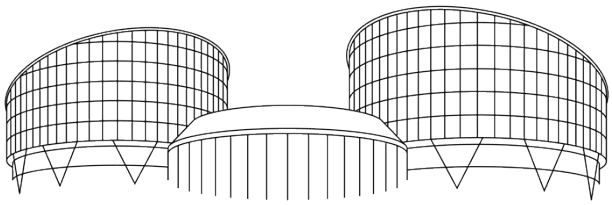

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF B. v. THE REPUBLIC OF MOLDOVA

(Application no. 61382/09)

JUDGMENT

STRASBOURG

16 July 2013

FINAL

16/10/2013

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of B. 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. 61382/09) 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 three Moldovan nationals, Ms O. B., Mr V. B. and Mr I. B. ("the applicants"), on 19 November 2009.

2. The applicants were represented by Mr A. Bivol, a lawyer practising in Chişinău. The Moldovan Government ("the Government") were represented by their Agent, Mr V. Grosu.

3. The applicants alleged, in particular, that Mrs O. B. ('the first applicant') had been subjected to violence from her ex-husband and that the other applicants had witnessed such violence and been affected by it, while the State authorities had done little to stop such violence and prevent it from happening again.

4. On 25 January 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).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1959, 1987 and 1990 respectively and live in Chişinău. The first applicant is the mother of the other two applicants.

A. The background of the case

6. In 1998 the applicants' family obtained from the first applicant's employer a three-room apartment in Chişinău for their use.

7. According to the first applicant, she was systematically beaten and insulted by her husband (V.B.). As a result, on 16 January 2007 the first applicant divorced V.B., but they continued living in the same apartment.

8. The beatings continued, as confirmed by seven medical reports between September 2007 and January 2008 attesting to light injuries to the first applicant's body caused by "blunt objects with a limited surface". All the reports were prepared at the request of the Centru district police in Chişinău following complaints by the first applicant. The first applicant's description of the origin of her injuries in all those medical reports was that V.B. had beaten her.

9. On 1 April, 7 August, 7 September and 28 November 2007, as well as on 10 and 29 April 2008 the courts adopted six administrative decisions concerning the above beatings. The first of them terminated the proceedings in view of the parties' friendly settlement of the proceedings. Another terminated the proceedings because of the expiry of the three-month limitation period for imposing an administrative sanction on V.B. In the four other cases the courts fined V.B. for beating and insulting her, although in one of them the court noted that the first applicant had provoked him. The fines imposed ranged from 140 to 300 Moldovan lei (MDL, the equivalent of, respectively, 8.65 to 18 euros (EUR) at the relevant time). V.B. paid all those fines. It appears from the parties' statements that on an unknown date the prosecution initiated criminal proceedings against V.B. for attempted rape, but on 14 May 2008 the applicant withdrew her complaint and the proceedings were discontinued.

10. According to a certificate issued by the Centru district police office, V.B. has been registered for supervision by that office as a "family trouble-maker" since 2007.

B. The court proceedings initiated by the first applicant

11. On an unknown date in 2008 the first applicant lodged a civil action against V.B. seeking his eviction from the apartment. She relied on the evidence of V.B.'s violent behaviour. V.B. lodged a counterclaim, asking for the rooms in the apartment to be divided between himself and the rest of his former family.

12. On 23 June 2008 the Centru District Court allowed the first applicant's action and rejected that of V.B. The court found that V.B. had been violent towards the first applicant and had insulted her in front of their children, as evidenced by the medical reports and court decisions.

13. On 30 October 2008 the Chişinău Court of Appeal upheld that judgment. In addition to the evidence relied on by the first-instance court, the Court of Appeal heard the two young men, who confirmed their mother's testimony and asked for their father's eviction.

14. On 20 May 2009 the Supreme Court of Justice quashed the lower courts' judgments and adopted a new one, rejecting the first applicant's claims and accepting that of V.B. The court found that the lower courts had erroneously concluded that V.B. had systematically abused the first applicant. It noted that one of the court proceedings in which V.B. had been accused of beating the first applicant had been discontinued after the parties' settlement of the case, while another had been discontinued because of the expiry of the time-limit for imposing a fine. In one of the remaining four decisions it had been mentioned that the applicant herself had provoked V.B.'s violence. The other three decisions were insufficient to prove systematic violent behaviour. Moreover, it had not been proved that V.B. suffered from alcohol or drug dependency. According to a certificate from the local apartment owners' association, V.B. had not been known for causing trouble. In addition, V.B. had proposed to the first applicant that they privatise the apartment and sell it so that they could buy separate apartments, but the first applicant had refused. The court also found that the parties could continue living in their apartment and that V.B. could take one of the rooms, leaving the two other rooms to the applicants. There would be no change to the common areas. The judgment was final.

C. Events after the judgment of the Supreme Court of Justice

15. Between 11 June 2009 and 5 February 2010 the first applicant spent time in hospital having treatment for tuberculosis. According to a medical certificate issued on 30 August 2011 by the applicants' family doctor, she is recommended, *inter alia*, to avoid stress.

16. Following the first applicant's complaint to the Court V.B. continued behaving violently towards her. On 19 August 2010 he was fined administratively in the amount of MDL 400 (EUR 25.5 at the time) for

insulting the first applicant. On the second occasion, after communication of the present application to the respondent Government, V.B. was fined MDL 200 (EUR 12.2) on 29 August 2011 for violence against the first applicant. According to a medical report made on 23 August 2011, the first applicant declared that V.B. had tried to rape her in the evening of 21 August 2011, but had not succeeded because of her resistance. The doctor found injuries on her body, caused by "blunt objects with a limited surface", as follows: oval haematomas measuring 1.5 x 1 cm and 4 x 3cm on various parts of her arms, the lower part of her left thigh and the middle part of her right thigh, as well as on various parts of both legs.

17. On 1 September 2011 the first applicant requested a court protection order for her and her sons. She described the latest events and the risk of further violence against her, as well as the authorities' inability or unwillingness to ensure her own and her sons' physical and psychological safety. In accordance with the provisions of Law no. 45 (see paragraph 21 below) she asked for V.B.'s temporary eviction from the common apartment, without deciding on the ownership of any assets; V.B.'s obligation not to come closer than 200 metres to her or her children and not to contact any of them, as well as not to visit the place of work or study of any of the applicants.

18. On 2 September 2011 the Centru District Court adopted a protection order, valid for three months, agreeing to some of the requests, namely to stay at least 200 m away from the first applicant, not to contact her and not to visit her place of work. The court refused to order V.B.'s temporary eviction from the apartment. It found that he had acted violently against the first applicant, but that "it had not been established that [V.B.] had applied physical and/or psychological violence to [the second and third applicants]". At the same time, V.B. had no alternative accommodation and in addition his right to use a part of the disputed apartment had been confirmed by a final judgment of the Supreme Court of Justice of 20 May 2009 (see paragraph 14 above). According to the Government, this order was brought to the attention of the local police and V.B.'s behaviour was subsequently monitored.

19. The first applicant appealed, stating that by preserving V.B.'s right to live in the apartment with her the authorities had effectively put her at risk of further ill-treatment. Also, without his removal from the apartment at least temporarily the court's protection order, in the part concerning V.B.'s staying at least 200 metres away from her, was deprived of any meaning and did not prevent any further ill-treatment or protect her against inhuman and degrading treatment caused by a private individual, despite a positive obligation to do so under the Convention. She added that according to a letter from the Social Assistance department of Chişinău Municipal Council, the apartment in which the first applicant and V.B. lived was

composed of three rooms, two of which were suitable for living in, but only one was connected to the heating system.

20. On 2 November 2011 the Chişinău Court of Appeal rejected the first applicant's appeal, for the same reasons as those relied on by the first-instance court. This decision was final.

II. RELEVANT NATIONAL AND INTERNATIONAL MATERIALS

A. Relevant domestic law

21. 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."

22. Article 102 of the Housing Code (in force since 3 July 1983) reads as follows:

Article 102. Eviction without allocating another dwelling.

"If the tenant, members of his or her family, or others living with them ... systematically break the ... rules of living together, making it impossible for the others to live together with them in the same apartment or house, and if the measures of prevention and public influence did not bring any result, at the request of ... interested persons those responsible shall be evicted, without allocating them another dwelling. ..."

23. On 9 July 2010 Parliament adopted amendments to the Civil Code and the Code of Criminal Procedure (Law no. 167, in force since 3 September 2010), instituting protection measures for victims of domestic violence similar to those listed in Law no. 45, cited above.

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

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."

25. 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

26. A summary of the relevant international materials 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).

27. 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.

28. 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.

29. 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.

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. ...

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 applicants complained that the first applicant had been subjected to ill-treatment by V.B. and that the State authorities had not done enough to protect her from such ill-treatment. 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 Government submitted that the applicants had failed to exhaust available domestic remedies. In particular, the first applicant had not asked for a protection order from a court if she really felt threatened by V.B.

33. The Court notes that at the time when the relevant complaints were made to the domestic courts in 2008 (see paragraph 11 et seq. above) the second and third applicants were adults and could lodge themselves court actions if they intended to do so. However, they did not lodge any court action or made any other complaints, nor did they submit to the Court any evidence that they had authorised their mother to lodge such court actions or complaints in their name.

Accordingly, the Court accepts the Government's objection concerning the second and third applicants' failure to exhaust domestic remedies. This part of the application must thus be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

34. The Court considers that the Government's objection concerning the first applicant's failure to exhaust domestic remedies is closely related to her complaint about the actions taken by State authorities in response to her complaints. It therefore joins this objection to the merits of the complaint under Article 3 of the Convention.

B. Merits

1. The parties' submissions

(a) The first applicant

35. The first applicant submitted that the authorities had not done enough to protect her against treatment contrary to Article 3 of the

Convention caused by V.B. They had failed to evict the aggressor and effectively found that his property right had precedence over her right not to be subjected to ill-treatment. Moreover, although the courts had found that V.B. had acted violently towards her, they had applied insignificant sanctions which had no effect on V.B.'s behaviour. The situation did not change even after communication of the present application to the respondent Government, since V.B. had attacked her on 21 August 2011.

36. Moldovan authorities kept referring to the judgment of 20 May 2009 (see paragraph 14 above) as the reason not to evict V.B. despite evidence of his violent behaviour towards her and in spite of her argument that without an eviction the protection order could not be effective. Even though she had withdrawn her complaint for fear that elements of her private life would be divulged to the public, the authorities should have continued the examination of the case against V.B. In her opinion, Moldova was one of the very few countries in the Council of Europe where the initiation and continuation of a criminal investigation of a crime as serious as rape depended entirely on the alleged victim's continued pressing of charges against the alleged assailant. Given the vulnerable state of women victims of domestic violence and rape, the discontinuation of the proceedings could only have taken place after a very thorough investigation, unlike in the present case.

37. Moreover, Moldovan law provides expressly for the possibility to evict a tenant who, by his own destructive behaviour, makes it impossible for the other tenants to live in the same apartment (see paragraph 22 above). However, the courts did not give any reason for not following this provision of the law in the present case.

38. There was no evidence that V.B. intended to sell his part of the apartment, even if it were to be privatised. Nor was there any legal basis for forcing him to do so after privatisation. In any event, she had expressly asked the courts not to decide on the ownership of the apartment but to offer her protection by taking temporary measures against V.B.

(b) The Government

39. The Government noted that on 14 May 2008 the first applicant had withdrawn her initial complaint of attempted rape by V.B. on 20 April 2008 (see paragraph 9 above). She had also failed to submit video evidence of that attempted rape, which she had previously claimed was available. Therefore, her own actions resulted in the discontinuation of the criminal proceedings against V.B.

40. Unlike in other cases, such as *Opuz*, cited above, in the present case there was no real and imminent risk of the first applicant's ill-treatment. Moreover, the courts have penalised V.B. for violent acts on several occasions, and the authorities had registered him as a "family trouble-maker". After the adoption of the protection order of 2 September

2011 the authorities took additional steps by informing the local police and V.B. himself and by making checks on his behaviour on a regular basis (see paragraph 18 above).

41. As to the civil court action which the first applicant initiated against V.B. and which ended with the judgment of 20 May 2009, this was not a real attempt to defend herself against any risk of violence but rather an attempt to obtain V.B.'s share of the common apartment, as found by the Supreme Court of Justice. That court also found that the evidence in the file was insufficient to establish a systematic breach of the rules of living together. Finally, it was clear that the first applicant had lodged her application with the Court some six months after the cessation of violent acts towards her. This proved once more the absence of a real risk of further domestic violence.

2. The Court's assessment

(a) General principles

42. 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).

43. 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).

44. 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).

45. 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).

46. 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 first applicant was subjected to treatment contrary to Article 3 of the Convention

47. In the present case, the Court notes first the undisputed fact that V.B. has beaten the first applicant on a number of occasions (see paragraphs 9 and 16 above). As is clear from the medical certificate of 23 August 2011 (see paragraph 16 above), the doctor found various bruises on the first applicant's body and noted her explanation that V.B. had tried to rape her.

48. 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 first 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

49. As recalled earlier (see paragraphs 42-46 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.

50. 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 members of one's own family (see paragraphs 24 and 25 above). Moreover, the law provided for protective measures for the victims of family violence (see paragraph 21 above), as well as, more generally, for the eviction of persons who systematically break the rules of living together (see paragraph 22 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.

51. 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).

52. It is clear from the file that the national authorities were well aware of V.B.'s violent behaviour since they sanctioned him administratively on a number of occasions (see paragraphs 9, 16 and 18 above). It is therefore necessary to determine whether the actions taken by them to protect the first applicant were sufficient to satisfy their positive obligations under Article 3.

53. The Court notes that the local authorities, namely the police and the courts, did not remain totally passive. Following each incident involving violence, the first applicant was taken for medical examination and on one occasion criminal proceedings were instituted against V.B. (terminated after the first applicant withdrew her complaint). On five occasions the courts fined V.B. (see paragraphs 9 and 16 above). However, none of these

measures were sufficient to stop V.B. from perpetrating further violence. In particular, the Court notes that the fines applied to V.B. were small (see paragraphs 9 and 16 above) and did not have any deterrent effect.

54. The Government blamed the applicant for withdrawing her criminal complaint about rape and failing to submit evidence in her possession, which prevented the authorities from continuing criminal proceedings against V.B. The Court recalls its finding that, amongst the Member States of the Council of Europe, in the context of withdrawal of complaints about domestic violence "there appears to be an acknowledgement of the duty on the part of the authorities to strike a balance between a victim's Article 2, Article 3 or Article 8 rights in deciding on a course of action" and that "... the more serious the offence or the greater the risk of further offences, the more likely that the prosecution should continue in the public interest, even if victims withdraw their complaints" (see *Opuz*, cited above, §§ 138 and 139). In the present case, the authorities did not make an analysis of whether the seriousness and number of attacks which the first applicant had suffered on the part of V.B. and the seriousness of the first allegation of rape had required to pursue the criminal investigation, despite her withdrawal of that complaint. Moreover, despite a clear second allegation of an attempted rape on 21 August 2011, coupled with medical evidence at least partly confirming that allegation (see paragraph 16 above), it appears that the authorities did not institute of their own motion any investigation of that matter, again limiting themselves to administrative proceedings.

55. The Court also notes that the first applicant tried to obtain protection from further violence against her by asking for V.B.'s eviction from their common apartment. However, in its decision of 20 May 2009 the Supreme Court of Justice rejected her claims, finding that the court action was aimed at affecting V.B.'s right to use the apartment rather than at protecting the first applicant from danger. It also found that, despite the six administrative cases against V.B. for violent or insulting behaviour against the first applicant, there was insufficient evidence that he had systematically breached the rules of living together (see paragraph 14 above).

56. Subsequently, when the applicant asked for the temporary eviction of V.B. from their common apartment after the attack of 21 August 2011 (see paragraph 17 above), the courts referred to the decision of 20 May 2009 as the ground for rejecting her request. The Court considers that the domestic courts should have taken into consideration the factual developments which had taken place after the decision of 20 May 2009 had been adopted, namely the two additional attacks by V.B. (see paragraph 16 above).

57. It was undisputed that V.B. had again assaulted the first applicant in their common apartment. This was the ground for the courts' adoption of a protection order on 1 September 2011 (see paragraph 18 above). However, while a number of measures were ordered which were aimed at preventing

any contact between V.B. and the first applicant, including a prohibition on his approaching her or her place of work or of contacting her by any means, V.B. was allowed to continue living in their common apartment. The Court agrees with the first applicant's argument, also made before the Chişinău Court of Appeal (see paragraph 19 above), that allowing V.B. to live in the same apartment as his victim rendered ineffective other measures in the protection order and exposed her to the risk of further ill-treatment.

58. It would also appear that the perspective of meeting her aggressor in her own apartment subjected the first applicant to constant fear of further ill-treatment, given the number of past attacks which she had suffered. This fear was sufficiently serious to cause the applicant suffering and anxiety amounting to inhuman treatment within the meaning of Article 3 of the Convention.

59. The Court is unable to accept the Government's argument that the applicant did not risk any further violence and was in fact pursuing the goal of obtaining V.B.'s part of the apartment, the more so that the eviction which she sought in 2011 was of a temporary nature and that she expressly asked the courts not to decide on the property issue (see paragraph 17 above). This should have allowed the domestic courts to properly balance the two competing rights protected under the Convention (the applicant's right not to be subjected to ill-treatment and V.B.'s right to use the apartment), by offering real protection to the applicant, while not depriving V.B. of his possessions. They could have also considered whether the applicant's argument based on Article 102 of the Housing Code (see paragraph 22 above) had any substance. However, they failed to do so.

60. In view of the above, the Court concludes that the authorities have not satisfied their positive obligation under Article 3 of the Convention to protect the first applicant from ill-treatment.

61. There has accordingly been a violation of Article 3 of the Convention. In light of all the elements established above, the Government's argument that the first applicant has not exhausted available domestic remedies is to be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

62. The applicants complained that the domestic courts' refusal to order V.B.'s temporary eviction from their apartment subjected them to suffering which was incompatible with their right to private life. They relied on Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 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."

A. Admissibility

63. The Government submitted that the applicants had failed to exhaust available domestic remedies.

64. The Court considers that the second and third applicants' complaint under this provision is to be dismissed pursuant to Article 35 §§ 1 and 4 of the Convention for failure to exhaust domestic remedies, for the same reasons as those noted in respect of their complaint under Article 3.

65. As for the first applicant's complaint, the Court finds that the request made on 1 September 2011 (see paragraph 17 above), constitutes proper exhaustion of domestic remedies.

66. The Court notes that the first applicant's complaint under Article 8 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. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

67. The first applicant submitted that the authorities had failed to comply with their positive obligation under Article 8 of the Convention to protect her from V.B.'s interference with her private life. She argued that as a result of the domestic courts' decisions she was essentially being forced to flee her home, even though – just as V.B. – she had nowhere else to go. She argued that the judgment of the Supreme Court of Justice of 20 May 2009 placed a disproportionate burden on her and resulted in an interference with her private life which was disproportionate to the aim of protecting V.B.'s right to use the apartment.

68. The Government submitted that the authorities had taken all reasonable steps in response to the first applicant's complaints, by subjecting V.B. to administrative sanctions and by monitoring him as a "family trouble-maker", with an additional level of monitoring instituted after the adoption of the protection order of 2 September 2011. However, they could not continue to prosecute V.B. after the first applicant's withdrawal of her criminal complaint against him accusing him of rape. Since the measures taken prevented against any further violence, the first applicant's insistence on V.B.'s eviction was aimed at taking away his part of the apartment and was not a real attempt to obtain protection.

2. The Court's assessment

(a) General principles

69. The Court reiterates that while the essential object of Article 8 of the Convention is to protect the individual against arbitrary action by public authorities, there may in addition be positive obligations inherent in effective "respect" for private and family life, and these obligations may involve the adoption of measures in the sphere of the relations of individuals between themselves. Children and other vulnerable individuals, in particular, are entitled to effective protection (see *X and Y v. the Netherlands*, 26 March 1985, §§ 23-24 and 27, Series A no. 91, and *August v. the United Kingdom* (dec.), no. 36505/02, 21 January 2003).

70. As regards respect for private life, the Court has previously held, in various contexts, that this concept includes a person's physical and psychological integrity. Under Article 8 the States have a duty to protect the physical and psychological integrity of an individual from the actions of others. To that end they 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*, cited above, §§ 22 and 23; *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*, no. 39272/98, §§ 150 and 152, ECHR 2003-XII; *A v. Croatia*, no. 55164/08, § 60, 14 October 2010; and *Hajduová v. Slovakia*, no. 2660/03, § 46, 30 November 2010). The Court notes in this respect that the particular vulnerability of the victims of domestic violence and the need for active State involvement in their protection has been emphasised in a number of international instruments (referred to in the cases *Bevacqua*, cited above, §§ 64-65, and *Sandra Janković v. Croatia*, no. 38478/05, §44-45, ECHR 2009-... (extracts)).

(b) Application of these principles in the present case

71. In the present case, the Court notes that the applicant's physical and moral integrity, which is covered by the concept of private life (see *X and Y v. the Netherlands*, 26 March 1985, § 23, Series A no. 91), has been affected by periodic abuse on the part of V.B. It refers, in this respect, to its findings made in paragraphs 54-58 above concerning the suffering and anxiety which the applicant felt in her own apartment, being faced with the real possibility of ill-treatment there.

72. Moreover, the authorities were well aware of these circumstances, as they had been submitted to the police and the domestic courts. In the Court's view, this should have provoked the authorities to act, as they were required in accordance with their positive obligations under Article 8 of the Convention.

73. The Court reiterates that its task is not to substitute itself for the competent domestic authorities in determining the most appropriate methods for protecting individuals from attacks on their personal integrity, but rather to review under the Convention the decisions that those authorities have taken in the exercise of their powers. The Court will therefore examine whether the national authorities, especially the courts, in handling the case, have been in breach of their positive obligation under Article 8 of the Convention (see *Sandra Janković*, cited above, § 46).

74. It notes in this respect that in reversing the lower courts' decisions on 20 May 2009 the Supreme Court of Justice did not find the six sets of administrative proceedings against V.B. as proving with sufficient certainty a pattern of his violent behaviour against the first applicant. In the 2011 proceedings, the courts simply referred to the judgment of 20 May 2009 to confirm V.B.'s right not to be evicted from the apartment, without any consideration of the further acts of violence committed by him in 2010 and 2011. They did not make any attempt to determine whether V.B.'s right to use the apartment had been exercised in a manner violating the first applicant's rights under Article 8 of the Convention and in breach of Article 102 of the Housing Code (see paragraph 22 above).

75. In such circumstances, the Court concludes that the domestic authorities did not properly comply with their positive obligations under Article 8 of the Convention. They failed to balance the rights involved and effectively forced the first applicant to continue risking being subjected to violence or to leave home.

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

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

76. The applicants also argued that the judgment of the Supreme Court of Justice of 20 May 2009 had been arbitrary and not based on the evidence in the case. The first applicant also complained of a violation of her property right, since due to the judgment of the Supreme Court of Justice she had lost a part of the apartment.

77. Having regard to all the material in its possession, the Court finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

78. 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. Non-pecuniary damage

79. The first applicant claimed EUR 32,000 in compensation for the violation of her rights under Articles 3 and 8 of the Convention. She referred to the Court's case-law in domestic violence cases and noted that the violation of her rights was on-going and that the authorities had shown tolerance towards her aggressor.

80. The Government considered that no award should be made in the absence of a violation of the applicant's rights. As an alternative, they submitted that the amounts claimed were excessive in view of the Court's case-law in similar cases.

81. The Court considers that the violations it has found must undoubtedly have caused the first applicant distress. Taking into account the circumstances of the case and having regard to its case-law, the Court awards her EUR 15,000.

B. Costs and expenses

82. The applicant claimed EUR 3,485 for costs and expenses and submitted an itemised list of hours which her lawyer had spent working on the case (thirty-eight hours at rates ranging between EUR 50 and EUR 100 per hour).

83. 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 so complex.

84. The Court reiterates that in order for costs and expenses to be included in an award under Article 41, it must be established that they were actually and necessarily incurred and are reasonable as to quantum (see, for example, *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 62, ECHR 1999-VIII).

85. Having regard to the itemised list submitted and the complexity of the case, the Court awards the applicant EUR 3,000 for costs and expenses.

C. Default interest rate

86. 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. *Joins* to the merits the Government's objection concerning the first applicant's failure to exhaust domestic remedies and *rejects* it;

2. *Declares* admissible the first applicant's complaints under Articles 3 and 8 of the Convention, and the remainder of the application inadmissible;

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

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

5. *Holds*
   (a) that the respondent State is to pay the first 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 3,000 (three thousand 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 applicants' 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