



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

SECOND SECTION

CASE OF E.T. v. THE REPUBLIC OF MOLDOVA

(Application no. 25373/16)

JUDGMENT

Art 6 § 1 (civil) • Inability of applicant, declared totally incapacitated owing to her mental illness, to directly seek restoration of her legal capacity under the domestic law at the material time • Disproportionate hindrance impairing the very essence of her right of access to a court • Rigid rule of total incapacitation, with no intermediary solutions in respect of varying degrees of incapacitation, resulting in total limitation of access to a court

Art 14 (+ Art 8) • Discrimination • Private life • Discriminatory treatment of applicant based on her intellectual disability • Substitute decision-making regime deprived applicant, for an indefinite period of time, of all legal capacity and thus of any participation in decision-making processes regarding every aspect of her life • Absence of periodic review of applicant's capacity to comprehend • Total incapacitation not impossible on any other category of persons • Disproportionate means of protecting rights and interests of persons affected by intellectual disabilities

Prepared by the Registry. Does not bind the Court.

STRASBOURG

12 November 2024

FINAL

12/02/2025

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

In the case of E.T. v. the Republic of Moldova,

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

Arnfinn Bårdsen, *President*,

Jovan Ilievski,

Saadet Yüksel,

Lorraine Schembri Orland,

Frédéric Krenc,

Diana Sârcu,

Gediminas Sagatys, *judges*,

and Hasan Bakırcı, *Section Registrar*,

Having regard to:

the application (no. 25373/16) against the Republic of Moldova lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Moldovan national, Ms E.T. (“the applicant”), on 29 April 2016;

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

the decision not to disclose the applicant’s name;

the parties’ observations;

Having deliberated in private on 15 October 2024,

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

INTRODUCTION

1. The case concerns the inability of the applicant, who had been declared totally incapacitated owing to her mental illness, to bring a court action aimed at restoring her legal capacity and the alleged discrimination against her on the basis of her intellectual disability. The applicant complained of a violation of Articles 6, 8 and 14 of the Convention.

THE FACTS

2. The applicant was born in 1961 and lives in Cocieri. She was represented by Mr D. Sliusarenco, a lawyer practising in Chişinău.

3. The Government were represented by their Agent, Mr D. Obadă.

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

5. In the late 1990s the applicant was diagnosed with chronic paranoid schizophrenia. In 2000 her husband A.T. divorced her; she assumed the guardianship of their two children.

6. On an unspecified date the applicant’s former husband A.T. brought a court action to have the applicant declared totally incapacitated owing to her mental illness and alleged that she behaved aggressively towards their children.

7. On 22 November 2002 the Botanica District Court examined the case in the applicant's absence and declared her totally incapacitated. It examined medical certificates, including those issued by a psychiatric hospital in which the applicant had been undergoing treatment at the time of the examination of the case, and heard A.T., a social worker, and M.M., the couple's godmother (*nașă*) at the wedding between the applicant and A.T. in 1986. In the interests of the applicant and her children, the court ordered the Botanica district guardianship authority ("the guardianship authority") to appoint a guardian in respect of the applicant. The applicant never received a copy of that decision.

8. On 17 December 2010 the guardianship authority appointed M.M. as guardian in respect of the applicant. On an unknown date M.M. asked the Cocieri psychiatric residential hospital (subsequently called the Cocieri Centre for the Temporary Placement of Persons with Disabilities – "the Cocieri centre") to admit the applicant for treatment for an indefinite period of time. According to the applicant, she had had an uneasy relationship with M.M., who had neglected her guardianship duties.

9. On an unspecified date in 2015 a representative of the Independent Service for the Defence of the Rights of Patients in Psychiatric Institutions (see paragraph 18 below) visited the hospital and discussed with the applicant, offering her assistance. She was then able to contact a non-governmental organisation, Promo-Lex, and its lawyer, Mr Sliusarenco. She signed a power of attorney authorising him to represent her.

10. On 16 July 2015 the applicant's lawyer brought a court action aimed at re-establishing his client's legal capacity. He argued that her state of health had improved and that she was able to take care of herself and she owned an apartment where she could live. He noted the strained relationship between the applicant and her guardian, who had "a hostile attitude". This had prevented the applicant from defending her rights and enjoying various guarantees. He relied on, *inter alia*, Article 12 of the Convention on the Rights of Persons with Disabilities ("the CRPD", see paragraph 22 below). He also referred to the applicant's right to live in the community, which was being breached by her being kept against her will in the hospital. The applicant had been placed in the hospital for an indefinite period of time, which constituted *de facto* detention and was thus contrary to Article 5 of the Convention. She had on many occasions expressed her wish to leave. She had also been separated from her children and deprived of her right to live in her apartment or to decide on important aspects of her private life.

11. On 22 July 2015 a judge from the Botanica Court in Chișinău left the action without examination. The court found that it had been brought by a lawyer who had not been authorised to initiate and continue such proceedings. A power of attorney, signed by a person who had been declared incapacitated, did not provide proper authorisation.

12. The applicant's lawyer appealed, essentially repeating his arguments. He relied *inter alia* on Articles 16 and 20 of the Constitution (see paragraph 14 below). On 30 October 2015 the Chişinău Court of Appeal rejected the appeal. It found that the lawyer had not been properly authorised to bring a court action, since his power of attorney had been signed by an incapacitated person, and that the first-instance court's decision was not amenable to appeal.

13. In a letter dated 20 March 2023 the director of the Cocieri centre informed the Ministry of Justice that it had examined the applicant's file and found that she continued to need treatment for paranoid schizophrenia. During the period when she had brought her court action in 2015, she had undergone treatment at the Psychiatric Clinical Hospital between 20 February and 1 April 2015 and between 29 September and 3 November 2015. She could have asked for an evaluation of her psychological state by the psychiatric service in Chişinău. Alternatively, following her treatment at the Psychiatric Clinical Hospital, an evaluation of her mental state could have been made. The absence of such an evaluation meant that it had been presumed that she did not need to be evaluated. The result of such an evaluation would have constituted a basis for declaring her legally capable. The psychiatrist who had worked with her considered that she could not understand what her representative had written in the court action and in the subsequent application to the Court. When asked directly and presented with the file from the domestic court action and the application to the Court, the applicant declared to the administration that she had met that lawyer in 2015 but she denied lodging any complaints. She recognised her signature on the application before the Court but could not recall in what circumstances it had been done. The psychiatrist concluded that she could not have lodged any complaints in view of her continuing psychiatric treatment. Her signature on the application form could have possibly been obtained as a consequence of a misunderstanding or a lack of understanding of what she was signing.

It was added that in 2018 a person had called the Chişinău airport and warned about a technical issue with the President's plane, following which an investigation had revealed that the applicant had been responsible.

RELEVANT MATERIALS

I. RELEVANT DOMESTIC LAW

14. The relevant provisions of the Moldovan Constitution read as follows:

Article 16 Equality

“(1) The respect and protection of the individual shall constitute the foremost duty of the State.

(2) All citizens of the Republic of Moldova are equal before the law and public authorities, regardless of the race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, property or social origin.”

Article 20
Free access to justice

“(1) Any individual is entitled to effective satisfaction from the part of competent courts of law against actions infringing upon his/her legitimate rights, freedoms and interests.

(2) No law may restrict the access to justice”

15. The relevant parts of the Civil Code, as in force at the material time, provided as follows:

Article 24
Declaring a person’s incapacity

“(1) A person who, as a result of a mental disorder (mental illness or mental deficiency), is unable to be aware of or direct his or her actions may be declared by the court to be incapacitated. Such a person shall be placed under guardianship.

(2) Legal acts on behalf of the natural person declared incapacitated shall be carried out by the guardian.

(3) If the grounds for declaring the person incapacitated have disappeared, the court shall declare him or her as being capable. On the basis of the court decision, the guardianship of the person shall be annulled.”

...

Article 222
Nullity of a legal act initiated by a person who does not have legal capacity

“(1) A legal act initiated by a person who does not have legal capacity shall be considered null and void.

... ”

16. The relevant parts of the Code of Civil Procedure, as in force at the material time, provided as follows:

Article 12¹
Raising the exception of constitutionality¹

“(1) In case of uncertainty as to the constitutionality of laws, Parliament decisions, decrees of the President of the Republic of Moldova, decisions and ordinances of the Government which must be applied in deciding a case, the court, on its own motion or at the request of a party to the proceedings, shall submit the exception of non-constitutionality to the Constitutional Court.

(2) When raising the exception of non-constitutionality and addressing the Constitutional Court, the court does not have the power to assess the well-founded

¹. An identical provision exists in Article 7 of the Code of Criminal Procedure.

character of the request or the compliance of the norm with the Constitution and shall limit itself to verifying the observance of the following conditions:

- a) the object of the request is part of the category of acts provided for under Article 135 (1)(a) of the Constitution;
- b) the exception is raised by one of the parties or their representative or by the court on its own motion;
- c) the contested provision must be applied in deciding the case;
- d) there is no previously adopted decision of the Constitutional Court concerning the contested legal provision.

...”

Article 170

Leaving a court action without examination

“(1) The judge shall leave the court action without examination if:

...

- (c) the application was lodged by an incapacitated person;

...

- (e) the application is not signed or is signed by a person not entitled to sign it or is signed without indicating the position of the signatory;

...

(4) Leaving a court action without examination does not exclude the possibility of the same applicant bringing a repeated action concerning the same matter, against the same defendant, in respect of the same subject matter and on the same grounds ...

...

Article 267

Taking the court action off the docket

The court shall take the court action off the docket if:

...

- (b) it was brought by an incapacitated person;

...

Article 308

The annulment of the limitation of legal capacity and the declaration of legal capacity

...

(2) In the case referred to in Article 24 § 3 of the Civil Code, the court, at the request of the guardian, the person’s family members, the psychiatric institution, the guardianship and curatorship authority or the public prosecutor, on the basis of the official psychiatric expert report, shall initiate court proceedings seeking a decision declaring the capacity of the recovered person. On the basis of that decision, the instituted guardianship of the person shall be revoked.”

17. The relevant parts of Law no. 121 on Ensuring Equality of 25 May 2012 provides as follows:

Article 130

The manner of lodging a complaint with the Council for Equality and for the Prevention and Elimination of Discrimination

“(1) The Council shall establish the existence or absence of discrimination of its own motion or at the request of the interested parties ...

(2) A complaint of discrimination shall be lodged with the Council. The complaint shall include a description of the violation of the person’s right, the time that the violation occurred, the circumstances of the case, any evidence in support of the complaint and the name and the address of the person who is lodging the complaint.

...

Article 18

The right to protection of a victim of discrimination

(1) Any person who considers himself or herself a victim of discrimination shall be entitled to bring an action in court and to request:

- (a) a finding of a violation of his or her rights;
- (b) the prohibition of the further violation of his or her rights;
- (c) the reinstatement of the situation as it existed prior to the violation of his or her rights;
- (d) the reparation of pecuniary and non-pecuniary damage caused, as well as costs and expenses.

... ”

18. By its order no. 1185 of 29 October 2014 the Ministry of Health adopted the Regulation concerning the organisation and functioning of the independent service for the defence of the rights of patients in psychiatric institutions. The Regulation provided for the creation of a position of advocate for patients who were being treated in psychiatric institutions (“the patients’ advocate”) and of an independent mechanism for supervising the observance of human rights by such institutions by way of obtaining and examining complaints from patients. The patients’ advocate was to, *inter alia*, carry out systematic planned and unplanned visits to psychiatric institutions, examine complaints, inform the relevant institutions of any irregularities therein, make proposals, verify documents, inform competent authorities including law-enforcement bodies of serious breaches of fundamental rights if the institution did not eliminate them, and report to the Ministry of Health and the Centre for Human Rights.

19. In its judgment no. 33 of 17 November 2016 on the constitutional review of certain provisions of the Civil Code and of the Code of Civil Procedure (rights and freedoms of persons with mental disabilities), the Constitutional Court found the provisions of Article 24 of the Civil Code

constitutional in so far as they were interpreted to the effect that the declaration that a person had an incapacity to act concerned only persons who lacked any discernment and in respect of whom the application of other less restrictive protective measures proved to be ineffective. At the same time, the Constitutional Court declared the provisions of Article 170 § 1 (c) and Article 267 (b) of the Code of Civil Procedure, which related to the impossibility of an incapable person bringing a court action, unconstitutional. It also found that domestic law did not provide for partial limitation of a person's capacity or the institution of temporary measures to protect persons with mental disorders, other than for those who were addicted to drugs or alcohol. The court further found that domestic law provided for the declaring of all procedural acts of an incapacitated person null and void, without allowing the court any possibility of deciding on the validity of such acts in the specific circumstances of the case. Although the law was amended in 2016 to allow persons deprived of their capacity to appeal against such decision, their legal actions continued to be declared null and void. While instituting guardianship over a person in and of itself was not unconstitutional, it had to be reserved only for cases involving the total incapacitation of the person.

20. Following the Constitutional Court's decision of 17 November 2016, several amendments were made to the legislation on 13 April 2017 and 8 November 2018. The determination of incapacitation was replaced with a series of guarantees reflecting the type and degree of the person's disability and offering a variety of solutions which are aimed at protecting the interests and taking into account the wishes of persons who are fully or partly unable to understand the effects of their actions or to express their will (Articles 65-145 of the Civil Code). In particular, the amended law now provides for two types of contractual and three types of judicial measures of protection, detailed rules for the eligibility of persons in the role of guarantors and assistants and for avoiding conflicts of interests, rules on the involvement of the family, and rules for administering the person's property and for challenging in court the decisions taken, including providing for the involvement of the person concerned in the decision-making process. The law expressly states that the protection measures are to be instituted while ensuring the observance of human rights and personal dignity and are to be taken so as to maximise as far as possible the person's autonomy while giving priority to his or her wishes and feelings.

21. In its decision no. 2 of 9 February 2016 the Constitutional Court clarified that in case of uncertainty as to the constitutionality of laws, Parliament decisions, decrees of the President of the Republic of Moldova, decisions and ordinances of the Government which must be applied in deciding a case, the court is obligated to submit the exception of non-constitutionality to the Constitutional Court, after verifying compliance with four formal criteria:

- a) the object of the request is part of the category of acts provided for under Article 135 (1)(a) of the Constitution;
- b) the exception is raised by one of the parties or their representative or by the court on its own motion;
- c) the contested provision must be applied in deciding the case;
- d) there is no previously adopted decision of the Constitutional Court concerning the contested legal provision.

In doing this formal assessment, the ordinary court does not have the power to assess the well-founded character of the request or the compliance of the norm with the Constitution.

The Constitutional Court's decision was subsequently codified in essentially the same language in the Code of Civil Procedure (see paragraph 16 above) and the Code of Criminal Procedure.

II. RELEVANT INTERNATIONAL MATERIAL

22. The relevant provisions of the United Nations Convention on the Rights of Persons with Disabilities, adopted on 12 December 2006 at the sixty-first session of the General Assembly (resolution A/RES/61/106), and ratified by the Republic of Moldova on 9 July 2010, read as follows:

Article 5 – Equality and non-discrimination

“1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.

2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.

4. Specific measures which are necessary to accelerate or achieve *de facto* equality of persons with disabilities shall not be considered discrimination under the terms of the [CRPD].

...

Article 12 – Equal recognition before the law

1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.

2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.

3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in

accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.

5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.

Article 13 – Access to justice

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

...

Article 19 – Living independently and being included in the community

States Parties to [the CRPD] recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

- a. Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;
- b. Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;
- c. Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs."

23. The relevant parts of General Comment No. 1 (2014) to the Convention on the Rights of Persons with Disabilities, adopted by the Committee on the Rights of Persons with Disabilities at its eleventh session between 31 March and 11 April 2014 (CRPD/C/GC/1) read as follows:

"...

15. In most of the State party reports that the Committee has examined so far, the concepts of mental and legal capacity have been conflated so that where a person is

considered to have impaired decision-making skills, often because of a cognitive or psychosocial disability, his or her legal capacity to make a particular decision is consequently removed. This is decided simply on the basis of the diagnosis of an impairment (status approach), or where a person makes a decision that is considered to have negative consequences (outcome approach), or where a person's decision-making skills are considered to be deficient (functional approach). The functional approach attempts to assess mental capacity and deny legal capacity accordingly. It is often based on whether a person can understand the nature and consequences of a decision and/or whether he or she can use or weigh the relevant information. This approach is flawed for two key reasons: (a) it is discriminatorily applied to people with disabilities; and (b) it presumes to be able to accurately assess the inner-workings of the human mind and, when the person does not pass the assessment, it then denies him or her a core human right — the right to equal recognition before the law. In all of those approaches, a person's disability and/or decision-making skills are taken as legitimate grounds for denying his or her legal capacity and lowering his or her status as a person before the law. Article 12 does not permit such discriminatory denial of legal capacity, but, rather, requires that support be provided in the exercise of legal capacity.

...

26. In its concluding observations on States [P]arties' initial reports, in relation to [A]rticle 12, the Committee on the Rights of Persons with Disabilities has repeatedly stated that States [P]arties must 'review the laws allowing for guardianship and trusteeship, and take action to develop laws and policies to replace regimes of substitute decision-making by supported decision-making, which respects the person's autonomy, will and preferences'.

27. Substitute decision-making regimes can take many different forms, including plenary guardianship, judicial interdiction and partial guardianship. However, these regimes have certain common characteristics: they can be defined as systems where (i) legal capacity is removed from a person, even if this is in respect of a single decision; (ii) a substitute decision-maker can be appointed by someone other than the person concerned, and this can be done against his or her will; and (iii) any decision made by a substitute decision-maker is based on what is believed to be in the objective 'best interests' of the person concerned, as opposed to being based on the person's own will and preferences.

28. States parties' obligation to replace substitute decision-making regimes by supported decision-making requires both the abolition of substitute decision-making regimes and the development of supported decision-making alternatives. The development of supported decision-making systems in parallel with the maintenance of substitute decision-making regimes is not sufficient to comply with [A]rticle 12 of the [CRPD].

...

32. To achieve equal recognition before the law, legal capacity must not be denied discriminatorily. Article 5 of the [CRPD] guarantees equality for all persons under and before the law and the right to equal protection of the law. It expressly prohibits all discrimination on the basis of disability. Discrimination on the basis of disability is defined in [A]rticle 2 of the [CRPD] as 'any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms'. Denial of legal capacity having the purpose or effect of interfering with the right of persons with disabilities to equal recognition before the law is a violation of Articles 5 and 12 of the [CRPD]. States have the ability to restrict the

legal capacity of a person based on certain circumstances, such as bankruptcy or criminal conviction. However, the right to equal recognition before the law and freedom from discrimination requires that when the State denies legal capacity, it must be on the same basis for all persons. Denial of legal capacity must not be based on a personal trait such as gender, race, or disability, or have the purpose or effect of treating the person differently.

...

44. To fully realize the rights provided for in [A]rticle 12, it is imperative that persons with disabilities have opportunities to develop and express their will and preferences, in order to exercise their legal capacity on an equal basis with others. This means that persons with disabilities must have the opportunity to live independently in the community and to make choices and to have control over their everyday lives, on an equal basis with others, as provided for in [A]rticle 19.

45. Interpreting [A]rticle 12, paragraph 3, in the light of the right to live in the community ([Article] 19) means that support in the exercise of legal capacity should be provided through a community-based approach. States [P]arties must recognize that communities are assets and partners in the process of learning what types of support are needed in the exercise of legal capacity, including raising awareness about different support options. States [P]arties must recognize the social networks and naturally occurring community support (including friends, family and schools) of persons with disabilities as key to supported decision-making. This is consistent with the [CRPD]'s emphasis on the full inclusion and participation of persons with disabilities in the community.

46. The segregation of persons with disabilities in institutions continues to be a pervasive and insidious problem that violates a number of the rights guaranteed under the [CRPD]. The problem is exacerbated by the widespread denial of legal capacity to persons with disabilities, which allows others to consent to their placement in institutional settings. The directors of institutions are also commonly vested with the legal capacity of the persons residing therein. This places all power and control over the person in the hands of the institution. In order to comply with the [CRPD] and respect the human rights of persons with disabilities, deinstitutionalization must be achieved and legal capacity must be restored to all persons with disabilities, who must be able to choose where and with whom to live ([Article] 19). A person's choice of where and with whom to live should not affect his or her right to access support in the exercise of his or her legal capacity.

..."

24. The relevant parts of General Comment No. 6 (2018) to the Convention on the Rights of Persons with Disabilities, On Equality and Non-Discrimination, adopted by the Committee on the Rights of Persons with Disabilities on 26 April 2018 (CRPD/C/GC/6) read as follows:

"8. Individual or medical models of disability prevent the application of the equality principle to persons with disabilities. Under the medical model of disability, persons with disabilities are not recognized as rights holders but are instead 'reduced' to their impairments. Under these models, discriminatory or differential treatment against and the exclusion of persons with disabilities is seen as the norm and is legitimized by a medically driven incapacity approach to disability. ...

9. The human rights model of disability recognizes that disability is a social construct and impairments must not be taken as a legitimate ground for the denial or restriction

of human rights. It acknowledges that disability is one of several layers of identity. Hence, disability laws and policies must take the diversity of persons with disabilities into account. It also recognizes that human rights are interdependent, interrelated and indivisible.

...

23. Reasonable accommodation is an intrinsic part of the immediately applicable duty of non-discrimination in the context of disability.

24. ... (a) As an *ex ante* duty, accessibility must be built into systems and processes without regard to the need of a particular person with a disability... ; (b) As an *ex nunc* duty, reasonable accommodation must be provided from the moment that a person with a disability requires access to non-accessible situations or environments, or wants to exercise his or her rights. ...

It is important to note that the duty to provide reasonable accommodation is not limited to situations in which the person with a disability has asked for an accommodation or in which it could be proved that the alleged duty bearer was actually aware that the person in question had a disability. It should also apply in situations where a potential duty bearer should have realized that the person in question had a disability that might require accommodations to address barriers to exercising rights. ...”

25. The relevant part of the Report of the Special Rapporteur on the rights of persons with disabilities on her mission to the Republic of Moldova from 10 to 17 September 2015 (document A/HRC/31/62/Add.2) reads as follows:

“... ”

D. Legal capacity

41. In the Republic of Moldova, approximately 4,000 persons with disabilities are deprived of their legal capacity. According to Article 24 (1) of the Civil Code, adults with disabilities may be declared incapable of exercising legal capacity on the basis of a ‘mental disorder (mental illness or intellectual impairment)’. Persons with disabilities who have been incapacitated are automatically deprived of all other fundamental human rights. Persons declared incapacitated are placed under guardianship, whereby a designated legal guardian is entitled to make all decisions on their behalf. The Code of Civil Procedure does not provide persons with disabilities a legal procedure to appeal or to review the incapacitation measure, and does not recognize the legal standing of persons under guardianship.

42. The Special Rapporteur is aware of efforts to reform the system of guardianship and legal capacity initially led by an interministerial working group, which in 2014 adopted a draft proposal for reform abolishing plenary guardianship and introducing provisions for supported decision-making. If adopted as proposed by the working group, it would put the State on track with regard to reforms based on [A]rticle 12 of the Convention on the Rights of Persons with Disabilities. The proposal has not, however, been forwarded for a decision by the Government, given that as an alternative proposal is being drafted under the auspices of the Ministry of Justice. The Special Rapporteur has been invited by the Ministry to support the process of legal harmonization and will be glad to support this process to the extent of her resources.

43. The Special Rapporteur notes with satisfaction that the Supreme Court of Justice of the Republic of Moldova ruled in November 2015 that persons with intellectual and

psychosocial disabilities have the right to seek recourse to *patronaj*,² provided for in [A]rticle 48 of the Civil Code, as a measure of support in exercising their legal capacity. She encourages the State to further strengthen the institution of *patronaj* and to promote the use of these arrangements as an alternative way to support the exercise of legal capacity by persons with disabilities.

...”

26. The relevant parts of the United Nations Partnership on the Rights of Persons with Disabilities report “The Human Rights of Persons with Mental or Intellectual Impairments in the Republic of Moldova: An Assessment of Key Aspects of the Domestic Law and Policy Framework in Light of the UN Convention on the Rights of Persons with Disabilities”, Chişinău, 2015 read as follows (some references in the text were omitted):

“...

Guardianship

When the deprivation of legal capacity has been decided, the judge will inform the local guardianship authority about the decision, asking them to identify and appoint a guardian to the incapacitated person. The guardian shall be appointed through an administrative procedure no later than 30 days from the moment of the adoption of the incapacitation decision. The law provides a list of people who cannot be appointed as guardians, and the guardianship authority has the final say on appointing the guardian. People about to be placed under guardianship can be consulted about the selection, but their preferences are not necessarily taken into account.

...

Although the law requires the guardian to live with the person under their guardianship, in practice many people under guardianship are right-away placed in residential institutions. In such cases, the institution will often act as a *de facto* guardian, although the appointed guardian retains their position – often without maintaining any contact with the person under guardianship.

...

Moldovan law requires that the guardianship authority must supervise the activities of guardians, ... but there is no guidance about how this should be done. Guardians must submit annual reports about any financial and property decisions they have made, ... and reporting on other decisions only happens at the discretion of the guardian. Where any irregularities are identified, the guardianship authority may request that these are rectified or may order suspension of the measures in question.

...

Supported decision-making

Current Moldovan legislation does not provide for or recognise any forms of supported decision-making, ... and is solely based on substitution. ... The only available alternative to plenary guardianship are the *patronaj* arrangements. ... *Patronaj* is usually

¹. An arrangement by which a person with disabilities who has full legal capacity but is unable to exercise it for health reasons may delegate this authority to a person of her or his choice.

applied to people who cannot exercise or protect their rights or fulfil certain obligations due to a health condition ... allowing them to maintain their legal capacity and receive necessary support from the people they trust.

...

Guardianship as a form of disability-based discrimination

Deprivation of legal capacity, is discrimination because it denies the exercise of a fundamental right recognized in international human rights law, as defined in CRPD Article 2 regarding 'discrimination on the basis of disability' and contradicts the universal principles of personal autonomy and human dignity. Although people under guardianship often reside in the community, ... guardianship isolates the person and limits their possibilities to interact with others. Guardianship is a form of institutional segregation severely restricting a person's ability to manage one's personal and financial affairs, as well as to enter into agreements that are substantial for inclusion, such as employment contracts, loans, rent, among others. Discrimination arises from the fact that in order to be able to receive necessary support, individuals with mental and intellectual impairments are forced to relinquish participation in community life they could enjoy if provided reasonable accommodation, while persons without impairments can receive the supports and services they need without similar sacrifices. ... CRPD Article 12 paragraph 3 envisages supported decision-making to be an antidiscrimination measure aiming to, on one side, ensure the best guarantee of the best decision possible (not to protect the decision of the person, who should be considered autonomous) and for the provision of juridical certainty to the actions.

...

Choice of where and with whom to live

From the moment a person has been deprived of their legal capacity and placed under guardianship, the person's domicile or main tenement is that of their guardian. Article 40 of the 2002 Civil Code obliges guardians to live together with the person under their guardianship.

Guardians can avoid this obligation by placing the person concerned into an institution, a decision which cannot be challenged by the person concerned. The only condition required for placement in an institution is to have a qualified psychiatrist provide an opinion that the person concerned has a 'mental disorder' which does not allow them to live outside of a 'specialized institution'.

One of the purposes of the right to equal recognition before the law is to ensure the respect of the persons' autonomy, will and preferences. ... This right is violated when the person cannot choose where and with whom they live. Moreover, the practice of placing people in institutions without their consent or with the substitute consent of a guardian results in an arbitrary deprivation of liberty, violating both the right to equal recognition before the law and the right to liberty and security (Article 14, CRPD).

...

Access to courts

Persons deprived of legal capacity cannot bring civil cases to courts. All procedural acts performed by persons deprived of their legal capacity are considered void. The practical implication is that people with disabilities can complain to institutions and

service providers when they are not satisfied with services, but they can never directly demand compensation because damages are only awarded through judicial proceedings.

Civil cases on behalf of persons deprived of legal capacity can only be brought to court by the public prosecutor, or by the person's guardian. The only exception is constitute [*sic*] by the court order through which a person is deprived of legal capacity, which, since May 2015, can be appealed by the person concerned. The guardian is also *de jure* nominated as legal representative of the person's interests.

..."

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

27. The Government argued that the application was an abuse of the right of individual application. In particular, the applicant's lawyer had argued before the Court that his client's domestic court action had been prompted by her improving mental health, whereas in reality her mental state had not evolved in any manner and that she had continued to require continuous psychiatric treatment. The lawyer had thus incompletely informed the Court and might have obtained the applicant's signature "by misunderstanding or unawareness as to the document she was signing" and in the absence of such intentions on the part of the applicant.

28. Alternatively, they argued that the lawyer had not had contact with the applicant since 2015 and had therefore not been instructed by her in any manner in 2023 when he had submitted his observations to the Court. Accordingly, since it was important that contact between the applicant and his or her representative be maintained throughout the proceedings (they referred to *V.M. and Others v. Belgium* (striking out) [GC], no. 60125/11, § 35, 17 November 2016), the Government asked the Court to strike the application out of its list of cases.

29. The applicant's lawyer argued that in the absence of a formal verification of the state of her mental health at regular intervals, there had been no medical evidence to prove the Government's submission. Moreover, the Cocieri centre was situated in the eastern region of the Republic of Moldova, a territory under the effective control of the Russian Federation, wherein members of the Promo-Lex organisation for which the applicant's lawyer worked were not allowed.

30. The Court reiterates that under Article 35 § 3 (a) an application may be rejected as an abuse of the right of individual application if, among other reasons, it is knowingly based on untrue facts. The submission of incomplete and thus misleading information may also amount to an abuse of the right of application, especially if the information concerns the very core of the case and no sufficient explanation has been provided for the failure to disclose that information. The same applies if important new developments have occurred

during the proceedings before the Court and where, despite being expressly required to do so by Rule 47 § 7 of the Rules of Court, the applicant has failed to disclose that information to the Court, thereby preventing it from ruling on the case in full knowledge of the facts. However, even in such cases, the applicant's intention to mislead the Court must always be established with sufficient certainty (see, among many others, *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 97, ECHR 2012; *Gross v. Switzerland* [GC], no. 67810/10, § 28, 30 September 2014; and *Savickis and Others v. Latvia* [GC], no. 49270/11, § 149, 9 June 2022).

31. The Court recalls that a representative wishing to lodge an application in the name of an applicant must show that (s)he has received specific and explicit instructions from the applicant whom they wish to represent (see, for instance, *Alican Demir v. Türkiye*, no. 41444/09, § 58, 25 February 2014). The Court also notes that for the applicant to lodge an application with the Court (whether or not he is represented), the applicant's guardian's consent is not required, even if that is the case under the domestic legal framework (*Anatoliy Marinov v. Bulgaria*, no. 26081/17, § 24, 15 February 2022).

32. In the present case, it is noted that the applicant has signed the relevant part of the application duly authorising her lawyer to represent her in the proceedings before the Court. Moreover, it was not contested that the signature indeed belonged to her. The Court considers that there is nothing in the file contradicting the lawyer's submission about his genuine belief that the applicant had understood sufficiently well her situation so as to authorise him to represent her. The Court does not see any sign of abuse in the lawyer's submissions or in the manner of obtaining the applicant's instructions.

33. The documents submitted by the Government confirm that the applicant recognised her signature on the application form. In view of the applicant's particular vulnerability, the Court cannot simply presume a loss of interest on her part, in the absence of any evidence that she no longer wished to continue with the case or to be represented by her lawyer. Were the Court to presume otherwise, considering that the applicant's guardian M.M. was not in favour of bringing a court action at the material time, this would amount to preventing serious allegations of a violation of the Convention from being examined at an international level, with the risk that the respondent State might escape accountability under the Convention (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 112, ECHR 2014).

34. The Government's objection must thus be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

35. The applicant complained that she had been deprived of her right of access to a court, contrary to Article 6 § 1 of the Convention, the relevant part of which reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

A. Admissibility

36. 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

37. The applicant submitted that her right of access to a court had been breached. She argued that persons with disabilities faced specific obstacles when trying to access justice, which imposed positive obligations on the State to secure that right in an effective manner.

38. The Government noted that while the procedural rules had prevented incapacitated persons or those authorised by such persons from bringing court actions, those rules had been amended subsequent to the Constitutional Court's judgment of 17 November 2016. Therefore, it was now possible for such a person to bring a court action which was aimed at restoring his or her capacity. The applicant had not been prevented from bringing such court action again after 2016, but she had not done so. This indicated that there had been no interference with her right of access to a court. As the Cocieri centre had noted in 2023 (see paragraph 13 above), there had been no improvement in the applicant's psychological state. Accordingly, “a reassessment of her state of health with a view to restoring her legal capacity [had] never been necessary”, as evidenced by the lack of an indication to do so by the specialised institutions after she had been treated there.

2. The Court's assessment

(a) General principles

39. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his or her civil rights and obligations brought before a court or tribunal (see *Golder v. the United Kingdom*, 21 February 1975, § 36, Series A no. 18, and *Stanev v. Bulgaria* [GC], no. 36760/06, § 229, ECHR 2012, *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 192, 25 June 2019, with further references). This “right to a court”, of which the right of access is an aspect, may be relied on by anyone who considers on arguable grounds that an interference with the exercise of his or her civil rights is unlawful and complains that no possibility was afforded to submit that claim to a court meeting the requirements of Article 6 § 1 (see, *inter*

alia, *Roche v. the United Kingdom* [GC], no. 32555/96, § 117, ECHR 2005-X, and *Salontaji-Drobnjak v. Serbia*, no. 36500/05, § 132, 13 October 2009).

40. The right of access to the courts is not absolute but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State, regulation which may vary in time and in place according to the needs and resources of the community and of individuals (see *Ashingdane v. the United Kingdom*, 28 May 1985, § 57, Series A no. 93, and *Bîzdîga v. the Republic of Moldova*, no. 15646/18, § 40, 17 October 2023). In laying down such regulation, the Contracting States enjoy a certain margin of appreciation. Whilst the final decision as to observance of the Convention's requirements rests with the Court, it is no part of the Court's function to substitute for the assessment of the national authorities any other assessment of what might be the best policy in this field. Nonetheless, the limitations applied must not restrict the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (*ibid.*; see also, among many other authorities, *Cordova v. Italy*, no. 40877/98, § 54, ECHR 2003-I, and the recapitulation of the relevant principles in *Fayed v. the United Kingdom*, 21 September 1994, § 65, Series A no. 294-B).

41. Furthermore, the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective. This is particularly true for the guarantees enshrined in Article 6, in view of the prominent place held in a democratic society by the right to a fair trial with all the guarantees under that Article (see *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, § 45, ECHR 2001-VIII).

(b) Application of those principles in the present case

42. The Court observes at the outset that in the present case the parties did not dispute the applicability of Article 6 to proceedings for restoration of legal capacity. The applicant, who was totally deprived of legal capacity, complained that Moldovan law had not afforded her direct access to a court to apply to have her capacity restored. The Court has had occasion to clarify that proceedings for restoration of legal capacity are directly decisive for the determination of "civil rights and obligations" (see *Matter v. Slovakia*, no. 31534/96, § 51, 5 July 1999, and *Stanev*, cited above, § 233). Article 6 § 1 of the Convention is therefore applicable in the instant case.

43. Accordingly, the Court must determine whether the applicant's access to a court was restricted and, if so, whether the restriction pursued a legitimate aim and was proportionate to it.

44. In this connection, the Court notes that, while the Government argued that there had been no interference with the applicant's right of access to

court, they admitted that prior to the Constitutional Court's judgment of 17 November 2016 the incapacitated persons, such as the applicant could not bring a court action for restoration of their legal capacity (see paragraph 38 above). Therefore, the Court considers it established that the applicant was unable to apply for restoration of her legal capacity other than through her guardian or certain officials (see paragraphs 15 and 16 above, notably Article 308 of the Code of Civil Procedure).

45. This being so, the Court further notes that domestic legislation did not provide for any possibility of automatic periodic review of whether the grounds for placing a person under guardianship remained valid, despite the requirement of Article 12 § 4 of the CRPD that measures restricting legal capacity be subject to regular review by a competent authority (see paragraph 22 above; see also *Nikolyan v. Armenia*, no. 74438/14, § 101, 3 October 2019). Lastly, in the applicant's case the measure in question was not limited in time.

46. At the same time, as confirmed by the Constitutional Court (see paragraph 19 above), domestic law did not provide for any intermediary solutions in respect of varying degrees of incapacitation. It only provided for total incapacitation. Aside from the negative effect on a person's rights under Article 8 of the Convention (see *Shtukaturv v. Russia*, no. 44009/05, § 95, ECHR 2008), such a rigid rule not allowing the domestic courts to take into account the degree of a person's incapacitation also resulted in the total limitation of his or her access to a court.

47. It is true that the right of access to a court is not unlimited. In particular, there may be relevant reasons for limiting an incapacitated person's access to a court, such as for the person's own protection, the protection of the interests of others and the proper administration of justice (see *Nikolyan*, cited above, § 91). However, the importance of exercising these rights will vary according to the purpose of the action which the person concerned intends to bring before the courts. In particular, the right to ask a court to review a declaration of incapacity is one of the most important rights for the person concerned since such a procedure, once initiated, will be decisive for the exercise of all the rights and freedoms affected by the declaration of incapacity (see *Shtukaturv*, cited above, § 71). The Court therefore considers that this right is one of the fundamental procedural rights for the protection of those who have been partially deprived of legal capacity. It follows that such persons should in principle enjoy direct access to the courts in this sphere (see *Stanev*, cited above, § 241), which was not the case in the Republic of Moldova at the time of the events (see paragraph 16 above, notably Article 308 of the Code of Civil Procedure).

48. The State remains free to determine the procedure by which such direct access is to be realised, while ensuring that the courts are not overburdened with excessive and manifestly ill-founded applications. This problem may be solved by other, less restrictive means than automatic denial

of direct access, for example by limiting the frequency with which applications may be made or introducing a system for prior examination of their admissibility on the basis of the file (*ibid.*, § 242).

49. The Court also notes the importance which international instruments for the protection of people with mental disorders attach to granting them as much legal autonomy as possible (see paragraphs 22 and 23 above). In particular, a growing trend has been the replacement of systems based on depriving a person of all legal capacity in his or her “best interests” with a system of supported decision-making which is capable of taking into account the person’s own will and preferences. In this connection, it is to be noted that in the present case the applicant argued that she had had strained relations with her guardian. The latter may have experienced a conflict of loyalties between, on the one hand, the applicant’s former husband in supporting his application to deprive her of legal capacity and, on the other hand, the applicant in supporting her wish to recover her capacity (see *Ivinović v. Croatia*, no. 13006/13, § 45, 18 September 2014). Nevertheless, the applicant had no direct means to initiate court proceedings to recover her capacity and the courts rejected the court action brought by the lawyer whom she had authorised (see paragraph 11 above).

50. Finally, the Court takes note of the decision of the Constitutional Court which found the domestic legal provisions limiting the right of access to a court by incapacitated persons unconstitutional (see paragraph 19 above), as well as the amendments to the legislation improving the situation (see paragraph 20 above).

51. In the light of the above, the Court considers that the applicant’s inability to directly seek restoration of her legal capacity at the material time was a disproportionate hindrance impairing the very essence of the applicant’s right of access to a court.

52. There has accordingly been a violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 14 TAKEN IN CONJUNCTION WITH ARTICLE 8 OF THE CONVENTION

53. The applicant complained that she had been discriminated against as compared with other persons temporarily unable to understand their actions but whose legal capacity remained intact. She relied on Article 14 taken in conjunction with Article 8 of the Convention. Article 14 reads as follows:

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

A. Admissibility

54. The Court notes that the applicant alleged a difference of treatment which concerns the manner of organising one's personal life. This is a matter protected under Article 8 of the Convention. It follows that Article 14, taken together with Article 8, is applicable in the present case.

55. The Government argued that the applicant had failed to exhaust available domestic remedies. In particular, she could have complained about her alleged discrimination to the Council for Equality and for the Prevention and Elimination of Discrimination (see paragraph 17 above) or the courts.

56. The applicant submitted that, after having pursued one remedy to no avail, she had not pursued any others. Moreover, she had sought the assistance of the patients' advocate (see paragraph 9 above).

57. The Court notes that in his appeal the applicant's lawyer relied on Article 16 of the Constitution (see paragraphs 12 and 14 above) and thus raised with the domestic courts the issue of equality before the law. Moreover, it considers that, given the fact that the origin of the alleged discrimination was the legislation itself (Articles 170 and 267 of the Code of Civil Procedure, see paragraph 16 above), neither the Council nor the ordinary courts could have remedied the breach complained of. In any event, it is clear that the applicant could not have lodged a court action of any kind (see paragraph 11 above). This situation continued ever since she was declared totally incapacitated, including on the date when she lodged her application with the Court in April 2016. Accordingly, the remedies mentioned by the Government were not accessible to her.

58. 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

59. The applicant argued that she was treated differently from other people after being deprived of her legal capacity. In particular, persons who had suffered a stroke or had abused drugs might be temporarily unable to understand what was happening to them. However, they continued to enjoy all their rights.

60. The applicant had been removed from the community and prevented from maintaining family and social relationships or developing new ones – she had become a victim of the “institutionalisation syndrome”, that is, of gradually losing her social skills. In practice, patients were not properly informed of their right to leave the institution. The removal of her legal capacity had been comprehensive, with a presumption that she had been unable to understand or decide anything in any sphere of her life. Moreover,

this presumption had not been limited in time, which meant that her social isolation had been of a permanent nature. She had been placed in a total state of dependence on her guardian in virtually all aspects of life and for an indefinite period. This situation had been exacerbated by her guardian's refusal to act in the applicant's interests.

61. The Government submitted that instituting guardianship over the applicant had not been a form of discrimination, but rather a means of protecting her rights and interests. The applicant had never complained of any form of discrimination at the domestic level. Her state of health had never improved, thus it had not required a reassessment of her legal capacity. Moreover, the Cocieri centre had not prevented anyone from leaving the institution.

2. The Court's assessment

(a) General principles

62. The relevant principles established under Article 14 of the Convention have been reiterated in, for instance, *Molla Sali v. Greece* [GC] (no. 20452/14, §§ 133-37, 19 December 2018). In that case the Court stated as follows:

“133. In order for an issue to arise under Article 14 there must be a difference in the treatment of persons in analogous or relevantly similar situations (see, among many other authorities, *Konstantin Markin v. Russia* [GC], no. 30078/06, § 125, ECHR 2012; *X and Others v. Austria* [GC], no. 19010/07, § 98, ECHR 2013; *Khamtokhu and Aksenchik v. Russia* [GC], nos. 60367/08 and 961/11, § 64, 24 January 2017; and *Fábián v. Hungary* [GC], no. 78117/13, 5 September 2017, § 113). In other words, the requirement to demonstrate an analogous position does not require that the comparator groups be identical.

134. However, not every difference in treatment will amount to a violation of Article 14. Only differences in treatment based on an identifiable characteristic, or ‘status’, are capable of amounting to discrimination within the meaning of Article 14 (see *Fábián*, cited above, § 113 and the references therein). In this context, the Court reiterates that the words ‘other status’ have generally been given a wide meaning in its case-law (see *Carson and Others v. the United Kingdom* [GC], no. 42184/05, ECHR 2010, § 70) and their interpretation has not been limited to characteristics which are personal in the sense that they are innate or inherent (see *Clift v. the United Kingdom*, no. 7205/07, §§ 56-59, 13 July 2010). For example, a discrimination issue arose in cases where the applicants’ status, which served as the alleged basis for discriminatory treatment, was determined in relation to their family situation, such as their children’s place of residence (see *Efe v. Austria*, no. 9134/06, § 48, 8 January 2013). It thus follows, in the light of its objective and nature of the rights which it seeks to safeguard, that Article 14 of the Convention also covers instances in which an individual is treated less favourably on the basis of another person’s status or protected characteristics (see *Guberina v. Croatia*, no. 23682/13, § 78, ECHR 2016; ... *Škorjanec v. Croatia*, no. 25536/14, § 55, 28 March 2017; and ... *Weller v. Hungary*, no. 44399/05, § 37, 31 March 2009).

135. The Court also reiterates that in the enjoyment of the rights and freedoms guaranteed by the Convention, Article 14 affords protection against different treatment,

without an objective and reasonable justification, of persons in similar situations. For the purposes of Article 14, a difference of treatment is discriminatory if it ‘has no objective and reasonable justification’, that is, if it does not pursue a ‘legitimate aim’ or if there is not a ‘reasonable relationship of proportionality’ between the means employed and the aim sought to be realised (see *Fabris v. France* [GC], no. 16574/08, ECHR 2013 (extracts)), § 56).

136. The Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment. The scope of this margin will vary according to the circumstances, the subject matter and its background (see *Stummer v. Austria* [GC], no. 37452/02, § 88, ECHR 2011).

137. As to the burden of proof in relation to Article 14 of the Convention, the Court has held that once the applicant has demonstrated a difference in treatment, it is for the Government to show that the latter was justified (see *Khamtokhu and Aksenchik*, cited above, § 65; *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 85, ECHR 2013 (extracts); and *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 177, [ECHR 2007-IV]).”

63. Furthermore, the Court has found that a distinction made on account of an individual’s health status should be covered – either as a disability or a form thereof – by the term “other status” in the text of Article 14 of the Convention (see, *mutatis mutandis*, *Kiyutin v. Russia*, no. 2700/10, § 57, ECHR 2011; see also *Guberina*, cited above, § 76, with further references; *Çam v. Turkey*, no. 51500/08, § 69, 23 February 2016; and *Cînta v. Romania*, no. 3891/19, § 66, 18 February 2020).

(b) Application of those principles in the present case

(i) Whether there was a difference in the treatment of persons in analogous or relevantly similar situations

64. The Court notes that the present case concerns alleged discrimination against the applicant who suffered from mental illness. The applicant referred to the difference in treatment between persons with mental illness and other persons, notably those who were temporarily unable to fully control all their actions, such as persons who chronically abused alcohol. The latter were not fully deprived of their legal capacity, but only limited in their ability to conduct financial activity.

65. The Court notes that under Article 20 of the Moldovan Constitution (see paragraph 14 above) all persons have the right of access to justice. However, as the law stood at the time of the events, one category of persons – those affected by intellectual disability – could be deprived of their legal capacity and as a result completely lose their right of defending in court their rights, such as those protected under Article 8. The Court considers that this shows the existence of a difference of treatment of this category in comparison to all other persons.

(ii) Whether the difference in treatment was based on an identifiable characteristic or 'status'

66. The Court notes that the above-mentioned difference in treatment was based on an identifiable characteristic, namely the state of mental health of the individual, which is to be considered as a form of "other status" within the meaning of Article 14 of the Convention (see paragraph 63 above).

(iii) Whether there was an objective and reasonable justification for the different treatment in question

67. The Government argued that the measure taken in respect of the applicant was aimed at protecting her rights and interests.

68. In this connection, the Court reiterates that there is a European and worldwide consensus on the need to protect people with disabilities from discriminatory treatment (see *Glor v. Switzerland*, no. 13444/04, § 53, ECHR 2009).

69. It accepts that mental illness may be a relevant factor to be taken into account in certain circumstances, such as when assessing parents' capability of caring for their child (see *Cînta*, cited above, § 68). In view of the obligation mentioned above, the Court finds that the domestic authorities had the power, and even the obligation to take action which was aimed at protecting the interests of such persons, notably through ensuring reasonable accommodation to their needs. There are, therefore, valid reasons for treating differently persons with mental illnesses, always with the aim of offering additional protection to them, to the extent that they need such protection, and while ensuring that taking into account their will and preferences remains at the heart of any arrangements made. Accordingly, the Court concludes that the reasons advanced by the Government – of protecting the rights and interests of persons affected by intellectual disabilities – constitute an objective and reasonable justification for the measure taken.

70. It remains to be determined whether the methods used were proportionate to the aim of protecting the rights and interests of persons with intellectual disabilities.

(iv) Whether there was a reasonable relationship of proportionality' between the means employed and the aim sought to be realised

71. In the present case the applicant found herself in a situation where she could no longer decide even in respect of the smallest matters or most intimate aspects of her life and was never heard in order to find out whether she had any wishes or preferences.

72. Furthermore, although the applicant had a home in which she had lived before T.A. had applied to have her declared incapacitated, she was moved elsewhere without being asked. Even though the Government submitted that the Cocieri centre in which the applicant had been treated had

not prevented anyone from leaving, they did not comment on the applicant's argument that in practice, patients had not been properly informed of their right to leave. In view of the especially vulnerable situation of persons with intellectual disabilities, such information was essential for them to have any realistic chance of exercising their right to leave.

73. It is also apparent that the applicant was not only prevented from deciding on where to reside, but also on with whom to live. Under the law in force at the time, she were to live with her guarantor M.M., but the latter asked that the applicant be admitted in a specialised institution. Moreover, after being declared incapacitated, she was separated from her two daughters, without any additional judicial review of the need for such a separation (see *Cînta*, cited above, § 76). Although T.A. argued before the court that the applicant had been aggressive with her daughters, no specific evidence was relied on to confirm the existence of such aggressiveness. During her internment, the applicant could not realistically hope to conduct other social relations, except with other persons being treated at the hospital.

74. In this context, the Court refers to General Comment No. 1 of the Committee on the Rights of Persons with Disabilities, which interpreted Articles 12 and 19 of the United Nations Convention on the Rights of Persons with Disabilities (the CRPD) as requiring, *inter alia*, that a person with disabilities should be able to express his or her will and preferences, including in respect of such issues as where to live and with whom (see paragraph 23 above).

75. It is to be noted that the States Parties to the CRPD, including the Republic of Moldova, were invited as early as in 2014, that is, before the time frame of the present case, to replace substitute decision-making regimes (whereby a person with intellectual disability is placed under guardianship and the guardian has the power to take all decisions concerning that person) with supported decision-making (see paragraph 23 above). By choosing to continue with a substitute decision-making regime, the Moldovan authorities allowed the most serious interference with the applicant's rights by depriving her of all legal capacity and thus of any participation in decision-making processes concerning every aspect of her life. The Court finds that this failure on the part of the domestic authorities amounted to disproportionate measures stemming from the legislation itself. It is apparent that less drastic steps were possible, as exemplified by the new protection system introduced by the Republic of Moldova in 2017 and 2018 (see paragraph 20 above).

(c) Conclusion

76. The Court finds that the Moldovan authorities deviated from what was required to ensure the reasonable accommodation of the applicant's needs in the form of supporting her in the decision-making process, by denying her any role in organising her own life (see paragraphs 59 and 60 above). The domestic court's decision of 22 July 2015 (see paragraph 11 above) was based

exclusively on the criterion of her mental health status, without any consideration to her actual abilities. The law allowed an interference with the applicant's rights that was not only not impossible on any other category of persons, but also did not permit the domestic courts to take into consideration the varying levels of intellectual disability and the possibility that, at least in some respects of their lives and with proper assistance, persons in such situations could both understand and take meaningful decisions. Moreover, in the absence of periodic review of the applicant's capacity to comprehend, the measure taken in her respect could be considered as being taken for an indefinite period of time.

77. With the passage of time, the initial measure taken has become increasingly burdensome on the applicant, causing her discomfort in her daily life while at the same time preventing her from being able to obtain directly in court the right to take at least some decisions on her own, unlike other persons (see paragraphs 59 and 60 above). In the face of this disproportionate means of achieving the otherwise acceptable aim of protecting the rights of persons with disabilities, the Court finds that the measure taken amounted to discriminatory treatment.

78. There has accordingly been a violation of Article 14 taken in conjunction with Article 8 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

79. 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."

Damage

80. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage. She referred to her placement in a specialised institution, her placement under the guardianship of another and her inability to challenge the relevant decision or to assert her rights. She did not make any claim in respect of costs and expenses.

81. The Government considered that the sum claimed was excessive.

82. Ruling on an equitable basis, the Court awards the applicant EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 14 taken in conjunction with Article 8 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Moldovan lei at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 November 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Registrar

Arnfinn Bårdsen
President