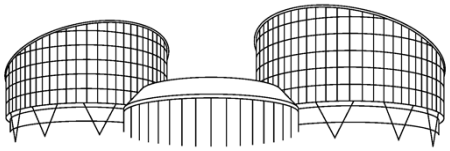

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF G.M. AND OTHERS v. THE REPUBLIC OF MOLDOVA

(Application no. 44394/15)

JUDGMENT

Art 3 (procedural) • Ineffective investigation into allegations of forced abortions and forced contraception after rape by doctor in neuropsychiatric residential asylum of three intellectually disabled applicants with legal capacity
Art 3 (substantive) • Positive obligations • Inhuman or degrading treatment • Respondent State's failure to establish and apply effectively a system providing protection to intellectually disabled women in psychiatric institutions against serious breaches of their integrity • Domestic legal framework lacking adequate safeguards of obtaining valid, free and proper consent from intellectually disabled persons for medical interventions • Inadequate criminal legislation and lack of mechanisms to prevent such abuse • Failure to protect applicants' physical integrity from non-consensual abortion and regarding first applicant also forced contraception • Absence of *prima facie* evidence showing remaining applicants subjected to forced contraception

STRASBOURG

22 November 2022

FINAL

22/02/2023

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

In the case of G.M. and Others v. the Republic of Moldova,

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

Jon Fridrik Kjølbro*, President*,
Carlo Ranzoni,
Branko Lubarda,
Pauliine Koskelo,
Jovan Ilievski,
Gilberto Felici,
Diana Sârcu*, judges*,
and Hasan Bakırcı, *Section Registrar,*

Having regard to:

the application (no. 44394/15) 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 G.M., Ms T.M. and Ms M.P. ("the applicants"), on 5 September 2015;

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

the decision not to disclose the applicants' names;

the observations submitted by the Government and the observations in reply submitted by the applicants;

the comments submitted by Validity, ORDO IURIS and the European Centre for Law and Justice, who were granted leave to intervene by the President of the Section;

Having deliberated in private on 18 October 2022,

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

INTRODUCTION

1. The case concerns the allegedly involuntary termination of pregnancies and birth-control measures imposed on persons with intellectual disabilities, and the alleged ineffective investigation into their complaints concerning the non-consensual medical interventions in question. The applicants complained of a violation of their rights under Article 8 of the Convention.

THE FACTS

2. The first applicant, G.M., and the second applicant, T.M. were born in 1984. The third applicant, M.P., was born in 1973. The applicants were represented by Ms V. Gaşiţoi, a lawyer practising in Chișinău.

3. The Government were represented by their Agent, Mr O. Rotari.

4. The facts of the case may be summarised as follows.

5. The applicants are affected by intellectual disabilities of varying levels of severity and have been institutionalised in the Bălți neuropsychiatric residential asylum ("the asylum") for different periods of time. During their stays in the asylum they were raped on various occasions by F.S., the head doctor of one of the units (see paragraph 35 below). The first and third applicants claim to have become pregnant after being raped by F.S. and all three applicants claim to have been subjected to forced abortions. All three applicants also claim that after the forced abortions, intrauterine contraceptive devices were implanted without their consent inside their uteruses to prevent further pregnancies.

A. The first applicant

6. The first applicant was resident in the Bălți asylum from 2002 to 2013. According to her, she became pregnant after being raped by F.S. In November 2003 the doctors at the asylum learned that she was between seventeen and eighteen weeks pregnant and sent her to the Bălți maternity hospital for the pregnancy to be terminated.

7. On 3 December 2003 the applicant was escorted by a nurse from the asylum to the maternity hospital. The same day a medical committee issued decision no. 253 on the termination of the pregnancy.

8. The Government submitted a copy of an excerpt from that decision, which read as follows:

> "Name: [G.M.]
>
> [Year of birth]: 1984
>
> Residence: Neuropsychiatric asylum
>
> Diagnosis: 17-18 weeks pregnant. Moderate mental impairment [*Retard mental mediu*]. Psychopathological syndrome. Single. Certificate no. 01/06-354 from the neuropsychiatric asylum. [Ultrasound] of 21/11/2003."

9. According to the first applicant, she refused to take the prescribed medication for several days. On 5 December 2003 she was forcefully subjected to abortion by amniotomy. The following day, the applicant gave birth to a baby boy and underwent curettage under anaesthetic. She was discharged on 8 December 2003.

10. On 1 April 2014 the first applicant underwent a gynaecological medical examination. The ultrasound investigation revealed a "hyperechoic formation in the cervical cavity", which the doctor believed to be an intrauterine contraceptive device. On an unspecified date, the doctor attempted to extract the device but was unable to locate it in the cervical cavity. The doctor concluded that the device must either have become embedded in the uterine wall or that it was not there at all. The doctor recommended additional ultrasound examinations.

11. The first applicant has not had any other children.

B. The second applicant

12. The second applicant has been resident in the Bălți asylum since 2001. On 22 November 2007 the doctors at the asylum learned that she was seven weeks pregnant. Five days later she was hospitalised in the Bălți maternity hospital and subjected to a medical abortion and curettage. She was discharged the following day.

13. The copies of the applicant's medical file, submitted by the Government, indicated that she had been hospitalised with vaginal bleeding and abdominal pain, and a "spontaneous miscarriage in progress [*în evoluție*]". The diagnosis read "7-8 weeks pregnant. Mental impairment [*Retard mental*]". The doctor prescribed laboratory tests and curettage of the uterus for medical reasons.

14. The Government submitted a copy of an informed consent form with a handwritten letter "M." in the fields for the patient's name and signature. The document does not contain any information concerning the identification data of the patient, the date or a description of the medical intervention concerned.

15. The Government also submitted a copy of an excerpt from decision no. 30 of 27 November 2007 issued by the committee on the termination of pregnancy, which read as follows:

> "Name: [T.M.]
>
> [Year of birth]: 1984
>
> Residence: [address of the neuropsychiatric asylum]
>
> Diagnosis: 6-7 weeks pregnant. Mental impairment [*Retard mental*]. Certificate no. 01/06-627 of 23/11/2007. [Ultrasound] of 27/11/2007."

16. According to the applicant, in 2014 during a medical check-up the doctor extracted an intrauterine contraceptive device, which the applicant believed must have been inserted after the abortion.

17. At the time she lodged her application in 2015, she had not had any other children. The Government submitted documents confirming that in July 2015 and November 2016 the applicant had had two spontaneous miscarriages and in 2019 and 2020 she had given birth to two children.

C. The third applicant

18. The third applicant was resident in the Bălți asylum from 1988 to 1998 and then from 2009 onwards.

19. According to the third applicant, in 1998 she became pregnant after being raped by F.S. and was subjected to a forced abortion. Because she complained about these events, she was transferred on 10 August 1998 to another psychiatric asylum. She has not had any other children and submitted that an intrauterine contraceptive device had been implanted in her uterus.

20. The Government submitted that there were no medical records of the applicant's alleged pregnancy nor of any medical intervention in the Bălți maternity hospital.

D. Investigation into the applicants' complaints

21. On 19 April 2014 the applicants lodged criminal complaints concerning the termination of their pregnancies and birth-control measures imposed on them without their consent. They relied directly on Article 8 of the Convention.

22. On 12 May 2014 the police replied in a letter that the termination of their pregnancies had been lawful and provided for by domestic law. The relevant parts of the letter read as follows:

> "It has been established that ... in December 2003 the *feldsher*, G., was instructed by F.S. to take [the first applicant] to the Bălți maternity hospital to have her examined by a gynaecologist and to terminate her pregnancy. At [the maternity hospital] ... it was confirmed that [the first applicant] was eighteen weeks pregnant and a decision to terminate the pregnancy was taken. [The first applicant] requested and agreed to the termination of the pregnancy for health reasons and she was hospitalised. She was at the hospital from 3 to 8 December 2003, after which she expelled the contents of the uterine cavity, which is confirmed by the medical records. Throughout her entire stay in the maternity hospital, she was under the surveillance of Doctor S.C. When discharged, [the first applicant] asked for her dead 'child' in order to bury him, which she did. [The first applicant] never became pregnant again after that. ...
>
> [The second applicant] was pregnant only once, and on 27 November 2007 the pregnancy was terminated around the sixth to seventh week ... which is confirmed by the medical records ... The decision to terminate the pregnancy was taken because her relatives are not in contact with her and taking into account her health condition ...
>
> [The third applicant] was never pregnant. ...
>
> In all cases the termination of the pregnancies of residents at the neuropsychiatric asylum took into consideration order no. 313 of 25 July 2006; the Regulation on medical services for the termination of pregnancy; order no. of 26 February 2007 modifying [the above-mentioned] Regulation; order no. 21 of 3 February 2012; order no. 18 of 27 January 2011; order no. 647 of 21 September 2010; the Regulation on voluntary termination of pregnancy; Regulation no. 313 of 25 July 2006 on the voluntary termination of pregnancy in the first months of pregnancy; and the residents' health condition, social status and consent.
>
> ... In respect of spontaneous termination of births [*sic*], no breaches of the law have been found, the curettage was lawful and provided for by existing legal provisions.
>
> ... The case file was referred to the prosecutor's office with the proposal to refuse the initiation of criminal proceedings."

The letter referred to two other residents at the asylum, S.T. and O.C., who had had their pregnancies terminated in similar circumstances, between the twenty-first and twenty-second weeks in 1998 and between the seventh and eighth weeks in 2008, respectively.

23. The applicants' representative appealed against the reply from the police, noting, *inter alia*, that it was incomplete, as no investigation into the facts in respect of the third applicant had been carried out and it only made reference to ministerial regulations without properly investigating the lack of consent.

24. On 16 June 2014 the prosecutor refused to initiate criminal proceedings, finding that the facts did not reveal any elements of the crime of illegal termination of a pregnancy or of illegal surgical sterilisation (see paragraph 37 below). In particular, the prosecutor concluded that the pregnancies of the first and second applicants had been terminated in accordance with the law and with their consent; that, in the absence of medical records to the contrary, the third applicant had never been pregnant; and that the applicants had not been sterilised. The prosecutor relied on the witness statements of employees at the neuropsychiatric asylum but did not cite their content.

25. The Government provided the Court with several witness statements made from May to July 2014 in the course of the inquiry. According to them, the manager of the Bălți maternity hospital submitted that the first applicant had provided written consent before the decision to terminate her pregnancy had been taken by the medical committee. Doctor N.F., who had witnessed the first applicant's abortion, submitted that the law at the time had not required the patient's consent as a precondition and that the procedure had been carried out after a discussion with the patient. O.G., the *feldsher*, submitted that the decision to terminate the second applicant's pregnancy had been taken by the gynaecologist at the Bălți asylum.

26. The applicants appealed against the prosecutor's decision, arguing that the first applicant had not consented to the termination of her pregnancy or to the birth-control measure, that the consent allegedly signed by the second applicant was flawed (it was not clear who had signed it, and there was no patient identification data or description of the medical procedure for which it had been given), and that no investigation had been carried out into the complaints concerning forced birth-control measures or in respect of the third applicant who had stayed at different facilities throughout the years.

27. On 14 July 2014 the hierarchically superior prosecutor upheld the applicants' appeal and remitted the case for additional investigation.

28. On 1 October 2014 the prosecutor once again refused to initiate criminal proceedings on the same grounds as before, reiterating the statements contained in the police letter of 12 May 2014 (see paragraph 22 above). The prosecutor noted that until 2006 the national law had not required the patient's consent for the termination of a pregnancy and, despite the reference to the first and second applicants' statements as to the absence of their consent both for the abortion and the birth control-measure, he concluded that all three applicants had agreed to the medical interventions.

29. The applicants appealed against the prosecutor's decision, referring extensively to the statements made by medical staff which allegedly confirmed that the applicants, who were intellectually disabled, were not allowed to give birth and that the placement of an intrauterine contraceptive device had not required the applicants' consent because "they were unable to take responsibility for their actions". The appeal provided details as to how the first applicant had learned about the intrauterine device during a medical check-up (see paragraph 10 above), and relied on Articles 3 and 8 of the Convention.

30. The hierarchically superior prosecutor rejected the applicants' appeal. The applicants appealed against his decision before the investigating judge, reiterating the same grounds for appeal as before.

31. On 5 December 2014 the Bălți investigating judge upheld the applicants' appeal and remitted the case for additional verification of the facts, in particular, to find out whether domestic law allowed for the termination of pregnancies as advanced as sixteen to eighteen weeks, and to hear the doctors who had carried out the abortions and to assess whether the applicants had legal capacity or not. On 28 January 2015 the Bălți Court of Appeal upheld this decision, rejecting the prosecutor's appeal on points of law.

32. On 10 July 2015 the prosecutor once again refused to initiate criminal proceedings. The decision reiterated the exact content of the previous decisions (see paragraphs 24 and 28 above) with the addition of statements made by an obstetrician, A.M., who had terminated the first applicant's pregnancy and a graphology expert report in respect of the signature on the consent form. A.M. submitted that she did not remember if the first applicant had agreed to or opposed the procedure and that in any event her consent had not been required at the time. The graphology expert was unable to ascertain if the signature belonged to the second applicant. This decision was upheld by the hierarchically superior prosecutor on 5 August 2015.

33. On 21 September 2015 the Bălți investigating judge upheld the applicants' appeal against the decisions of the prosecutors and remitted the case for additional investigation, noting as follows:

> "On the basis of the [applicants'] complaints and the materials in the case file, the court notes the absence of consent given by [all three applicants] in respect of the termination of their pregnancies ... and sterilisations, including the doubt as to the veracity of [the second applicant's] signature on the consent form ... The graphology expert was unable to conclude who the signature belonged to owing to the limited amount of handwriting, a single letter, ... and [the court] considers that it was necessary to appoint an expert committee [to investigate that issue]. ... The court also notes that the complaint refers to the termination of a pregnancy at sixteen to eighteen weeks, whereas Article 159 § 1 (c) of the Criminal Code prohibits the termination of a pregnancy after twelve weeks in the absence of medical indications established by the Ministry of Health. ... In the absence of such indications, according to Article 159 of the Criminal Code the [termination of a pregnancy] should be classified [as an illegal termination of a pregnancy]. ... The criminal investigating authority also did not appoint

a psychiatric expert to assess if at the time of the abortions the [applicants] had been aware of their actions or inactions and able to take a conscious decision, or whether they had been deprived of legal capacity by a court judgment or not; these are circumstances which should be clarified during an additional consideration of the case."

34. The prosecutor reopened the case and ordered an expert opinion concerning the lawfulness of the medical decisions to terminate the pregnancies of the first and second applicants. Examining the first applicant's medical file, on 4 November 2016 the experts concluded the following:

"According to medical record no. 3936 in respect of [the first applicant.], aged 19, on 5 December 2003 her pregnancy was terminated at between eighteen and nineteen weeks by amniotomy on the basis of excerpt no. 253 of the committee decision of 3 December 2003 to terminate the pregnancy, after which [the first applicant] expelled a dead foetus ...

According to annex no. 2 of order no. 152 of 3 August 1994 of the Ministry of Health, the termination of a pregnancy for medical reasons is possible in respect of a pregnancy not exceeding between twenty-four and twenty-five weeks. Under the heading 'Illnesses in respect of which pregnancy is contraindicated', Chapter V of the same annex listed a diagnosis of mental impairment of moderate, severe and profound severity, from which [the first applicant] suffered.

Based on this, it follows that the committee's decision no. 253 of 3 December 2003 to terminate the pregnancy was reasoned and based on the law in force at the time."

Examining the second applicant's medical file, on 30 November 2016 the experts concluded the following:

"According to medical record no. 1858 ... on 28 February 2007 [the second applicant's] pregnancy was terminated at between six and seven weeks on the basis of committee decision no. 30 of 27 November 2007 to terminate the pregnancy ...

[This decision] was reasoned and complied with order no. 2 of 4 January 1999 amending annex no. 2 of order no. 152 of 3 August 1994 of the Ministry of Health."

Both expert reports concluded that no violation of medical assistance rules or methods for the termination of pregnancies had been committed, that the two applicants had not been injured in the process and that no negative consequences had been recorded in their medical files.

35. On 3 January 2017 the prosecutor once again refused to institute criminal proceeding on the same grounds as before. The decision reiterated the exact content of the previous decisions (see paragraphs 24, 28 and 32 above), adding a reference to the medical expert reports (see paragraph 34 above). The prosecutor concluded that the actions taken in respect of the applicants did not contain the elements of the criminal offences of illegal termination of a pregnancy or of medical negligence (see paragraph 37 below). The applicants did not appeal against this decision.

36. On 19 November 2019 F.S. was finally convicted of raping a total of sixteen female residents of the Bălți asylum, including all three applicants. He was sentenced to fifteen years' imprisonment and ordered to pay 70,000 Moldovan lei ((MDL) – equivalent to 3,570 euros (EUR)) to the first

applicant, and MDL 50,000 (equivalent to EUR 2,550) each to the second and third applicants. The final judgment cited two witness statements mentioning the pregnancy of the third applicant and her referral to the Bălți maternity hospital for her pregnancy to be terminated. In addition, V.N., a staff member, cited the case of another resident at the asylum who had become pregnant after being raped by F.S. and who had been forced to terminate her pregnancy. He submitted that female residents "were allowed to live with men on the condition that they did not become pregnant".

RELEVANT DOMESTIC AND INTERNATIONAL LEGAL FRAMEWORK

I. RELEVANT DOMESTIC LAW

37. At the time of the events the relevant parts of the Criminal Code of the Republic of Moldova, enacted by Law no. 895 of 18 April 2002, read as follows:

Article 151
Intentional serious bodily injury

"1. Intentional serious bodily injury, which ... has resulted in the termination of a pregnancy ..., shall be punished by imprisonment of five to ten years.

2. The same action committed:

...

(b) deliberately in respect of a pregnant woman or by taking advantage of the victim's known or obvious vulnerability, owing to age, health condition, disability or other factor;

...

(i) owing to prejudice;

...

shall be punished by imprisonment of ten to twelve years."

Article 159
Illegal termination of a pregnancy

"1. Termination of a pregnancy, by any means, committed:

(a) outside authorised medical institutions or centres;

(b) by a person without special medical education;

(c) in respect of a pregnancy exceeding twelve weeks, in the absence of medical indications established by the Ministry of Health;

(d) if such a procedure is medically contraindicated; or

(e) in unsanitary conditions

shall be punished by a fine ... or by imprisonment of up to two years.

..."

Article 160
Illegal surgical sterilisation

"1. Illegal surgical sterilisation committed by a doctor shall be punished by a fine ... with (or without) the deprivation of the right to hold a certain position or exercise a certain activity for up to three years.

..."

Article 213
Negligent violation of rules and methods for providing medical assistance [medical negligence]

"The violation by a doctor or another member of medical staff of the rules or methods for the provision of medical assistance, if this has resulted in:

(a) a serious bodily injury; or

(b) the patient's death,

shall be punished by imprisonment of up to three years with (or without) the deprivation of the right to hold a certain position or exercise a certain activity for between two and five years."

38. Law no. 411 of 28 March 1995 on health protection, in force since 22 June 1995, reads as follows:

Article 23
Consent for medical services

"1. The patient's consent is necessary for any proposed medical service (for prophylactic, diagnostic, therapeutic or recovery purposes).

2. In the absence of manifest opposition, consent shall be presumed for any service which does not pose significant risks for the patient or which is not likely to violate his or her intimacy.

3. In the absence of a patient's legal capacity ... the patient's legal representative or, in his or her absence, the next of kin may give his or her consent.

4. The consent of a patient lacking legal capacity, either temporarily or permanently, shall be presumed in the event of imminent death or a serious threat to his or her health.

...

7. The consent or refusal of a patient or of his or her legal representative is to be confirmed in writing by the signature of the treating doctor or of the medical team on duty, or in exceptional cases by the signature of the head of the medico-sanitary institution."

Article 32
Voluntary termination of pregnancy

"1. Women shall be entitled to personally decide on their own maternity.

2. Termination of a pregnancy may be carried out before the end of the first twelve weeks of pregnancy only in public medical institutions.

3. Terminations of pregnancy after the first twelve weeks shall be regulated by the Ministry of Health."

39. Law no. 1402 of 16 December 1997 on psychiatric assistance (renamed in 2008 to "on mental health"), in force since 21 May 1998, reads as follows:

Article 5
The rights of persons suffering from mental disorders

"1. Persons suffering from mental disorders shall enjoy all citizen's rights and freedoms provided for in the Constitution and in other laws. Limitations on their rights and freedoms owing to their mental disorders shall be permitted only in the cases provided for in the present law and other normative acts. ...

3. It shall be prohibited to limit the rights and freedoms of persons suffering from mental disorders on the sole ground of their psychiatric diagnosis, of their surveillance through hospitalisation, or of their internment in a psychiatric ward or a neuropsychiatric institution. ..."

40. Law no. 185 of 24 May 2001 on the protection of reproductive health and family planning, in force since 2 August 2001, reads as follows:

Article 5
The right to decide freely on reproduction

"1. Everybody is entitled to decide freely on the number of children [he or she will have] and the timing of birth within or outside wedlock.

2. The State shall guarantee its non-interference in the exercise of its nationals' right to decide freely on reproduction."

41. Law no. 263 of 27 October 2005 on the rights and responsibilities of the patient, in force since 30 June 2006, reads as follows:

Article 13
Consent and the method to establish informed consent or voluntary refusal for a medical intervention

"1. A mandatory preliminary requirement for a medical intervention is the patient's consent, except in the cases provided under the present law.

2. The patient's consent for a medical intervention can be expressed orally or in writing and is established by recording it in the medical file, with the mandatory signature of the patient or of his or her legal representative (next of kin) and the treating doctor. For high-risk medical interventions (invasive or surgery), consent must be established in writing, by filling in a special form in the medical file, called informed consent. The list of medical interventions which require informed consent in writing and the template for the special form shall be developed by the Ministry of Health, Labour and Social Protection.

3. The informed-consent form must contain information, expressed in a form accessible to the patient, about the purpose, the expected outcome, and the methods of

the medical intervention; the potential risks associated with it; its possible medico-social, psychological, economic and other consequences; and the available alternative treatment or medical care.

...

8. In the event of an emergency life-saving medical intervention, when the patient is unable to express his or her will and the consent of the patient's legal representative (next of kin) cannot be obtained in time, the medical personnel, authorised under the law, shall be entitled to take this decision in the patient's interests."

42. According to the excerpts provided by the Government, unpublished order no. 152 of 3 August 1994 of the Ministry of Health of the Republic of Moldova approved the Instructions for the termination of a pregnancy for medical reasons (annex no. 2). According to these Instructions, intellectual disability of moderate, severe and profound severity (*Retard mental, întârziere mentală medie, severă, profundă*) constituted an illness for which pregnancy was contraindicated. Among the other illnesses listed were, for example, tuberculosis, all forms of cancer and insulin-dependent diabetes mellitus. The Instructions refer to a medical committee set up annually to establish the existence of medical indications for the termination of a pregnancy. In cases of patients with psychiatric disorders and venereal diseases, all documents were to be sent by the heads of the medical institutions directly to this medical committee. The same document ordered the heads of medical institutions to provide contraception (intrauterine devices, surgical sterilization) for free for women at "advanced" social and medical risk. The document does not contain any provisions concerning the patient's consent.

43. The National Standard for the termination of pregnancy in safe conditions, approved by order no. 766 of 18 August 2020 of the Ministry of Health of the Republic of Moldova, lists intellectual disability among the illnesses which constitute medical indications for voluntary abortions (annex no. 1), if such illnesses either endanger the patient's life or health or there is a risk of severe or incurable foetal malformations. The termination of a pregnancy in the first twelve weeks may be carried out with or without medical or social indications. The termination of a pregnancy after twelve weeks may be carried out only in the event of medical or social indications, as ascertained by a medical committee. The patient's or her legal representative's consent is mandatory in all cases and is referred to explicitly in the section concerning mental and behavioural disorders. An informed-consent template provides details concerning various procedures for the medical termination of pregnancy.

44. Order no. 300 of 24 July 2007 of the Ministry of Health approved the list of medical interventions which required the patient's written consent (annex no. 2); these include surgical interventions, parenteral interventions (including vaccinations), paraclinical medical services, physiotherapy and rehabilitation services by physical means.

II. INTERNATIONAL LAW

A. United Nations

45. General Recommendation No. 19: Violence against women, adopted in 1992 by the United Nations Committee on the Elimination of Discrimination against Women (CEDAW), stated that compulsory sterilisation and compulsory abortion are forms of gender-based violence, adversely affecting women's physical and mental health, and infringing on the right of women to decide on the number and spacing of their children. The CEDAW called on States to take measures to prevent coercion in regard to fertility and reproduction. The Republic of Moldova acceded to the UN Convention on the Elimination of All Forms of Discrimination against Women on 1 July 1994.

46. In its General Recommendation No. 35, adopted in 2017 (UN Doc. CEDAW/C/GC/35), which complements and updates General Recommendation No. 19, the CEDAW stated, *inter alia*, as follows:

> "18. Violations of women's sexual and reproductive health and rights, such as forced sterilizations, forced abortion, ..., are forms of gender-based violence that, depending on the circumstances, may amount to torture or cruel, inhuman or degrading treatment."

47. The relevant parts of the CEDAW's Concluding Observations on the combined fourth and fifth periodic reports of the Republic of Moldova, UN Doc. CEDAW/C/MDA/CO/4-5, 29 October 2013, read as follows:

> "32. The Committee urges the State party:
>
> ...
>
> (d) To amend and develop the regulatory framework, in addition to the guidance provided to medical practitioners, to ensure that sterilization is carried out only in conformity with international law, in particular with the free and informed consent of the women concerned;
>
> ...
>
> 37. The Committee notes the limited information and data available on other disadvantaged groups of women, such as older women and women with disabilities. The Committee is concerned about the marginalization of such women and their vulnerability to intersecting forms of discrimination. The Committee is particularly concerned about the situation of women with disabilities in residential institutions, where they are at high risk of abuse, including sexual assault. The Committee is further concerned that such acts often go unreported and that perpetrators are rarely brought to justice. Lastly, the Committee is concerned about the discriminatory guardianship system for women with intellectual and psychosocial disabilities that permits the removal of their legal capacity.
>
> 38. The Committee calls upon the State party:
>
> ...
>
> (d) To effectively investigate all cases of sexual assault against women with disabilities in residential institutions, facilitate access by such women to high-quality

reproductive health care and ensure that all medical interventions are based on informed consent;

...”

48. The Convention on the Rights of Persons with Disabilities (CRPD), adopted by the United Nations General Assembly on 13 December 2006 (UN Doc. A/RES/61/106) was signed and ratified by the Republic of Moldova on 30 March 2007 and 21 September 2010 respectively. The relevant provisions of that Convention read as follows:

Article 23 – Respect for home and the family

1. States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that:

...

b) The rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education are recognized, and the means necessary to enable them to exercise these rights are provided;

c) Persons with disabilities, including children, retain their fertility on an equal basis with others.”

Article 25 – Health

“States Parties recognise that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall:

...

d) Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, *inter alia*, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care;

...”

49. The relevant part of the Report of the UN Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, on her mission to the Republic of Moldova (8–14 September 2013), UN Doc. A/HRC/26/28/Add.2, 20 June 2014, reads as follows:

“49. The Special Rapporteur received reports that severe abuses, such as neglect, mental and physical abuse and sexual violence, continue to be committed against people with psychosocial and intellectual disabilities in residential institutions and psychiatric hospitals. She was concerned about the lack of sexual and reproductive health care in the institutions that she visited, as well as unsanitary and unhygienic conditions. In 2012, the Institutional Ombudsman of Psychiatric Hospitals reported that forced

abortions in psychiatric and social care institutions were a common measure to prevent births which were deemed unwanted by institutional staff, in the absence of accessible information about reproductive and sexual health and contraception. The women concerned were victims of multiple forms of discrimination, in breach of both the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities. The Special Rapporteur is aware of ongoing criminal proceedings pursuant to the allegations of 19 women concerning serial sexual assault, including rape, over a period of years, at the Bălți neuropsychiatric residential institution. She is concerned at the slow pace of the proceedings, which were initiated in March 2013."

50. The relevant parts of the United Nations interagency statement "Eliminating forced, coercive and otherwise involuntary sterilization" (WHO, 2014), read as follows:

"Women with intellectual disabilities are particularly vulnerable to coercive and involuntary sterilization. Women with intellectual disabilities are often treated as if they have no control, or should have no control, over their sexual and reproductive choices; they may be forcibly sterilized or forced to terminate wanted pregnancies, based on the paternalistic justification that it is 'for their own good'.

Rather than indicating individual choices, sterilization rates often reflect the policies of residential institutions or community services. Sterilization or long-term contraception are often provided to persons with disabilities on a precautionary basis ...

Some states, family members, guardians, courts, review boards or tribunals are permitted under national law to take decisions on behalf of persons with disabilities; this is referred to as substitute decision-making. Article 12 of the CRPD reaffirms that persons with disabilities have the right to recognition everywhere as persons before the law, and that states must ensure that persons with disabilities have access to the support they may require in exercising their legal capacity. This may include supported decision-making where supporters, advocates or other systems assist persons with disabilities to make their own decisions, free of conflict of interest or undue influence, and without transfer of decision- making rights to third parties (as opposed to traditional substitute decision-making or guardianship). The Committee on the Rights of Persons with Disabilities has consistently urged States Parties, including with respect to sterilization, to adopt laws and policies that replace substitute decision-making systems with a supported decision-making model that upholds the autonomy, wishes and preferences of the individuals concerned. ...

Persons with disabilities may require support in decision-making about contraception and sterilization, as mandated by the United Nations CRPD. Safeguards may be required to ensure that this support respects the rights and preferences of the person concerned, that there are no conflicts of interest or undue influence, and that the support is proportional and tailored to the circumstances. International human rights law requires these procedural measures in all cases involving sterilization of persons with disabilities who may either appear functionally incapable of, or be legally restricted from, either deciding freely or giving full, free and informed consent. ...

Respecting autonomy requires that any counselling, advice or information given by health-care providers or other support staff or family members should be non-directive, enabling individuals to make decisions that are best for themselves ... Clear guidelines that indicate the requirement of full, free and informed consent should be available and should be well understood by practitioners and the public, especially the affected populations.

A provider ... has the responsibility to convey accurate, clear information, in a language and format that is readily understandable to the person concerned, together with proper counselling, free from coercion, to achieve full, free and informed decision-making."

51. The relevant parts of General Comment No. 3 (2016) on women and girls with disabilities, adopted by the UN Committee on the Rights of Persons with Disabilities on 25 November 2016 (UN Doc. CRPD/C/GC/3), noted the following:

"32. Certain forms of violence, exploitation and abuse may be considered as cruel, inhuman or degrading treatment or punishment and as breaching a number of international human rights treaties. Among them are: forced, coerced and otherwise involuntary pregnancy or sterilization; any medical procedure or intervention performed without free and informed consent, including procedures and interventions related to contraception and abortion. ...

39. ...Women with disabilities may also face harmful eugenic stereotypes that assume that they will give birth to children with disabilities and thus lead women with disabilities being discouraged or prevented from realizing their motherhood. ...

44. In practice, the choices of women with disabilities, especially women with psychosocial or intellectual disabilities, are often ignored and their decisions are often substituted by those of third parties, including legal representatives, service providers, guardians and family members, in violation of their rights under article 12 of the Convention. All women with disabilities must be able to exercise their legal capacity by taking their own decisions, with support when desired, with regard to medical and/or therapeutic treatment, including by taking their own decisions on retaining their fertility and reproductive autonomy, ...

45. Forced contraception and sterilization can also result in sexual violence without the consequence of pregnancy, especially for women with psychosocial or intellectual disabilities, women in psychiatric or other institutions and women in custody. Therefore, it is particularly important to reaffirm that the legal capacity of women with disabilities should be recognized on an equal basis with that of others and that women with disabilities have the right to found a family and be provided with appropriate assistance to raise their children. ...

51. Women with disabilities, more often than men with disabilities and more often than women without disabilities, are denied the right to legal capacity. Their rights to maintain control over their reproductive health, including on the basis of free and informed consent, ... are often violated through patriarchal systems of substituted decision-making.

52. Women with disabilities face barriers to accessing justice, including with regard to exploitation, violence and abuse, owing to harmful stereotypes, discrimination and lack of procedural and reasonable accommodations, which can lead to their credibility being doubted and their accusations being dismissed. ... [D]ismissive attitudes by the police or other law enforcement agencies are examples of such attitudes. ...

54. Women with disabilities are more likely to be subjected to forced interventions than are women in general and men with disabilities. Such forced interventions are wrongfully justified by theories of incapacity and therapeutic necessity, are legitimized under national laws and may enjoy wide public support for being in the alleged best interest of the person concerned. ...

63. States parties should combat multiple discrimination by, *inter alia*: (a) Repealing discriminatory laws, policies and practices that prevent women with disabilities from enjoying all the rights enshrined in the Convention, outlawing gender- and disability-based discrimination and its intersectional forms, criminalizing sexual violence against girls and women with disabilities, prohibiting all forms of forced sterilization, forced abortion and non-consensual birth control, prohibiting all forms of forced gender- and/or disability-related medical treatment and taking all appropriate legislative steps to protect women with disabilities against discrimination;"

52. The relevant parts of the UN Committee on the Rights of Persons with Disabilities Concluding Observations on the initial report of the Republic of Moldova, UN Doc. CRPD/C/MDA/CO/1, 18 May 2017, read as follows:

"14. The Committee is particularly concerned that women with disabilities, especially women with psychosocial and/or intellectual disabilities, are still living in institutions where cases of neglect, violence, forced contraceptive measures, forced abortion, forced medication, restraint and sexual abuse, including by medical staff, remain common.

...

34. The Committee is concerned about discriminatory Ministry of Health regulations that specify 'mental disability' as a criterion for sterilization. It is also concerned about reports of forced contraceptive measures, including forced sterilization and abortion, particularly involving women with psychosocial and/or intellectual disabilities, especially those still in residential institutions.

35. The Committee urges the State party to repeal and amend any legislation and regulations permitting the forced or involuntary sterilization of persons with disabilities, and to prevent and stop the use of non-consensual contraceptive measures, including cases where consent is given by a third party."

53. The relevant parts of the report of the Special Rapporteur on the rights of persons with disabilities, Catalina Devandas Aguilar, "Sexual and reproductive health and rights of girls and young women with disabilities", UN Doc. A/72/133, 14 July 2017, read as follows:

"31. Other medical procedures or interventions that are often performed without the free and informed consent of girls and young women with disabilities include forced contraception and forced abortion. Contraception is often used to control menstruation at the request of health professionals or parents. Moreover, while the contraceptive needs of girls and young women with disabilities are the same as those without disabilities, they receive contraception more often by way of injection or through intrauterine devices rather than orally, as it is less burdensome for families and service providers. In addition, girls and young women with disabilities are frequently pressured to end their pregnancies owing to negative stereotypes about their parenting skills and eugenics-based concerns about giving birth to a child with disabilities. ...

40. States must immediately repeal all legislation and regulatory provisions that allow the administration of contraceptives to and the performance of abortion, sterilization or other surgical procedures on girls and young women with disabilities without their free and informed consent, and/or when decided by a third party. Furthermore, States should consider adopting protocols to regulate and request the free and informed consent of girls and young women with disabilities with regard to all

medical procedures. ... Laws permitting substituted decision-making and involuntary treatment of persons with disabilities must also be revoked."

B. Council of Europe

54. In its Recommendation Rec(2002)5 on the protection of women against violence, adopted on 30 April 2002, the Committee of Ministers called on member States to "prohibit enforced sterilisation or abortion [and] contraception imposed by coercion or force".

55. The relevant parts of Recommendation Rec(2004)10 of the Committee of Ministers to member States concerning the protection of the human rights and dignity of persons with mental disorders (adopted on 22 September 2004) read as follows:

Article 30 – Procreation

"The mere fact that a person has a mental disorder should not constitute a justification for permanent infringement of his or her capacity to procreate."

Article 31 – Termination of pregnancy

"The mere fact that a person has a mental disorder should not constitute a justification for termination of her pregnancy."

56. The Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (CETS 164) was opened for signature in Oviedo on 4 April 1997 and came into force in respect of the Republic of Moldova on 1 March 2003. The relevant parts read as follows:

Article 5 – General Rule

"An intervention in the health field may only be carried out after the person concerned has given free and informed consent to it.

This person shall beforehand be given appropriate information as to the purpose and nature of the intervention as well as on its consequences and risks.

The person concerned may freely withdraw consent at any time."

Article 6 – Protection of persons not able to consent

"1. Subject to Articles 17 and 20 below, an intervention may only be carried out on a person who does not have the capacity to consent, for his or her direct benefit.

2. Where, according to law, a minor does not have the capacity to consent to an intervention, the intervention may only be carried out with the authorisation of his or her representative or an authority or a person or body provided for by law.

The opinion of the minor shall be taken into consideration as an increasingly determining factor in proportion to his or her age and degree of maturity.

3. Where, according to law, an adult does not have the capacity to consent to an intervention because of a mental disability, a disease or for similar reasons, the

intervention may only be carried out with the authorisation of his or her representative or an authority or a person or body provided for by law.

The individual concerned shall as far as possible take part in the authorisation procedure.

4. The representative, the authority, the person or the body mentioned in paragraphs 2 and 3 above shall be given, under the same conditions, the information referred to in Article 5.

5. The authorisation referred to in paragraphs 2 and 3 above may be withdrawn at any time in the best interests of the person concerned."

Article 7 – Protection of persons who have a mental disorder

"Subject to protective conditions prescribed by law, including supervisory, control and appeal procedures, a person who has a mental disorder of a serious nature may be subjected, without his or her consent, to an intervention aimed at treating his or her mental disorder only where, without such treatment, serious harm is likely to result to his or her health."

The Explanatory Report to this Convention provides as follows:

"35. The patient's consent is considered to be free and informed if it is given on the basis of objective information from the responsible health care professional as to the nature and the potential consequences of the planned intervention or of its alternatives, in the absence of any pressure from anyone. ...

36. Moreover, this information must be sufficiently clear and suitably worded for the person who is to undergo the intervention. The patient must be put in a position, through the use of terms he or she can understand, to weigh up the necessity or usefulness of the aim and methods of the intervention against its risks and the discomfort or pain it will cause.

37. Consent may take various forms. It may be express or implied. Express consent may be either verbal or written. Article 5, which is general and covers very different situations, does not require any particular form. The latter will largely depend on the nature of the intervention. It is agreed that express consent would be inappropriate as regards many routine medical acts. The consent is therefore often implicit, as long as the person concerned is sufficiently informed. In some cases, however, for example invasive diagnostic acts or treatments, express consent may be required. ...

50. [Article 7] deals with the specific question of the treatment of patients suffering from mental disorders. ...

51. ...In order for the article to apply, an impairment of the person's mental faculties must be observed.

52. The second condition is that the intervention is necessary to treat specifically these mental disorders. For every other type of intervention, the practitioner must therefore seek the consent of the patient, insofar as this is possible, and the assent or refusal of the patient must be followed. The refusal to consent to an intervention may only be disregarded under those circumstances prescribed by law and where a failure to intervene would result in serious harm to the health of the individual (or to the health and safety of others). In other words, if persons capable of consent refuse an intervention not aimed at treating their mental disorder, their opposition must be respected in the same way as for other patients capable of consent."

57. The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS 210) was adopted in Istanbul on 11 May 2011 and came into force in respect of the Republic of Moldova on 1 May 2022. The Convention lists forced abortions and forced sterilisation as forms of gender-based violence and makes it an obligation for Parties to criminalise such intentional acts (Article 39), prohibiting the performance of an abortion or a sterilisation surgery on a woman without her prior and informed consent. The Convention also requires Parties to take the necessary measures to ensure that investigations in relation to all forms of violence covered by its scope are carried out without undue delay and having regard to the gendered understanding of violence (Article 49). The investigation and prosecution of forced abortions and forced sterilisations should not be wholly dependent on a complaint lodged by a victim and the proceedings should continue even if the victim withdraws her statement or complaint (Article 55).

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

A. Objection concerning abuse of the right of application in respect of the second applicant

58. The Government argued that the second applicant had abused her right of application since she had omitted to inform the Court that she had had two more pregnancies terminated in 2015 and 2016 and had given birth to two children in 2019 and 2020, which refuted her allegations of having been sterilised.

59. The applicant did not submit any comments on the matter.

60. The Court reiterates that an application may be rejected as an abuse of the right of application under Article 35 § 3 of the Convention, among other reasons, if it was knowingly based on untrue facts (see *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X; *Řehák v. the Czech Republic* (dec.), no. 67208/01, 18 May 2004; *Popov v. Moldova (no. 1)*, no. 74153/01, § 48, 18 January 2005; and *Kérétchachvili v. Georgia* (dec.), no. 5667/02, 2 May 2006). Incomplete and therefore misleading information may also amount to abuse of the right of application, especially if the information concerns the very core of the case and no sufficient explanation is given for the failure to disclose that information (see *Poznanski and Others v. Germany* (dec.), no. 25101/05, 3 July 2007).

61. The Court considers that the information about the second applicant having given birth to children in 2019 and 2020 was relevant to the present case and should have been brought to the attention of the Court, along with any subsequent developments that occurred after she had lodged her

application on 2 September 2015. However, it notes that when lodging her application, the second applicant submitted that she had been unable to have any children since the termination of her pregnancy in 2007 and argued that an intrauterine device implanted against her will had been at fault (see paragraph 16 above). It was thus clear from the beginning that the case concerned an allegation of an involuntary birth-control measure and not one of involuntary permanent sterilisation. In addition, the second applicant never formulated any complaints to the Court concerning the termination of her pregnancies in 2015 and 2016. In such circumstances, the Court finds that, although important, the missing information was not decisive for the question of whether the application was meritorious. Therefore, the Court decides, in the particular circumstances of the present case, not to declare the application in respect of the second applicant inadmissible on this ground.

62. This objection must therefore be dismissed.

B. Objection concerning the failure to exhaust domestic remedies

63. The Government also argued that the applicants had failed to exhaust the available domestic remedies. In particular, they had failed to appeal against the prosecutor's decision of 3 January 2017 to refuse to initiate criminal proceedings; they had also failed to institute civil proceedings against the Bălți asylum and/or maternity hospital in order to seek compensation in respect of the alleged non-pecuniary damage under Article 19 of the Civil Code.

64. The applicants disagreed, noting that once the prosecutor had on several occasions concluded that the domestic law allowed for the non-consensual termination of pregnancies of intellectually disabled persons, no effective remedy had existed at the domestic level which had needed to be exhausted.

65. The Court reiterates that the purpose of Article 35 § 1 of the Convention is to afford Contracting States the opportunity to prevent or put right the violations alleged against them before those allegations are submitted to the Court. Consequently, they are dispensed from answering for their acts before an international body before they have had the opportunity to put matters right through their own legal system (see, for example, *Remli v. France*, 23 April 1996, § 33, *Reports of Judgments and Decisions* 1996-II; and *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V, and *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 70, 25 March 2014). At the same time, an applicant does not need to exercise remedies which, although theoretically of a nature to constitute remedies, do not in reality offer any chance of redressing the alleged breach (see *Akdivar and Others v. Turkey*, 16 September 1996, § 68, *Reports* 1996-IV, and *Yöyler v. Turkey*, no. 26973/95, 13 January 1997).

66. In the instant case, it is true that the applicants did not appeal against the final refusal by the prosecutor to open a criminal investigation into their allegations, a decision which was given more than one year after the application had already been lodged. Nevertheless, the Court finds the question of the exhaustion of domestic remedies inextricably linked to the merits of the complaints. It therefore considers that both questions should be joined and examined together (see *Timus and Tarus v. the Republic of Moldova*, no. 70077/11, § 41, 15 October 2013, and *Scripnic v. the Republic of Moldova*, no. 63789/13, § 24, 13 April 2021).

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

67. Relying on Article 8 of the Convention, the applicants complained that they had been subjected to involuntary abortions and birth-control measures and that the authorities had failed to carry out an effective investigation into the circumstances of these events.

68. The Court reiterates that it is master of the characterisation to be given in law to the facts of the case and is not bound by the characterisation given by the applicants or the Government (see *Rõigas v. Estonia*, no. 49045/13, § 65, 12 September 2017). The Court considers that the applicants' complaints should be examined from the standpoint of Article 3 of the Convention (see, for instance, *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 110-27, 20 March 2018) for the reasons explained below (paragraphs 84 to 91).

69. The latter provision reads as follows:

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

A. Admissibility

70. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

71. The applicants contended that they had not given their free, full and informed consent to the termination of their pregnancies and to the subsequent birth-control measures imposed on them, such as the placement of intrauterine contraceptive devices, as required by international standards. They submitted that they had been subjected to those medical interventions simply because they were intellectually disabled, not because of any medical

reason, such as risks for the health of the child or of the mother. The medical committee which had decided on the termination of their pregnancies had relied solely on their intellectual disability.

72. The applicants also submitted that the investigation into their allegations of forced medical interventions had not been effective because the domestic law and practice authorised non-consensual abortions and contraception in respect of intellectually disabled persons. This had been reflected in the repeated refusal of the authorities to open a criminal investigation.

73. The preliminary inquiry had been unable to confirm that the second applicant had indeed signed the consent form. It had also failed to investigate the situation of the third applicant by failing to order at least a gynaecological examination and to investigate the hospital archives before 2000.

74. In view of their intellectual disability, their internment in the asylum which had severely limited their freedom of movement, and in the absence of identification documents, the applicants had been in a particularly vulnerable situation, which had exposed them to systemic sexual abuse and to practices such as forced abortions and birth-control measures. For this reason, they themselves had been unable to seek an independent medical examination and independently produce evidence in support of their allegations.

75. The refusal to initiate criminal proceedings on the ground that the termination of their pregnancies had been lawful and that birth-control measures had not been used on them had deprived the applicants of any chance of success in a civil action for damages.

76. Before the Court, the applicants submitted the statement of a psychologist, C.A., who had interacted with them in 2014 when the investigations into their rape had been initiated. According to the psychologist, the applicants had suffered physical pain and psychological distress as a result of the forced medical interventions and had expressed feelings of humiliation, anxiety, sadness, helplessness, grief, fear and inferiority. Their intellectual disability did not allow them to memorise details such as dates or time but did not alter their ability to describe what they had experienced. Moreover, their intellectual disability prevented them from "creating a story of events" unless they had personally experienced those events.

(b) The Government

77. The Government submitted that the pregnancies of the first and second applicants had been terminated in compliance with domestic and international standards. In particular, the domestic law at the time of the events had required verbal consent, not prior written consent; a medical committee had ascertained the existence of medical and social reasons to terminate their pregnancies; and the second applicant had actually expressed

in writing her consent to the curettage, which had been necessary after her spontaneous miscarriage.

78. The Government submitted that the allegations of the third applicant were manifestly ill-founded because her medical files contained no reference to a pregnancy or, moreover, to the termination of a pregnancy. Similarly, they contended that the allegations concerning forced contraception were manifestly ill-founded because the applicants' medical files contained no note of a device being implanted in their bodies.

79. They noted that the investigation carried out by the national authorities had been thorough and had allowed for the hearing of the applicants, of doctors from the asylum and the Bălți maternity hospital, the examination of the signature on the consent form by a handwriting expert and an expert opinion on the medical files of the first and second applicants. The investigation had concluded that there had been no evidence of a crime in the actions of the medical staff.

80. The Government argued that the applicants had failed to appeal against the final decision taken by the prosecutor on 3 January 2017 refusing to open a criminal investigation. The applicants had also failed to initiate a civil action against the asylum and/or the Bălți maternity hospital in order to seek compensation in respect of the alleged non-pecuniary damage, although such an avenue had been open to them. The Government also referred to various complaint mechanisms which would have allowed the applicants to seek assistance against any alleged abuse in the asylum.

(c) Third-party interveners

81. Validity emphasised the systemic dimension of forced abortions and sterilisations performed on women with intellectual or psychosocial disabilities, which required a systemic response. There was a broad consensus among the international human rights institutions condemning forced sterilisations and abortions as serious human rights violations, which had historically been used to deny reproductive rights to vulnerable populations. They were a form of structural gender-based and disability-based discrimination, linked to denials of legal capacity, a form of violence and of ill-treatment, condoned or at least tolerated by the State. The fact that many legal systems enabled such interventions subject to the authorisation of a legal guardian, specialised committees or a court did not legitimise these human rights abuses; it merely State-sanctioned them. For this reason, consideration had to be given to the broader context of the State's positive obligations to prevent, investigate and redress such human rights violations. These obligations inevitably required legislative reform, such as the criminalisation of sterilisations and abortions without informed consent, in accordance with Article 39 of the Istanbul Convention.

82. Ordo Iuris submitted that forced abortion had been denounced as a crime against humanity during the Nuremberg trials and that forced abortion

and sterilisation had been condemned by the United Nations human rights committees as forms of violence against women and girls which should be eliminated. To prevent such practices, States should explicitly prohibit them, hold perpetrators responsible and provide redress and compensation in cases of abuse.

83. The European Centre for Law and Justice submitted that forced abortion and sterilisation represented a serious violation of Articles 3 and 8 of the Convention and also of Articles 2 and 12 of the Convention.

2. The Court's assessment

(a) Scope of the present case

84. The Court observes that cases concerning medical interventions, including those carried out without the consent of the patient, will generally lend themselves to be examined under Article 8 of the Convention (see, for instance, *G.B. and R.B. v. the Republic of Moldova*, no. 16761/09, 18 December 2012, *Csoma v. Romania*, no. 8759/05, §§ 45 and 46, 15 January 2013 and *L.F. v. Ireland* (dec.), no. 62007/17, § 95, 10 November 2020). In a number of cases the Court has nonetheless accepted that under certain conditions, medical interventions can reach the threshold of severity to be regarded as treatment prohibited by Article 3 of the Convention.

85. In particular, the Court has held that a medical intervention to which a person was subjected against his or her will may be regarded as treatment prohibited by Article 3 of the Convention (see, for instance, *Akopyan v. Ukraine*, no. 12317/06, § 102, 5 June 2014, and the cases cited therein). Thus, the Court considered that forced gynaecological examinations (virginity tests) to which two applicants, then aged 16 and 19, had been subjected while in police custody constituted severe ill-treatment(see *Salmanoğlu and Polattaş v. Turkey*, no. 15828/03, § 96, 17 March 2009). The Court has also found that the sterilisation of a mentally competent adult without her full and informed consent, when there was no immediate threat to her life, amounted to treatment contrary to Article 3 of the Convention. The Court reached that conclusion taking into account the particular circumstances of the cases concerned, including the fact that the applicants belonged to a vulnerable population group (Roma); their young age and the fact that they were at an early stage of their reproductive life; the absence of imminent medical necessity; and the serious medical and psychological after-effects of the sterilisation procedure (see *V.C. v. Slovakia*, no. 18968/07, §§ 116-19, 8 November 2011; *N.B. v. Slovakia*, no. 29518/10, §§ 79-80, 12 June 2012; and *I.G. and Others v. Slovakia*, no. 15966/04, § 123-25, 13 November 2012).

86. In this connection, the Court reaffirms that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this minimum is relative; it depends on all the

circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim. Although the purpose of such treatment is a factor to be taken into account, in particular the question of whether it was intended to humiliate or debase the victim, the absence of any such purpose does not inevitably lead to a finding that there has been no violation of Article 3 (see, for instance, *V.C. v. Slovakia*, cited above, § 101). In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt". Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see, among other authorities, *Akopyan v. Ukraine*, cited above, § 103).

87. The Court has noted previously that the position of inferiority and powerlessness which is typical of patients confined in psychiatric hospitals calls for increased vigilance in reviewing whether the Convention has been complied with. While it is for the medical authorities to decide, on the basis of the recognised rules of medical science, on the therapeutic methods to be used, if necessary by force, to preserve the physical and mental health of patients who are entirely incapable of deciding for themselves and for whom they are therefore responsible, such patients nevertheless remain under the protection of Article 3, whose requirements permit of no derogation (see *Herczegfalvy v. Austria*, 24 September 1992, § 82, Series A no. 244).

88. The legal instruments and reports adopted by the United Nations and the Council of Europe indicate that forced abortion, sterilisation and birth control are forms of gender-based violence (see paragraphs 45-46, 51, 54 and 57 above).

89. In the present case, the issue of the alleged non-consensual medical interventions, namely abortions and birth control, concerns women with intellectual disabilities who were victims of rape by a doctor in the psychiatric asylum where they were resident but who retained full legal capacity. The invasive medical interventions to which they were allegedly subjected, if established, combined with the applicants' vulnerability – resulting from such elements as their gender, disability and institutionalisation – are sufficiently serious to come within the scope of application of Article 3 of the Convention.

90. Moreover, the Court observes that the allegations of non-consensual contraception cannot be seen separately from the allegations of non-consensual abortions, as they could raise issues about a systemic denial of agency to institutionalised women with intellectual disabilities concerning their reproductive rights (see paragraphs 51 and 53 above). Given the gravity of such allegations and the vulnerability of the applicants, the complaints concerning non-consensual contraception should also be examined under Article 3 of the Convention.

91. The Court will therefore examine whether in the present case the respondent State complied with its obligations under that provision.

(b) General principles

92. The obligation of the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to ill-treatment, including ill-treatment administered by private individuals (see *I.G. v. Moldova*, no. 53519/07, § 40, 15 May 2012). These measures should provide effective protection, in particular, of children and other vulnerable persons and include reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge (see *M.C. v. Bulgaria*, no. 39272/98, § 150, ECHR 2003-XII). The Court has also pointed out that in the case of mentally ill patients, consideration had to be given to their particular vulnerability (see *Keenan v. the United Kingdom*, no. 27229/95, § 111, ECHR 2001-III; *Rivière v. France*, no. 33834/03, § 63, 11 July 2006; and *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 131, ECHR 2014).

93. An examination of the Court's case-law shows that Article 3 has most commonly been applied in contexts in which the risk of being subjected to a proscribed form of treatment has emanated from intentionally inflicted acts of State agents or public authorities. It may be described in general terms as imposing a primarily negative obligation on States to refrain from inflicting serious harm on persons within their jurisdiction (see *Hristozov and Others v. Bulgaria*, nos. 47039/11 and 358/12, § 111, ECHR 2012 (extracts)).

94. However, the Court has also considered that States have positive obligations under Article 3 of the Convention, which comprise, first, an obligation to put in place a legislative and regulatory framework of protection; secondly, in certain well-defined circumstances, an obligation to take operational measures to protect specific individuals against a risk of treatment contrary to that provision; and, thirdly, an obligation to carry out an effective investigation into arguable claims of infliction of such treatment. Generally speaking, the first two aspects of these positive obligations are classified as "substantive", while the third aspect corresponds to the State's positive "procedural" obligation (see *X and Others v. Bulgaria* [GC], no. 22457/16, §§ 178-79, 2 February 2021; *mutatis mutandis*, *Kurt v. Austria* [GC], no. 62903/15, § 165, 15 June 2021; and, *mutatis mutandis*, *Tunikova and Others v. Russia*, nos. 55974/16 and 3 others, § 78, 14 December 2021).

(c) Assessment of the facts in the present case

95. The Court is called upon to examine whether the applicants, who were intellectually disabled but not deprived of legal capacity, were subjected to invasive medical interventions without giving their informed consent and, in connection with this, to assess the adequacy of the legal framework governing

the conduct of doctors in carrying out the said medical interventions, as well as the adequacy of the legal framework governing the conduct of the authorities in investigating the applicants' complaints. It is also called upon to examine whether in the criminal proceedings concerning the alleged non-consensual medical interventions, the competent authorities carried out a thorough, effective and prompt investigation, and whether they afforded sufficient protection to the applicants' right to respect for their personal integrity in the light of their vulnerability as women with intellectual disabilities exposed to sexual abuse in an institutional context.

96. It is undisputed that the pregnancies of the first and second applicants were terminated, but the parties are in dispute as to whether the terminations were carried out with their consent. The parties are also in dispute as regards the termination of the pregnancy in respect of the third applicant and the birth-control measures in respect of all three applicants. The Court will examine the factual aspects of each complaint.

97. Sensitive to the subsidiary nature of its task and recognising that it must be cautious in taking on the role of a first-instance tribunal of fact where this is not rendered unavoidable by the circumstances of a particular case, the Court considers it appropriate to first examine whether the applicants' complaints of ill-treatment were adequately investigated by the authorities (see, among recent authorities, *Shmorgunov and Others v. Ukraine*, nos. 15367/14 and 13 others, § 326, 21 January 2021).

(i) The obligation to carry out an effective investigation

98. The Court refers to the general principles summarised in *X and Others v. Bulgaria* (cited above, §§ 184-190).

99. The domestic investigation concluded on several occasions that before 2006 the domestic law did not require consent for the said medical interventions but that nevertheless the first and second applicants had consented to the abortions. The medical committee's decisions to terminate the pregnancies were legal in any event owing to the presence of medical reasons such as the applicants' intellectual disability. For this reason, the termination of the pregnancies had been legal in respect of the first and second applicants. The investigation concluded that in the absence of relevant medical files, the allegations concerning the termination of the third applicant's pregnancy and the birth-control measures in respect of all three applicants were unsubstantiated and no further investigations were carried out.

100. The domestic investigation focused on whether the facts revealed the elements of the criminal offences of illegal termination of a pregnancy, illegal sterilisation or medical negligence, and concluded that they did not in the applicants' cases. As a result, the prosecutor refused on four occasions to open a criminal investigation into the applicants' complaints.

101. The Government argued that a thorough investigation had taken place in the course of the pre-investigation inquiry and that it had concluded that the pregnancies of the first and second applicants had been terminated lawfully and that the rest of the complaints were unsubstantiated (see paragraph 79 above).

102. The Court observes that the national authorities promptly initiated a preliminary inquiry into the applicants' allegations, interviewing the applicants, certain medical staff at the Bălți asylum and the Bălți maternity hospital. The preliminary inquiry partially confirmed the applicants' statements. For this reason, the Court considers that the Moldovan authorities were faced with "arguable" claims, within the meaning of the Court's case-law, of non-consensual medical interventions on persons with intellectual disability, and that they had a duty under Article 3 of the Convention to take the necessary measures without delay to assess the credibility of the claims, clarify the circumstances of the case and identify those responsible (see *X and Others v. Bulgaria*, cited above, § 201). However, it does not appear that any criminal investigation was actually initiated to allow the collection of evidence (see *Gasanov v. the Republic of Moldova*, no. 39441/09, § 53, 18 December 2012, and *Ciorap v. the Republic of Moldova (no. 5)*, no. 7232/07, § 62, 15 March 2016).

103. The inquiry relied essentially on the content of the first and second applicants' medical files and did not attempt to verify their accuracy. It did not attempt to establish whether and in what circumstances the first and second applicants had consented, as alleged, to the said medical interventions, even though the witness statements were contradictory (see paragraphs 25 and 32 above), the signature on the form had not been confirmed as belonging to the second applicant and there was no trace of any consent obtained in respect of the first applicant. Moreover, despite the specific instructions of the investigating judge (see paragraphs 31 and 33 above), the inquiry never assessed to what extent the applicants had been able to express a valid consent, in view of their intellectual disability.

104. Neither did the inquiry attempt to investigate beyond the medical files whether the alleged medical interventions had left traces on the applicants' bodies. There was no attempt to interview other residents of the asylum about the third applicant's alleged abortion or other asylum residents who became pregnant, despite the presence of evidentiary elements supporting her allegations (see paragraphs 22 and 36 above). No further medical investigations were carried out to establish whether there was a contraceptive device embedded in the first applicant's uterine wall, despite the evidence submitted by her (see paragraph 10 above), and, if so, whether it had resulted in her permanent inability to procreate. There was no attempt to investigate the second and third applicants' allegations concerning contraceptive devices being implanted in them, such as medical examinations

or an inquiry into the second applicant's allegations that such a device had been extracted from her in 2014.

105. The inquiry focused on whether the facts revealed the elements of various criminal offences, none of which appear to concern non-consensual medical interventions.

106. The foregoing considerations are sufficient to enable the Court to conclude that the authorities failed to carry out an effective investigation into the applicants' allegations of ill-treatment despite it being reopened on four occasions following the applicants' appeals. The inquiry did not factor in the applicants' vulnerability, or the gender and disability aspects of their complaints concerning institutionalised medical violence against them.

107. In the Court's opinion, all the considerations above suggest that the national authorities did not carry out investigations available to them, did not take all reasonable measures to shed light on the facts of the present case and did not undertake a full and careful analysis of the evidence before them. The omissions observed appear sufficiently serious for it to be considered that the investigation carried out was not effective for the purposes of Article 3 of the Convention.

108. Having concluded above that the investigation into the applicants' allegations was ineffective, the Court considers that they were no longer required to appeal against the prosecutor's refusal to open an investigation in order to exhaust domestic remedies (see *mutatis mutandis, Vovk and Bogdanov v. Russia,* no. 15613/10, § 75, 11 February 2020). As to the civil remedies suggested by the Government, the Court reiterates its constant case-law stating that compensation awarded in civil proceedings could not be considered sufficient for the fulfilment of the State's positive obligations under Article 3 of the Convention, as such a civil remedy is aimed at awarding damages rather than identifying and punishing those responsible (see, for instance, *Kosteckas v. Lithuania*, no. 960/13, § 46, 13 June 2017, with the authorities cited therein).

109. Accordingly, the Court dismisses the Government's objection on non-exhaustion of domestic remedies (see paragraphs 63, 66 and 80 above) and finds that there has been a violation of the procedural limb of Article 3 in respect of all the applicants as concerns their allegations of forced abortions and forced contraception.

110. From the results of the investigation, the Court distinguishes two elements to be analysed further, which correspond to the State's substantive obligations under Article 3 of the Convention. The first element relates to the structural issue concerning the legal framework and its implementation in respect of protecting intellectually disabled women from forced medical interventions, such as abortion and contraception. The second element relates to the personal situation of each applicant and, in particular, what treatment they were subjected to and its consequences and how the relevant laws were applied in practice.

(ii) The obligation to put in place an appropriate legislative and regulatory framework

111. The Court has determined in the past that States have a positive obligation to ensure effective legal safeguards to protect women from non-consensual sterilisation, with a particular emphasis on the protection of the reproductive health of women of Roma origin, who particularly required protection against sterilisation because of a history of non-consensual sterilisation against this vulnerable ethnic minority (see *V.C. v. Slovakia*, cited above, §§ 154-55, and *I.G. and Others v. Slovakia*, cited above, §§ 143-46). This obligation assumes particular importance in the context of a public service with a duty to protect the health and well-being of people, especially where they are particularly vulnerable and are under the exclusive control of the authorities. It may, in some circumstances, require the adoption of special measures and safeguards (see, *mutatis mutandis*, *X and Others v. Bulgaria*, cited above, § 180).

112. In the light of these principles, the Court finds that States have a heightened duty of protection towards persons with intellectual disabilities who, like the applicants in the present case, have been placed in the care of a public institution which is responsible for ensuring their safety and well-being, have no family, have not been deprived of their legal capacity and have no legal representative, and who are therefore in a particularly vulnerable situation (see, *mutatis mutandis*, *Rooman v. Belgium* [GC], no. 18052/11, § 246, 31 January 2019). This is all the more so in respect of the protection of their reproductive rights. The Court will now examine whether sufficient legal safeguards existed to effectively protect women with intellectual disabilities from forced abortions and birth-control measures.

113. At the outset the Court notes that the parties are in dispute as to whether the domestic law required the applicants' consent for the medical interventions in question and, if so, whether it was presumed and, if not, whether they had given their free and informed consent.

114. In particular, the domestic authorities appear to have concluded that before 2006 the domestic law did not require consent for the said medical interventions, while the Government in their submissions argued that the domestic law required verbal consent, not prior written consent.

115. The applicants called into question the existence of legislation in the respondent State aimed at protecting intellectually disabled persons like themselves from forced medical interventions and punishing those responsible. In particular, they argued that the domestic law and practice did not require their consent for such interventions and, consequently, there was no criminal legislation in place to punish perpetrators of forced abortions and birth-control measures and that, precisely because of this, there had been a violation of their rights.

116. The Court notes that the text of the Moldovan law established a system of "presumed consent" for all medical interventions which did not

"pose significant risks for the patient or which [were] not likely to violate his or her intimacy" and that, in any case, the presumed consent was to be confirmed in writing by the doctor in the patient's medical file (see paragraph 38 above). Since at least July 2007, the law required written consent for an extensive list of medical interventions (see paragraphs 41 and 44 above). There are explicit legal provisions concerning one's freedom to decide on maternity and reproduction (see paragraphs 38 and 40 above) and the prohibition of restrictions on one's rights purely on grounds of mental health (see paragraph 39 above). The 1994 ministerial order authorised the termination of pregnancies in cases of medical contraindications, such as intellectual disability of any degree of severity. This order did not contain any reference to the patient's consent, unlike its updated 2020 version, but it seems to imply that in respect of persons with mental-health disorders, related documents would be communicated between medical institutions (psychiatric asylum and medical committee for the termination of pregnancies) directly, without the involvement of the patient (see paragraphs 42 and 43 above).

117. Neither the domestic authorities nor the Government argued that the interventions in issue were carried out to save the applicants' lives and were therefore exceptionally allowed to be carried out in the absence of their prior consent. The Court therefore agrees with the Government that the applicants' consent was required under domestic law for the said interventions and that it had to be either confirmed in writing by the doctor in the medical file or expressed in writing by the patient. The Court finds striking the conclusion to the contrary of the domestic authorities and the medical professionals (see paragraphs 25, 28, 32 and 34 above).

118. The Court observes that even if the Convention itself does not prescribe a particular form of consent, once the domestic law provides for certain specific requirements, these need to be complied with (see *G.H. v. Hungary* (dec.), no. 54041/14, 9 June 2015). However, the Court reiterates that the principle of legality requires States not only to respect and apply, in a foreseeable and consistent manner, the laws they have enacted, but also, as a necessary part, to ensure the legal and practical conditions for their implementation (see, *mutatis mutandis*, *Broniowski v. Poland* [GC], no. 31443/96, §§ 147 and 184, ECHR 2004-V, and *Petrova v. Latvia*, no. 4605/05, § 95, 24 June 2014).

119. At the same time, the Court notes the international standards in respect of informed consent in general and also in respect of people with mental disorders. In particular, the Oviedo Convention requires consent for all medical interventions, with a few exceptions which do not encompass the applicants' situation, and provides for the accessibility of the information provided to patients and the validity of the opposition to a medical intervention not meant to treat a mental disorder, when the patient is able to express consent (see paragraph 56 above). Furthermore, the World Health Organization advocates for supported decision-making systems which are

intended to ensure that persons with disabilities have access to the support they may require in exercising their legal capacity and in making their own decisions. Such support should be free of conflict of interest or undue influence, include the provision of readily understandable information and should not seek to transfer the decision-making rights to third parties (see paragraph 50 above).

120. The Court has previously held that the legal framework devised for the purposes of the determination of the conditions for lawful abortion should be "shaped in a coherent manner which allows the different legitimate interests involved to be taken into account adequately and in accordance with the obligations deriving from the Convention" (see *A, B and C v. Ireland* [GC], no. 25579/05, § 249, ECHR 2010). The Court has to determine whether, having regard to the particular circumstances of the case, and notably the nature of the decisions to be taken, an individual has been involved in the decision-making process, seen as a whole, to a degree sufficient to provide him or her with the requisite protection of his or her interests (see, *mutatis mutandis*, *W. v. the United Kingdom*, 8 July 1987, §§ 62 and 64, Series A no. 121). The Court has already held that in the context of access to abortion the relevant procedure should guarantee to a pregnant woman at least the possibility to be heard in person and to have her views considered. The competent body or person should also issue written grounds for its decision (see *Tysiąc v. Poland*, no. 5410/03, § 117, ECHR 2007-I, and *P. and S. v. Poland*, no. 57375/08, § 99, 30 October 2012). These principles are all the more relevant in the context of persons with intellectual disabilities being called upon to express consent for abortion and contraception.

121. The Court notes that the applicants' case is not isolated and that the domestic case file refers to other abortions carried out on women from the Bălți asylum. This practice is particularly worrying when the conditions in which intellectually disabled persons are called upon to express their consent are unclear, to the extent that the professionals themselves seem to question if such persons should be asked for consent at all (see paragraph 117 above).

122. As found by international bodies, generally in human societies and more particularly in the Republic of Moldova, harmful stereotypes exist according to which persons with mental disabilities should not procreate and which result in various human rights violations in respect of persons with disabilities, and especially in respect of women with mental disabilities (see paragraphs 47, 49, 51-53). International bodies have also found deficiencies in Moldovan legislation and medical protocols concerning informed consent for such interventions and called for legislative reforms which would prevent non-consensual medical interventions on persons with mental disabilities (see paragraphs 47 and 52 above).

123. In this context and against the background of a general legal provision concerning consent for all medical interventions, which is neutral on its face, the Court observes the paternalistic tone of the 1994 ministerial

order concerning termination of pregnancies in respect of persons with intellectual disabilities (see also *V.C. v. Slovakia*, cited above, § 114). On the one hand, the order indicated intellectual disability as a contraindication for pregnancy without any further assessment of medical risks, which by itself is contrary to international standards (see paragraphs 48 and 55 above). On the other hand, the order excluded the women concerned from the communication of their medical documents between medical institutions altogether, which reflects the limited extent to which a woman with mental disabilities is involved in the decision-making process concerning her own pregnancy (see paragraph 42 above).

124. Furthermore, the Government failed to demonstrate the existence of any legal provisions, safeguards and mechanisms meant to support persons like the applicants, who were intellectually disabled but had not been deprived of their legal capacity, to express a valid and fully informed consent for medical interventions, especially in respect of abortions and contraception. Even the 2020 updated national standards seem to transfer the decision to the legal representative and do not envisage situations such as that of the applicants (see paragraph 43 above). In this connection, it has not been shown by the Government that there existed any practice to provide persons with intellectual disabilities with information in a manner accessible to them.

125. On the contrary, it follows from the results of the domestic inquiry that the domestic authorities considered that before 2006 consent was not even required in cases of intellectual disability, when it actually was required. The interviews with medical staff reflect a paternalistic attitude towards the applicants, considering as they did that it was normal for the decision to terminate the pregnancy to have been taken by a doctor in the psychiatric asylum or by the medical committee without the applicants' consent (see paragraphs 22, 25, 29 and 32 above).

126. In respect of the criminal legislation, the Court notes that the domestic investigation concluded that the applicants' allegations did not reveal elements of such criminal offences as the illegal termination of a pregnancy, illegal sterilisation or medical negligence. The Court agrees with this assessment, however not because of the applicants' alleged consent to the procedures, but because the respondent State's criminal legislation was inadequate and therefore unable to protect the applicants from non-consensual abortion and contraception.

127. While the situation should improve with the national implementation of the Istanbul Convention, which requires the criminalisation of forced abortion, the Court finds that the domestic criminal law does not provide effective protection against such invasive medical interventions carried out without the patient's valid consent.

128. Having considered the elements above, the Court finds that the existing Moldovan legal framework – which lacks the safeguard of obtaining a valid, free and prior consent for medical interventions from intellectually

disabled persons, adequate criminal legislation to dissuade the practice of non-consensual medical interventions carried out on intellectually disabled persons in general and women in particular, and other mechanisms to prevent such abuse of intellectually disabled persons in general and of women in particular – falls short of the requirement inherent in the State's positive obligation to establish and apply effectively a system providing protection to women living in psychiatric institutions against serious breaches of their integrity, contrary to Article 3 of the Convention.

(iii) The obligation to protect the applicants' physical integrity

129. The applicants complained of having been subjected to invasive medical interventions without their consent at the Bălți maternity hospital, which is a public hospital, after being sent there by another public hospital, the Bălți asylum, where they were institutionalised.

130. While the acts and omissions of the medical staff of these public hospitals clearly engage the responsibility of the respondent State under the Convention (see *Glass v. the United Kingdom*, no. 61827/00, § 71, ECHR 2004-II, and *G.B. and R.B. v. the Republic of Moldova*, cited above, § 25), the different roles of these hospitals require that the factual circumstances of the alleged ill-treatment be examined simultaneously from the perspective of the State's negative and positive obligations under Article 3 of the Convention.

(α) The complaints concerning the termination of the pregnancies

131. It is undisputed that the first and second applicants had their pregnancies terminated at the Bălți maternity hospital after being sent there by the Bălți asylum. Although the Government argued that the second applicant had been hospitalised with a "spontaneous miscarriage in progress [*în evoluție*]", the medical-committee decision and the domestic investigating authorities relied exclusively on her intellectual disability as the medical reason for the abortion and never argued that the abortion had occurred naturally without external intervention. As noted above, the applicants' consent could not have been presumed and needed to be confirmed in writing either in the medical file or on a special form (see paragraph 117 above).

132. The Court has not been presented with any such evidence of consent in respect of the first applicant.

133. In respect of the second applicant, it is to be noted that the domestic authorities were unable to conclude that she had indeed signed the respective consent form. Even assuming that she did sign the form, in the absence of any legal safeguards to assist her in expressing a valid consent and in view of her vulnerability owing to her intellectual disability, despite retaining full legal capacity (as found above in paragraph 128), the Court is not convinced that a simple handwritten letter "M." (paragraph 14 above) could constitute a

validly expressed consent for the termination of her pregnancy (see also *V.C. v. Slovakia*, cited above, § 112).

134. Although there is no indication that the medical staff of either hospital acted with the intention of ill-treating the first and second applicants, they nevertheless displayed gross disregard for their right to autonomy and choice as patients. The Court therefore concludes that there has been a violation of Article 3 of the Convention on account of the first and second applicants' abortions.

135. In respect of the third applicant, the national authorities found that her allegations were unsubstantiated because her medical file did not contain any record of a pregnancy and they never proceeded to a more in-depth investigation, despite witness statements supporting the applicant's allegations. The third applicant herself is unable to independently produce evidence in view of the circumstances in which she became pregnant – raped by a doctor at the asylum where she was resident – and in view of her continued residence in the asylum and her lack of relatives.

136. The Court observes that the difficulty in determining whether there was any substance to the third applicant's allegations of ill-treatment stems from the authorities' failure to investigate her complaints effectively (see *Petru Roşca v. Moldova*, no. 2638/05, § 42, 6 October 2009, and *Popa v. Moldova*, no. 29772/05, § 39, 21 September 2010). The Court reiterates in this connection that, in all cases where it is unable to establish the exact circumstances of a case for reasons objectively attributable to the State authorities, it is for the respondent Government to explain, in a satisfactory and convincing manner, the sequence of events and to exhibit solid evidence capable of refuting the applicant's allegations (see *Mansuroğlu v. Turkey*, no. 43443/98, § 80, 26 February 2008, with further references). While it must be cautious in taking on the role of a first-instance tribunal of fact where this is not rendered unavoidable by the circumstances of a particular case, the Court is prepared to take account of the quality of the domestic proceedings and any possible flaws in the decision-making process (see, among recent authorities, *Bouyid*, cited above, § 85).

137. The Court reiterates that where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. The burden of proof is then on the Government to provide a satisfactory and convincing explanation by producing evidence establishing facts which cast doubt on the account of events given by the victim. In the absence of such explanation, the Court can draw inferences which may be unfavourable for the Government. That is justified by the fact that persons in custody are in a vulnerable position and the authorities are under a duty to protect them (ibid., § 83).

138. As the Court noted above, the applicants were in a particularly vulnerable situation and had been placed in the sole charge of the public

authorities. The management of the Bălți asylum had an ongoing duty to ensure the safety, health and well-being of the residents in their care, including the third applicant. In these circumstances, in view of their control over the third applicant both at the time of the events and at the present time owing to her continued residence at the same psychiatric asylum, the burden of proof is on the Government to provide a satisfactory and convincing explanation in respect of her allegations.

139. The Court notes, on the basis of the documents produced by the Government, that the domestic authorities limited their inquiry to the applicant's medical file, establishing that she had never been pregnant. However, witness statements revealed, on the one hand, that abortions among women at the Bălți asylum were common practice and, on the other hand, that the third applicant had been pregnant at a certain moment in time (see paragraphs 22 and 36 above).

140. Thus even if the third applicant's medical file from 2000 onward did not contain any information about a pregnancy and related abortion, the proven rape of multiple residents of the asylum (including the third applicant), the proven forced abortions in respect of the other two applicants, and the deficiencies in the legal framework meant to protect any woman in the third applicant's condition from such ill-treatment, allow the Court to conclude that there is evidence in favour of her version of events and that the burden of proof should shift to the Government. However, the Government have failed to demonstrate conclusively why the above evidence could not serve to corroborate the allegations made by the applicant. They have not provided a satisfactory and convincing explanation of how the third applicant's situation was different from that of the first and second applicants and why the inquiry which ended with the rejection of her complaint was inconclusive, leading to the Court being unable to draw any benefit from its results (see *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, §§ 165-67, ECHR 2012).

141. In the light of the foregoing, the Court considers that it can draw inferences in support of the third applicant's version of events from the domestic authorities' failure to conduct a meaningful investigation and refute the third applicant's account, or to provide a plausible alternative explanation. The Court finds the third applicant's allegations sufficiently convincing and established. The Court therefore finds that there has been a violation of Article 3 of the Convention in its substantive limb in respect of the third applicant as well.

(β) The complaints concerning the birth-control measures and inability to procreate

142. The Government submitted that the applicants' allegations of intrauterine devices being implanted in their bodies shortly after their abortions were unsubstantiated, as the domestic inquiry had concluded that

there were no medical records to support the applicants' allegations. All three applicants argued to the contrary; the first applicant also argued that following the non-consensual medical interventions, she was no longer able to procreate.

143. The first applicant, who has not been a resident of the Bălți asylum since 2013, submitted a medical record suggesting the possibility of an intrauterine device being embedded in her body (see paragraph 10 above). No further investigations were carried out to rule out or confirm this possibility, either independently by the applicant or by the national criminal investigating authorities.

144. The Court notes that the summary of the ultrasound investigation produced by the first applicant – the authenticity of which has not been contested – indicated the presence of a foreign body in her cervical cavity in April 2014. The fact that it was subsequently impossible to extract the presumed intrauterine device does not disavow the initial findings of the ultrasound and could be a possible consequence of the fact that the device is embedded.

145. The Court also observes that the Government have not argued that the first applicant did not display any such marks on exiting the Bălți asylum a year before the ultrasound investigation took place, and the domestic inquiry, when presented with the opportunity, did not carry out any investigations.

146. As noted above, the difficulty in determining whether there was any substance to the first applicant's allegations of ill-treatment stems from the authorities' failure to investigate her complaints effectively, which has already resulted in a finding of a violation of the procedural limb of Article 3 of the Convention (see paragraph 109 above).

147. In the light of the foregoing and of the practice described above which sought to prevent women in the Bălți asylum from having children (see paragraphs 36 and 121-122), the Court deems it sufficiently established that the foreign body described in the medical investigation produced by the first applicant had been implanted in her body as a contraceptive measure while she was under State control in the Bălți asylum. It also notes that the Government failed to produce any evidence likely to cast doubt on the first applicant's submissions. The Court therefore considers that fact proven and concludes that there has been a violation of the substantive limb of Article 3 of the Convention in respect of the first applicant.

148. In view of this finding, the Court considers that it is not necessary to examine separately the first applicant's complaint concerning her inability to procreate.

149. The second and third applicants continue to be residents of the asylum to date. The second applicant submitted that in 2014 an intrauterine device had been extracted from her body but failed to provide the Court with any evidence or details in support of this allegation, such as whether the

extraction was carried out by the gynaecologist at the asylum or outside the facility. The third applicant did not submit any evidence or details in support of her allegation that an intrauterine device had been implanted in her body.

150. Therefore, in the absence of prima facie evidence capable of shifting the burden of proof onto the respondent Government, and given the above conclusion that no effective investigation was carried out in the present case, the Court cannot draw a conclusion as to whether the second and third applicants were subjected to forced contraception. It concludes, therefore, that there has not been a violation of the substantive limb of Article 3 of the Convention in their respect.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

151. 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."

152. The applicants claimed 30,000 euros (EUR) each in respect of non-pecuniary damage. According to a statement by a psychologist, the applicants had suffered physical pain and psychological distress as a result of the forced medical interventions and had expressed feelings of humiliation, anxiety, sadness, helplessness, grief, fear and inferiority.

153. The applicants also claimed jointly EUR 15,750 in respect of costs and expenses and requested that the amount of the costs and expenses be paid directly into their representative's bank account. They submitted a detailed description of these services covering proceedings before the domestic authorities and the Court. The applicants' representative noted in her submissions before the Court that she had been contracted by a United Nations agency in the Republic of Moldova to represent the applicants.

154. The Government submitted that the applicants' claims in respect of non-pecuniary damage were exaggerated and invited the Court to dismiss them. The Government argued that the applicants should not be granted any costs and expenses because their representative had failed to substantiate the claim and appeared to have been employed by the United Nations in the Republic of Moldova, and that in any event the claims were excessive.

155. In the light of the circumstances of the case, the Court awards the first applicant EUR 30,000 and the second and third applicants EUR 25,000 each in respect of non-pecuniary damage, plus any tax that may be chargeable.

156. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 5,000 in respect of costs and expenses, plus any tax that may be chargeable to the applicants, to be paid into the bank account indicated by the applicants' representative (see *Denizci and Others*

v. Cyprus, nos. 25316 and 6 others, § 428, ECHR 2001-V, and *Cobzaru v. Romania*, no. 48254/99, § 111, 26 July 2007).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins to the merits* the Government's preliminary objection as to the non-exhaustion of domestic remedies and *dismisses* it;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 3 of the Convention in its procedural limb as regards the forced abortions and forced contraception in respect of all three applicants;

4. *Holds* that there has been a violation of Article 3 of the Convention in its substantive limb as regards the forced abortions in respect of all three applicants, and concerning the forced contraception in respect of the first applicant;

5. *Holds* that there has been no violation of Article 3 of the Convention in its substantive limb as regards the forced contraception in respect of the second and third applicants;

6. *Holds*
   (a) that the respondent State is to pay the applicants, 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 the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the first applicant;
      (ii) EUR 25,000 (twenty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage each to the second and third applicants;
      (iii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses jointly to all the applicants to be paid into the bank account of their representative;
   (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;

7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 22 November 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı Registrar	Jon Fridrik Kjølbro President