government also referred to the applicant's failure to see a doctor after the alleged attack on 31 December 2009 (see paragraph 7 above) in order to obtain written confirmation of her allegations, as well as to inconsistencies between the description of events in her domestic complaints and that submitted to the Court. Similarly, the applicant had failed to obtain medical evidence of her alleged beating on 27 March 2010. This had made it impossible for the Government to comment on the allegations of violence before 22 June 2010.

37. As for the period after 22 June 2010, when a new protection order had been issued, the authorities had again reacted promptly by warning A. M. not to attack the applicant and by imposing a number of restrictions on his contacts with her. The preventive measure of making him undertake

not to leave town had also been taken (see paragraph 10 above). Other measures could not be taken because of A.M.'s mental illness.

38. The present case was different from *Opuz*, cited above, in that the level of violence and of any threats made in the present case had clearly been less serious than in *Opuz* and the authorities' reaction had been prompt in the present case.

*2. The Court's assessment*

**(a) General principles**

39. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the nature and context of the treatment, its duration, its physical and mental effects and, in some instances, the sex, age and state of health of the victim (see *Costello-Roberts v. the United Kingdom*, 25 March 1993, § 30, Series A no. 247-C and *Kudła v. Poland* [GC], no. 30210/96, § 91, ECHR 2000-XI).

40. It further reiterates that Article 1 of the Convention, taken in conjunction with Article 3, imposes on the States positive obligations to ensure that individuals within their jurisdiction are protected against all forms of ill-treatment prohibited under Article 3, including where such treatment is administered by private individuals (see *A. v. the United Kingdom*, 23 September 1998, § 22, *Reports of Judgments and Decisions* 1998-VI and *Opuz*, cited above, § 159). This obligation should include effective protection of, *inter alia*, an identified individual or individuals from the criminal acts of a third party, as well as reasonable steps to prevent ill-treatment of which the authorities knew or ought to have known (see, *mutatis mutandis*, *Osman v. the United Kingdom*, 28 October 1998, § 116, *Reports* 1998-VIII; *E. and Others v. the United Kingdom*, no. 33218/96, § 88, 26 November 2002; and *J.L. v. Latvia*, no. 23893/06, § 64, 17 April 2012).

41. It is not the Court's role to replace the national authorities and to choose in their stead from among the wide range of possible measures that could be taken to secure compliance with their positive obligations under Article 3 of the Convention (see, *mutatis mutandis*, *Bevacqua and S. v. Bulgaria*, no. 71127/01, § 82, 12 June 2008). At the same time, under Article 19 of the Convention and in accordance with the principle that the Convention is intended to guarantee not theoretical or illusory, but practical and effective rights, the Court has to ensure that a State's obligation to protect the rights of those under its jurisdiction is adequately discharged (see *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, § 61, 20 December 2007).

42. Furthermore, Article 3 requires that the authorities conduct an effective official investigation into the alleged ill-treatment even if such treatment has been inflicted by private individuals (see *M.C. v. Bulgaria*, no. 39272/98, § 151, ECHR 2003-XII, and *Denis Vasilyev v. Russia*, no. 32704/04, §§ 98-99, 17 December 2009). For the investigation to be regarded as "effective", it should in principle be capable of leading to the establishment of the facts of the case and to the identification and punishment of those responsible. This is not an obligation of result, but one of means. In cases under Articles 2 and 3 of the Convention where the effectiveness of the official investigation has been at issue, the Court has often assessed whether the authorities reacted promptly to the complaints at the relevant time. Consideration has been given to the opening of investigations, delays in taking statements and to the length of time taken for the initial investigation (see *Denis Vasilyev*, cited above, § 100 with further references; and *Stoica v. Romania*, no. 42722/02, § 67, 4 March 2008).

43. Interference by the authorities with the private and family life may become necessary in order to protect the health and rights of a person or to prevent criminal acts in certain circumstances (see *Opuz*, cited above, § 144). To that end States are to maintain and apply in practice an adequate legal framework affording protection against acts of violence by private individuals (see *X and Y v. the Netherlands*, 26 March 1985, § 22 and 23, Series A no. 91; *Costello-Roberts v. the United Kingdom*, 25 March 1993, § 36, Series A no. 247‑C; *D.P. and J.C. v. the United Kingdom*, no. 38719/97, § 118, 10 October 2002; *M.C. v. Bulgaria*, cited above, §§ 150 and 152, ECHR 2003-XII; *Bevacqua*, cited above, § 65, and *Sandra Janković v. Croatia*, no. 38478/05, § 45, 5 March 2009).

**(b) Application of these principles in the present case**

*(i) Whether the applicant was subjected to treatment contrary to Article 3 of the Convention*

44. In the present case the Court notes that on two occasions the applicant obtained medical evidence of having been beaten up by A.M. (see paragraphs 8 and 11 above). Moreover, even though it appears that the applicant did not obtain any further medical evidence, both the local police and the courts established that A.M. had attacked her on other occasions (see paragraphs 9 and 16 above).

45. Moreover, the fear of further beatings by A.M., following those of 19 February, 27 March, 17 July and 5 December 2010 (see paragraphs 8, 9, 11 and 16 above), was sufficiently serious to cause the applicant suffering and anxiety amounting to inhuman treatment within the meaning of Article 3 of the Convention.

46. In such circumstances, the Court finds that Article 3 of the Convention was applicable to the present case. It must therefore determine whether the authorities' actions in response to the applicant's complaints complied with the requirements of that provision.

*(ii) Whether the authorities complied with their positive obligations under Article 3 of the Convention*

47. As recalled earlier (see paragraphs 39-43 above), the States' positive obligations under Article 3 include, on the one hand, setting up a legislative framework aimed at preventing and punishing ill-treatment by private individuals and, on the other hand, when aware of an imminent risk of ill-treatment of an identified individual or when ill-treatment has already occurred, to apply the relevant laws in practice, thus affording protection to the victims and punishing those responsible for ill-treatment.

48. In respect of the first obligation, the Court notes that the Moldovan law provided for specific criminal sanctions for committing acts of violence, including against (former) members of one's own family (see paragraphs 23 and 24 above). Moreover, the law provided for protective measures for the victims of violence, as well as for sanctions against those persons who refused to abide by court decisions (see paragraphs 22 and 23 above). The Court concludes that the authorities had put in place a legislative framework allowing them to take measures against persons accused of family violence.

49. The Court must determine whether the domestic authorities were aware, or ought to have been aware, of the violence to which the applicant had been subjected and of the risk of further violence, and if so whether all reasonable measures had been taken to protect her and to punish the perpetrator. In verifying whether the national authorities have complied with their positive obligations under Article 3 of the Convention, the Court must recall that it will not replace the national authorities in choosing a particular measure designed to protect a victim of domestic violence (see, *mutatis mutandis*, *A. v. Croatia*, cited above, § 61 and *Sandra Janković*, cited above, § 46).

50. It is clear from the various documents in the file that the authorities were well aware of A.M.'s long history of mental health problems. Indeed, he was supervised by a psychiatrist and was considered dangerous to society. He was also known to have particularly strong negative feelings towards his former wife, the applicant, suspecting that she wanted to poison him (see, for instance, paragraph 14 above). While these facts do not automatically attest to any immediate danger for the applicant, the risk to her physical well-being became very clear when A.M. broke into her house and beat her up, a circumstance of which the authorities were fully aware (see paragraphs 8 et seq. above). It is therefore necessary to determine whether the actions taken by them to protect the applicant were sufficient to satisfy their positive obligations under Article 3.

51. The Court notes that the applicant was a single woman aged 72 at the relevant time. As such, she was particularly vulnerable to attacks by A.M., who had a long history of violent behaviour against her (see paragraph 14 above). He had entered her house without permission and stayed there for more than a year, so he had had the possibility to ill-treat her at any time and the applicant had had to find refuge with the neighbours. It considers that that risk to the applicant's physical and psychological well-being was imminent and serious enough as to require the authorities to act swiftly. The national authorities could have charged A.M. with at least three different criminal offences as early as December 2009: bodily harm and threat of such harm (Articles 152 and 155 of the Criminal Code), given that A.M. was no longer a member of the applicant's family and that, accordingly, Article $201^1$ of the Criminal Code did not apply, break-in (Article 179 of the Criminal Code) and failure to abide by a court decision (Article 320 of the Criminal Code), all cited in paragraphs 23 and 24 above. This would have allowed the courts to take resolute action, either by way of criminal sanctions or, as it eventually happened, by formally finding that A. M. was mentally ill and by ordering his mandatory psychiatric treatment.

52. However, their actions have been ineffective, allowing A.M. to stay in the applicant's house for more than a year after her complaint had been made. While the authorities eventually lodged criminal prosecutions, it took them approximately six months to initiate the proceedings concerning the break-in (see paragraph 10 above) and eight months to initiate the proceedings concerning the failure to abide by the protection order in favour of the applicant (see paragraph 12 above). No criminal proceedings were started in respect of the violence as such.

53. Moreover, A.M.'s refusal to abide by the protection order was so clear and persistent that the courts had to adopt two more such orders. Despite the above, the authorities still did not remove A.M. from the applicant's house, the local police informing the applicant on 21 January 2011 that they had no power to remove anyone (see paragraph 19 above). Only on 24 January 2011 was A.M. finally removed by the Ocniţa police.

54. It is true that A.M. was eventually recognised as a mentally ill person. However, the courts could have ordered his mandatory treatment much earlier had the criminal proceedings started sooner (see paragraph 51 above). There is no acceptable explanation in the case file or in the Government's observations for the delay of more than a year for doing so.

55. The Court concludes that the manner in which the authorities had handled the case, notably the long and unexplained delays in enforcing the court protection orders and in subjecting A.M. to mandatory medical treatment, amounted to a failure to comply with their positive obligations under Article 3 of the Convention. There has, accordingly, been a violation of that provision in the present case.

## II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION READ IN CONJUNCTION WITH ARTICLES 3 AND 8 OF THE CONVENTION

56. The applicant also complained under Article 14 of the Convention in conjunction with Articles 3 and 8, that the authorities had failed to apply the domestic legislation intended to afford protection from domestic violence, as a result of preconceived ideas concerning the role of women in the family. Article 14 reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

### A. Admissibility

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

### B. Merits

58. The applicant claimed that the authorities had failed to take appropriate action aimed at preventing domestic violence, protecting from its effects, investigating the complaints and punishing the perpetrator. They thus promoted further violence from A.M., who felt immune to any State action. The violence was gender-based and amounted to discrimination contrary to Article 14 of the Convention.

59. The Government argued that there had been no discriminatory treatment in the present case. Unlike in the case of *Opuz,* cited above, the authorities had not been inert to the applicant's complaints and had taken all reasonable action to prevent her ill-treatment, having started criminal proceedings against A.M. and eventually sending him for mandatory medical treatment. Even if some shortcomings in the practical implementation of the law against domestic violence could still be found, this was due to the relative novelty of that law, dating from 2007.

60. The Equal Rights Trust submitted that there was well-established evidence that domestic violence impacted disproportionately and differently upon women. If it was to be effectively tackled, such violence demanded a particular response, which included treating such violence as a form of gender-based discrimination. Failing to realise this amounted to a failure to acknowledge the magnitude of the problem and its impact upon the dignity of women. They referred to the General Recommendation No. 28 on the

Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women of the Committee on the Elimination of Discrimination against Women (CEDAW/C/2010/47/GC.2), in accordance with which "States parties have a due diligence obligation to prevent, investigate, prosecute and punish such acts of gender based violence".

61. The Court recalls that it has already found the State's failure to protect women against domestic violence breaches their right to equal protection of the law and that this failure does not need to be intentional (see *Opuz*, cited above, § 191).

62. In the present case, the Court refers to its findings (see paragraphs 8, 9, 14, 16 and 51 above) that the applicant was subjected to violence from A.M. on a number of occasions and that the authorities were well aware of that. It observes that A. M. was allowed to live in the applicant's house for more than a year, that three protection orders had to be taken by a court and that they were not enforced during all that time. Moreover, during that time A.M. openly opposed the local police and social workers (see paragraph 15 above), refusing to acknowledge in writing having been warned not to harm the applicant and repeating his violent acts against her. Despite several legal provisions allowing the authorities to initiate criminal proceedings against A.M. and thus to subject him to a psychiatric examination with a view to deciding on the need to order his compulsory psychiatric treatment, it took the authorities almost a year to do so.

63. In the Court's opinion, the combination of the above factors clearly demonstrates that the authorities' actions were not a simple failure or delay in dealing with violence against the applicant, but amounted to repeatedly condoning such violence and reflected a discriminatory attitude towards her as a woman. The findings of the United Nations Special rapporteur on violence against women, its causes and consequences (see paragraph 30 above) only support the impression that the authorities do not fully appreciate the seriousness and extent of the problem of domestic violence and its discriminatory effect on women.

64. Accordingly, in the particular circumstances of the present case, the Court finds that there has been a violation of Article 14 in conjunction with Article 3 of the Convention.

65. The Court considers that the complaint under Article 14 taken in conjunction with Article 8 does not raise any separate issues. It will, therefore, not examine this complaint separately.

## III. ALLEGED VIOLATION OF ARTICLE 17 OF THE CONVENTION

66. The applicant complained under Article 17 of the Convention that the authorities' failure to curb A.M.'s violent behaviour on account of his

mental illness allowed him to breach her rights with impunity, effectively destroying her Convention rights. Article 17 reads as follows:

> "Nothing in [the] Convention may be interpreted as implying for any state, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."

67. Having examined the materials in the case file, the Court considers that this complaint is unsubstantiated. 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

68. 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

69. The applicant claimed 20,000 euros (EUR) in damages for the suffering caused to her by her systematic humiliation and beatings, and by the authorities' failure to promptly offer her protection by enforcing the protection orders.

70. The Government argued that the amount claimed was unjustified and also excessive in the light of the Court's previous rulings on Article 3 in similar cases. They invited the Court to reject her claims.

71. Having regard to the seriousness of the violation found above, the Court considers that an award for non-pecuniary damage is justified in this case. Making its assessment on an equitable basis, the Court awards the applicant EUR 15,000.

### B. Costs and expenses

72. The applicant claimed EUR 7,500 and 20,686.25 Moldovan lei (approximately EUR 1,300) for legal costs. She submitted an itemised list of hours which her lawyer had spent working on her case (61.75 hours at the rate of MDL 335 at the domestic level and 50 hours at an hourly rate of EUR 150 before the Court).

73. The Government considered excessive both the number of hours worked on the case and the rates charged by the lawyer. They noted that in *Boicenco v. Moldova* (no. 41088/05, § 176, 11 July 2006), the Court had accepted as reasonable a rate of EUR 75 per hour, in view of the complexity

of the case and the extensive input by the lawyers. The present case was not as complex.

74. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria and to the fact that the applicant has been given legal aid by the Council of Europe, the Court considers it reasonable to award the sum of EUR 2,150, covering costs under all heads.

### C. Default interest

75. 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* admissible the complaints under Articles 3 and 14 read in conjunction with Articles 3 and 8 of the Convention, and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention;

3. *Holds* that there has been a violation of Article 14 read in conjunction with Article 3 of the Convention;

4. *Holds* that there is no need to examine separately the complaint under Article 14 read in conjunction with Article 8 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,150 (two thousand one hundred and fifty 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;

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

Done in English, and notified in writing on 16 July 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President