

## **La CEDU sull'uso eccessivo della forza da parte delle autorità di polizia (CEDU, sez. II, sent. 30 giugno 2020, ric. n. 23524/14)**

Con la decisione resa al caso di Mițu contro la Repubblica di Moldavia, la Corte EDU si è pronunciata sul ricorso presentato da una cittadina moldava, la Sig.ra Ana Mițu, per avere la polizia di Stato usato un trattamento inumano e degradante contro la sua persona (e quella del coniuge) nel corso di una perquisizione presso la loro abitazione.

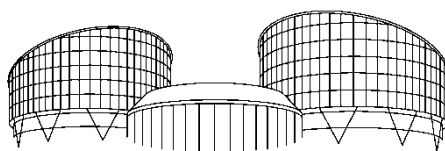
Stando alla ricostruzione dei fatti, durante l'operazione condotta nei confronti del Sig. Mițu, sospettato di detenere in casa beni rubati oltre che armi da fuoco, gli agenti avrebbero fatto ricorso a misure sproporzionate, nonostante non vi fosse stato alcun segno di resistenza da parte dei due coniugi. In particolare, la ricorrente aveva lamentato come la forza usata nei suoi confronti fosse stata eccessiva sì da averle provocato un profondo shock emotivo, e che le indagini svolte successivamente dalle autorità giudiziarie nazionali fossero lacunose ed insufficienti, basandosi esclusivamente sulle dichiarazioni dei poliziotti.

Di contro, il Governo moldavo respingeva ogni addebito, dichiarando che l'uso della forza era stato indispensabile data la condotta aggressiva e resistente dei coniugi. Parimenti per il Tribunale di Botanica gli agenti avevano agito legittimamente in base a quanto disposto dalla legge n. 218 del 19 ottobre 2012 concernente l'uso della forza fisica, dei mezzi speciali e delle armi da fuoco. Pertanto, il trattamento posto in essere, per quanto spiacevole, non era da ritenersi "tortura disumana".

Rispetto a questo pronunciamento, la Corte Edu, dopo aver preliminarmente ricordato che in caso di violazione dell'art. 3 CEDU essa ha facoltà di esercitare un controllo particolare e approfondito sull'iter decisionale dei tribunali nazionali, ha ribadito che nei confronti di una persona privata della sua libertà, o, più in generale, che si trova di fronte a forze dell'ordine, qualsiasi ricorso alla forza fisica non strettamente necessitato dalla sua condotta viola la dignità umana e, con essa, l'articolo 3. La valutazione dei giudici di Strasburgo è proseguita poi analizzando sotto il duplice profilo, sostanziale e procedurale, la presunta violazione della disposizione in parola. Quanto al primo profilo, essi hanno ritenuto che il trattamento posto in essere dagli agenti di polizia fosse eccessivo e non giustificabile di fronte alla condotta inoffensiva della Sig. ra Ana Mițu (come appunto è da considerarsi il gesto di alzare il capo, reazione evidentemente innocua). Inoltre, la Corte ha osservato come l'operazione di perquisizione fosse stata pianificata dalle stesse autorità di polizia e, quindi, come ne fosse presumibile anche lo svolgimento con conseguente prevedibilità delle misure da adottare in caso di resistenza da parte del perquisito.

Quanto al secondo profilo, la Corte di Strasburgo ha ritenuto carenti ed inefficaci le indagini svolte dai pubblici ministeri e dal giudice istruttore nazionali, i quali solo sommariamente avevano ritenuto il trattamento posto in essere dagli agenti conforme alle circostanze previste dalla legge, senza procedere però ad alcuna più specifica e puntuale analisi del caso di specie. Sicché alla luce di simili argomentazioni la Corte ha deciso che il trattamento subito dalla ricorrente integri violazione dell'art. 3 CEDU sia sotto il profilo sostanziale che procedurale, in quanto inumano e degradante, disponendo finanche il risarcimento del danno non patrimoniale.

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

SECOND SECTION

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

(Application no. 23524/14)

JUDGMENT  
STRASBOURG

30 June 2020

*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 Mîțu v. the Republic of Moldova,**

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

Jon Fridrik Kjølbro, *President*,

Marko Bošnjak,

Valeriu Grițco,

Ivana Jelić,

Arntfinn Bårdsen,

DarianPavli,

Peeter Roosma, *judges*,

and Hasan Bakırcı, *Deputy Section Registrar*,

Having regard to:

the application (no. 23524/14) 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 Ana Mîțu (“the applicant”), on 10 March 2014;

the decision to give notice of the application to the Moldovan Government (“the Government”);

the parties’ observations;

Having deliberated in private on 2 June 2020,

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

**INTRODUCTION**

The present case concerns the alleged excessive use of force against the applicant during the authorities’ forcing into her apartment, following her husband’s refusal to submit to a search as well as the deficiencies in the investigation into her complaint of ill-treatment.

**THE FACTS**

## I. THE CIRCUMSTANCES OF THE CASE

1. The applicant was born in 1983 and lives in Chişinău.
  2. The facts of the case, as submitted by the parties, may be summarised as follows.
  3. On 5 April 2013 a criminal investigator opened a criminal investigation into the theft of certain items from L.D. (electric switches, detergents and alcoholic beverages, the overall value of which was estimated at 27,605 Moldovan lei (the equivalent of approximately 1,700 euros (EUR))).
  4. According to an investigator from the Botanica police, he had received “operational information” that the offence, as well as other similar ones, had been committed by the applicant’s husband (S.M.) and that he could be hiding stolen items in his flat and car.
  5. On 28 May 2013 an investigating judge of the Botanica District Court authorised a search of the flat where the applicant and her husband lived, his car and a bar belonging to him.
- A. The parties’ versions of the events of 30 May 2013
6. According to the applicant, at around 8 a.m. on 30 May 2013, she and her husband were at home when unidentified persons surrounded the block of flats in which their flat was situated, knocked at the door and demanded that they open it. One of those persons was allegedly wearing a T-shirt printed with the words “Killing time”. The applicant and her husband thought that they were being attacked by criminals and called the police. The police arrived and, along with the unidentified persons, ordered the applicant to open the door. She refused and explained that she was frightened. She asked the unidentified persons to leave. The police told her that there was a search warrant for her flat, and showed her through the window a paper which she could not see to read. Shortly thereafter ten men arrived, visibly from the special forces as they were masked, armed and wearing bulletproof vests.
  7. At that moment, the applicant’s husband opened the door while she squatted on the floor in another room. The special forces unit (hereinafter “the unit”) stormed in, and three of them dealt with the applicant. She was ordered to kneel and they twisted her hands behind her back. She raised her head and saw her husband’s face covered in blood. One of the masked men kicked her in the back with a boot to secure her to the floor and handcuffed her. They yelled contradictory instructions at her, and she was shaking with fright. They dragged her to the kitchen, where she was given a glass of water. At that point they stopped using force on her. The police searched the flat, found allegedly stolen goods and arrested the applicant’s husband on charges of theft.
  8. According to the Government, at around 7 a.m. on 30 May 2013 the police went to the applicant’s flat and asked the occupants to open the door in order that they could carry out a search. The applicant initially did not answer, but then refused to open the door, allegedly for fear of the men outside. She did not change her mind after having been shown the search warrant at the window. She called the police and uniformed police officers arrived at the scene soon thereafter. They too urged the applicant to open the door, but she refused. The police decided to call the special forces, since they knew that the suspect (the applicant’s husband) possessed firearms. At around 1.45 p.m. the unit arrived and made a detailed assessment of the situation. They noted that the block of flats was surrounded by abundant vegetation and that the blinds on the windows of the target flat were closed. They were also informed by a police officer that the electricity in the flat had been cut off and that the suspect possessed firearms. Moreover, the applicant had threatened to block the entrance door with her body, exposing herself to the risk of injury if the door were broken down.

9. In view of the above situation, the unit commander decided to force the entrance door to the flat. As it would be dark inside, it would take a certain time for his men's eyesight to adjust. The commander therefore decided to secure everyone inside in order to prevent any gunfire. When they approached the flat, someone warned them that the door had been opened from the inside, but that there was no apparent intention to surrender. Therefore, the unit proceeded with the original plan, adjusted to the fact that there was no need to force the entrance door. When they saw the applicant, she was hysterical, was twisting her hands "in unnatural ways" and could hardly control her movements, such as holding a glass of water without spilling it.

B. The applicant's complaint and investigation thereof

10. On 30 May 2013 the applicant lodged a complaint with the police about the excessive force used by the police. A medical report drawn up on 31 May 2013 recorded two violet-blue oval bruises on her back measuring 5 by 3 cm and 6 by 1.5 cm; a violet-blue oval bruise measuring 2 by 0.8 cm on her left forearm; and a violet oval bruise measuring 1.2 by 0.8 cm on her left knee. The report concluded that the injuries had probably been caused in circumstances as described by the applicant and assessed them as being of minor severity. The applicant's T-shirt with a boot print on the back was retained as evidence.

11. On 5 June 2013 the applicant was acknowledged as a victim. However, on 20 June 2013 the Botanica prosecutor's office refused to initiate a criminal investigation, finding that the actions of the officers of the unit had been taken while stopping the applicant and her husband from deliberately opposing the lawful orders of the police in the form of a search and preventing them from destroying stolen items.

12. According to a statement given by Officer I.S., he was in possession of "operational information" according to which the applicant's husband had committed the crime under investigation. On 29 May 2013 an investigating judge had authorised a search of the applicant's flat. I.S. further stated that "at the same time, according to information obtained, [the applicant's husband] was aggressive and was in possession of two pistols and a hunting gun". The applicant refused to open the door, even when a uniformed police unit arrived following the applicant's phone call to the local police. However, given that they had information that the suspect possessed firearms, the officers decided not to force the door in order not to risk their lives and safety. Therefore, they called the special forces. When the latter arrived, the unit commander asked for brief information about the situation inside the flat. After being informed of the presence of persons with firearms inside, he made a plan for breaking into the flat. Before the special forces moved towards the flat, electricity therein was disconnected by the utilities provider.

13. According to the statement of Major O.R., the commander of the unit involved in the events, at around 1.45 p.m. on 30 May 2013 he was alerted to an incident involving the arrest of persons resisting the police and in possession of firearms. Within several minutes his team was ready and equipped. When they arrived at the scene, he noted that the flat was on the ground floor, surrounded by abundant vegetation, with the blinds down. He was informed by a police officer that the electricity had been cut off inside the flat, that the persons inside might be in possession of firearms and that the suspect's wife was actively resisting the police. Because there was a lot of sunlight outside and it was dark inside (the electricity had been disconnected in the flat, which was on the first floor and poorly lit by daylight), it was decided to immobilise completely whoever was inside

in order to prevent the use of arms. Once they had entered the block of flats, an officer informed them that the door of the flat had been opened but that there was no indication of the occupants' willingness to surrender. He decided to continue the operation as planned, adjusting to the fact that there was no need to force the door. O.R. was the second person who entered the flat and saw, at a hand's distance to his right, a man of athletic build. He immediately warned him to stay put and applied a martial arts move to bring him to the floor and immobilise him. After the man had been handcuffed, O.R. advanced into the flat and saw the applicant, who had been detained by his unit. The applicant was "hysterical (very frightened)", her hands were uncontrollably shaking, she could hardly hold a glass of water without spilling it, her mouth was trembling and she was unresponsive to questions addressed to her.

14. Officer V.S. from the same unit made a similar statement, adding that when he entered the flat he saw to his right an immobilised person and another person at the end of the corridor, "in whose hand an object was sparkling". He moved together with another officer and immobilised the applicant, who was hysterical, tried to free herself and "twisted her hands in an unnatural manner (creating a real danger of causing injury to herself)", so they had to pin her to the ground. She was then handcuffed in order to prevent any injury.

15. Seven other officers from the same unit stated that the applicant and her husband had acted aggressively, had tried to free themselves and to resist them. They had had to be handcuffed to prevent such actions.

16. In his decision of 20 June 2013 the prosecutor concluded that the police had lawfully used force to neutralise the resistance of the applicant and of her husband, and therefore could not be held responsible for the pecuniary, non-pecuniary and physical damage inflicted.

17. The applicant appealed. She argued that she had complied with all instructions given by the police after they had entered the flat. She complained that the force used in respect of her had been contrary to Article 3 of the Convention and that the investigation into her complaint had been unilateral and inefficient, relying exclusively on the statements of the police officers. She pointed out that there had been no danger of destroying objects allegedly stolen by her husband, since it was impossible in a flat to destroy without trace objects such as forty electric switches or thirty-two mains outlets. Moreover, no analysis had been made of her T-shirt, which had been taken as evidence and bore the marks of a boot, confirming that she had been kicked in the back.

18. On 16 August 2013 a superior prosecutor rejected the applicant's appeal. The applicant challenged the decisions of 20 June and 16 August 2013 before the investigating judge. She repeated her arguments, stressing that she and her husband had complied with all the contradictory orders given to them by the officers and had not offered any resistance.

19. On 8 October 2013 the investigating judge of the Botanica District Court finally dismissed the applicant's appeal. The judge reiterated the reasons provided by the prosecutor and concluded: "As has been established in the course of the criminal proceedings, the search at the [applicant's] home had been authorised ... In circumstances in which the residents of the flat to be searched had refused to open the door and according to operational investigation data, they had stolen goods and weapons, the police officers were entitled to use force and special means in accordance with section 7 (a) of the Law on the use of physical force, special means and firearms.

... the investigating authority has taken all lawful measures in order to fully and objectively investigate the case and establish the truth, without breaching [the applicant]'s rights".

## II. RELEVANT DOMESTIC LAW

20. Law no. 218 of 19 October 2012, which entered into force on 14 December 2012, on the use of physical force, special means and firearms, reads as follows:

"Section 7. Use of special means

In the exercise of their duties, the subjects of the present law shall use special means in the following cases:

a. in order to suppress attacks against persons, themselves and other persons involved in securing public order and safety and in fighting crime; ...

Section 8. Restrictions on the use of special means

(1) It shall be prohibited:

a. to use special means against ... women, ...unless they attack the legal subject or another person, either in a group or by using firearms, if they resist in a way which is dangerous to other people's life and health, [and] if such actions cannot be curtailed in other ways and by other means.

Section 20. Responsibility in the use of physical force, special means and firearms

(1) The subjects of the present law shall not be responsible for non-pecuniary, pecuniary and physical damage inflicted on an offender in connection with the use of physical force, special means and firearms if they have acted in strict compliance with the provisions of the present law.

(2) If the subjects of the present law overstep their powers in respect of using physical force, special means and firearms, they shall be liable to disciplinary, civil, administrative or criminal penalties."

## THE LAW

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

21. The applicant complained under Article 3 of the Convention that the police had used unjustified excessive force against her and that there had been no effective investigation into the use of excessive force. Article 3 reads as follows:

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

#### A. Admissibility

22. The Court notes that the application 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

23. The applicant submitted that the authorities had invented the existence of firearms in the flat, since neither she nor her husband were registered as firearm holders and no weapons had been found in their flat. The offence allegedly committed by her husband had not involved the use of weapons.

24. The applicant had suffered a profound emotional shock, as acknowledged also by the Government. From the moment her husband had opened the front door, she had not resisted in any manner any of the officers around her. There had therefore been no need to use any force against her, notably – after having been secured by the unit – by twisting her arms and pushing her to the ground with a boot when all she had done was to raise her head to see how her husband was being ill-treated. She argued that after meeting no resistance from her and her husband, the officers had acted violently towards them out of vengeance for not having opened the door earlier and having called the police and the media. Their actions had been aimed at humiliating and scaring her, and at breaking her moral resistance.

25. The investigation into her complaints had been ineffective, and had made no mention of the injuries caused to her. Moreover, there had been no expert analysis of her T-shirt with the boot print on the back. The investigating judge had faithfully reproduced the prosecutor's decision and rejected her complaint in a formalistic manner.

(b) The Government

26. The Government submitted that the applicant and her husband had resisted the lawful requests of the police to allow a search of their flat for more than six hours. Both parties agreed that at the moment when the unit had entered the flat, the applicant had been in shock, hysterical and had refused to obey the orders of the police. Therefore, clearly the marks on her body had been the result of her resistance to the officers apprehending her, notably to the unnatural twisting of her arms and pushing with her legs against the door in order not to be moved to another room. The applicant acknowledged that she had disobeyed the officers' orders by raising her head to see what was happening to her husband. At that moment an officer had ordered her not to move and had secured her to the floor with his foot. In the Government's opinion, that treatment, as unpleasant as it may have been, cannot be qualified as torture or inhuman.

27. It was clear that the police officers and those from the unit had evaluated all the risks. They were properly equipped with special means and arms, and carried out a quick operation, achieving their aims.

28. Moreover, a criminal investigation had been initiated in response to the applicant's complaint; most of the participants – including the applicant – had been heard, and a video made by a television crew and a medical report had been examined. Despite allegations that the applicant's husband had been ill-treated, he had made no complaints about that. Therefore, the investigation had been effective and it had determined that the use of force against the applicant had not been disproportionate.

2. *The Court's assessment*

(a) General principles

29. The Court pointed out in *El-Masri v. the former Yugoslav Republic of Macedonia* ([GC], no. 39630/09, § 155, ECHR 2012) that, although it recognised that it must be cautious in taking on the role of a first-instance tribunal of fact where this was not rendered unavoidable by the circumstances of a particular case (see *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000), it had to apply a “particularly thorough scrutiny” where allegations were made under Article 3 of the Convention (see, *mutatis mutandis*, *Ribitsch v. Austria*, 4 December 1995, § 32, Series A no. 336, and *Georgiy Bykov v. Russia*, no. 24271/03, § 51, 14 October 2010), even if certain domestic proceedings and investigations had already taken place (see *Cobzaru v. Romania*, no. 48254/99, § 65, 26 July 2007). In other words, in such a context the Court is prepared to conduct a thorough examination of the findings of the national courts. In examining them it may take account of the quality of the domestic proceedings and any possible flaws in the decision-making process (see *Bouyid v. Belgium* [GC], no. 23380/09, § 85, ECHR 2015, and also *Denisenko and Bogdanchikov v. Russia*, no. 3811/02, § 83, 12 February 2009).

30. The Court also reiterates that in respect of a person who is deprived of his liberty, or, more generally, is confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is an infringement of the right set forth in Article 3 (see, among other authorities, *Ribitsch*, cited above, § 38; *Mete and Others v. Turkey*, no. 294/08, § 106, 4 October 2011; *El-Masri*, cited above, § 207; *Bouyid*, cited above, § 88; and *Almaši v. Serbia*, no. 21388/15, § 80, 8 October 2019).

(b) Application of these principles to the present case

31. The Court will examine two aspects of the applicant's complaint: the substantive one that excessive force was applied against her, and the procedural one that the investigation was ineffective.

(i) *The use of force against the applicant*

32. The Court notes that the applicant refused to open the door to the police, even after having been shown a search warrant and when uniformed police arrived at the scene following her own call. At that time she was thus not cooperating with the authorities. It is true that, at the last moment, her husband opened the door, thus giving a first signal of obeying the orders of the police. However, given the absence of any clear sign that he and the applicant were surrendering, it cannot be said that the police were in a position to ascertain, before storming in, that the persons inside the flat were no longer resisting them.

33. The applicant's contention is, however, that when the officers entered the flat they met no resistance, which made the use of force not strictly required by their actions. The Court reiterates that, being detached from the events at issue, it cannot substitute its own assessment of the situation for that of an officer who was required to react in the heat of the moment to avert an honestly perceived danger to his life (see, *mutatis mutandis*, *Bubbins v. the United Kingdom*, no. 50196/99, § 139, ECHR 2005-II, and *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 179, ECHR 2011 (extracts)). The fact is that, given the information about the presence of firearms in the flat, the officers could not be entirely sure that the danger to their lives and safety had disappeared until such time as they had secured all the occupants of the flat. When they entered the apartment they could not have known



that the applicant was in a state of shock and barely able to control her movements. Therefore, the minor bruising caused to her during the few minutes it had taken to secure her can be said to have been made strictly necessary by her own actions and those of her husband.

34. At the same time, the Court cannot overlook the fact that, as also acknowledged by the Government, once both occupants of the flat were under the unit's control, the applicant was pushed to the ground with a boot against her back in order to stop her raising her head to see her husband. In the Court's view, at that point it can no longer be said that the officers were acting in the heat of the moment or that they could still have held a genuine belief that their lives or safety were endangered. As acknowledged by Officer O.R. and the Government, the applicant had been afraid to the point of hysteria and could barely control the movement of her arms (see paragraph 13 above). In such circumstances, it is highly doubtful that the officer who saw the applicant raise her head felt any kind of danger when forcing her down with his boot. Rather, this appears to have been a form of reprisal against the applicant for disobeying the order to remain still and thus witnessing the alleged ill-treatment of her husband (see, *mutatis mutandis*, *Dedovskiy and Others v. Russia*, no. 7178/03, §§ 83-85, ECHR 2008 (extracts), and *Vladimir Romanov v. Russia*, no. 41461/02, §§ 65-70, 24 July 2008).

35. The Court considers that this kind of treatment, even if prompted by the applicant's actions (raising her head), was not made strictly necessary by that conduct, which did not cause any danger. Since any such treatment in such conditions diminishes human dignity, it constitutes an interference with the right set forth in Article 3 in this respect (see paragraph 30 above), namely protection from degrading treatment within the meaning of that provision.

36. In the Court's opinion, while the execution of an operation potentially involving the use of force is subject to the need to react in the heat of the moment to unpredictable events, as referred to in paragraph 33 above, different considerations apply to the planning of such operations (see, *mutatis mutandis*, *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 202-14, Series A no. 324, and *Makaratzis v. Greece* [GC], no. 50385/99, § 70, ECHR 2004-XI). When the authorities have sufficient time to prepare an operation potentially involving the use of force, the Court must carefully scrutinise the manner in which it was planned (see, *mutatis mutandis*, *McCann and Others*, cited above, § 194), with a view to determining whether all reasonable measures were taken in order to minimise or even avoid the use of force.

37. In the present case, Officer I.S. knew the day before the search was planned that the suspect could be in possession of firearms (see paragraph 12 above). Despite the availability of that information, it appears that several officers went to his flat without any back-up plan in the event that the occupants refused to open the door. Moreover, when it was eventually decided to call the special forces, the latter were completely unaware of the operation until the unit commander was called at around 1.45 p.m. Thereafter, the unit scrambled to the scene and received summary information about the situation in the flat, and had to make its own assessment of the situation on the spot (see paragraph 13 above). This means that the unit had to improvise many of its actions, making the possibility of the use of excessive force more likely than if the entire operation had been thoroughly planned.

38. The Court considers that the applicant was not injured in the course of a random operation which might have given rise to unexpected developments to which the police might have been called

upon to react without prior preparation (see *Rehbock v. Slovenia*, no. 29462/95, § 72, ECHR 2000-XII, and contrast *Berliński v. Poland*, nos. 27715/95 and 30209/96, § 65, 20 June 2002). Rather, the authorities had had sufficient time to plan for the possibility of a refusal to open the door and submit to the search, knowing about the possible weapons inside. However, the events of the following day attest to a total lack of planning, the police and then the unit having had to react to the developments rather than anticipating them.

39. The Court concludes therefore that the manner in which the applicant was treated after being secured and the insufficient planning of the operation, which allowed too much scope for improvisation and thus for possible use of excessive force, amounted to a degrading treatment in breach of Article 3 of the Convention.

*(ii) The investigation into the applicant's allegations*

40. The Court reiterates that, having regard to the general duty on the State under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", the provisions of Article 3 require by implication that there should be some form of effective official investigation where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of State authorities (see, for instance, *Bouyid*, cited above, §§ 114-23).

41. The Court notes that on 20 June 2013 a prosecutor refused to open a criminal investigation into the applicant's allegations. Before doing so, the prosecutor examined the statements made by the applicant and her husband, police officers and officers of the unit, as well as the medical report of 31 May 2013 and a video made by a television crew. He concluded that the actions of the officers of the unit had been lawful; they had been aimed at carrying out a search of the applicant's flat, while preventing the destruction of allegedly stolen items (see paragraph 11 above). The superior prosecutor, in his decision of 16 August 2013, and the investigating judge in the decision of 8 October 2013, essentially repeated the same reasoning.

42. The Court notes that none of the authorities which examined the applicant's complaint paid any attention to her claim, backed by a T-shirt with a boot print on the back, that a unit member had pushed her down to the floor with his foot, when she was already under the control of at least two special force officers specially trained for immobilising suspects and when, as acknowledged by a number of people, she was barely able to coordinate her movements.

43. Moreover, the prosecution and the courts made no analysis of the manner in which the operation had been planned so as to determine whether all reasonable steps had been taken to minimise or prevent injuries to those inside the flat. There is no mention in the decisions taken of having verified the existence and source of the "operational information" according to which the suspect was in possession of firearms. It was that information that had made the use of the special forces necessary, with the relevant consequences on the use of force. Neither the prosecution nor the judge considered whether the unit had had the right to use special means against a woman, in accordance with the conditions set out in section 8 of Law no. 218 (see paragraph 20 above). Notably, they did not consider whether she had attacked the officers or had resisted in a way which was dangerous to other people's life and health. Hence, even the lawfulness of the use of force was not fully verified by the domestic authorities. Furthermore, the authorities did not identify which specific officers ill-treated the applicant, notably by pressing her to the floor with the boot.

44. Most importantly, although the prosecutors and the investigating judge verified that force had been used in circumstances provided for by law (namely, resistance to lawful orders of the police, and the need to neutralise any potential danger from firearms), there was no specific analysis of the degree of force used. In other words, having established that force had been lawfully used against the applicant and her husband, the authorities did not verify whether such force had been excessive in the circumstances (see paragraphs 11 and 19 above).

45. In view of these deficiencies of the investigation, the Court concludes that there has been a breach of the procedural limb of Article 3 in the present case.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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

47. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage. She referred to the mental suffering to which she had been exposed as a result of the intervention by fifteen armed men in her flat, ill-treating her and subjecting her to various restraint techniques, even though she had never been accused of an offence and had not resisted the police.

48. The Government considered that the sum claimed was not justified and was excessive.

49. The Court awards the applicant EUR 4,500 in respect of non-pecuniary damage.

### B. Costs and expenses

50. The applicant also claimed EUR 380 for the costs and expenses incurred before the Court.

51. The Government considered that the claim was unsubstantiated.

52. 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, the Court accepts the claim in full.

### C. Default interest

53. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

## FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention in both its substantive and procedural limbs;
3. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Moldovan lei at the rate applicable at the date of settlement:

(i) EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 380 (three hundred and eighty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

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

Done in English, and notified in writing on 30 June 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan  
Deputy RegistrarPresident

BakırcıJon Fridrik Kjølbro

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