



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

SECOND SECTION

CASE OF CLIPEA AND GROSU v. THE REPUBLIC OF MOLDOVA

(Application no. 39468/17)

JUDGMENT

Art 3 (substantive) • Material conditions in a psychiatric hospital during a particular period of treatment considered to be involuntary and to amount to inhuman or degrading treatment

Art 3 (procedural and substantive) • Ineffective investigation into allegations of ill-treatment by hospital staff and/or other patients • Difficulty in determining substance of allegations in particular due to investigation shortcomings • Absence of prima facie evidence capable of shifting the burden of proof on to respondent Government

Art 14 (+ Art 3) • Dismissal of applicants' complaints amounting to discriminatory treatment based on their intellectual disability *vis-à-vis* other alleged victims of inhuman and degrading treatment • Lack of objective and reasonable justification • Difference of treatment resulting from a *de facto* State agent policy • Evidence of a perpetuated domestic practice in respect of persons with intellectual disabilities

Prepared by the Registry. Does not bind the Court.

*This version was rectified on 6 May 2025
under Rule 81 of the Rules of Court.*

STRASBOURG

19 November 2024

FINAL

19/02/2025

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

In the case of Clıpea and Grosu 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,

Diana Sârcu,

Davor Derenčinović,

Gediminas Sagatys, *judges*,

and Hasan Bakırcı, *Section Registrar*,

Having regard to:

the application (no. 39468/17) 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 two Moldovan nationals, Mr Eugeniu Clıpea (“the first applicant”) and Mrs Virginia Iapără (“the second applicant”, who changed her name to Virginia Grosu in the meantime), on 17 May 2017;

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

the parties’ observations;

the comments submitted by the Council of Europe Commissioner for Human Rights (“the Commissioner”) (Article 36 § 3 of the Convention);

Having deliberated in private on 15 October 2024,

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

Having deliberated in private on 15 November 2024,

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

INTRODUCTION

1. The present case concerns the alleged inhuman material conditions contravening Article 3 of the Convention in a psychiatric hospital where the applicants periodically undergo voluntary treatment for intellectual disabilities. It also concerns alleged discriminatory treatment of the applicants in breach of Article 14 of the Convention.

THE FACTS

2. The applicants were born in 1992 and 1965, respectively, and live in Chişinău. They were represented by Ms D. Străisteanu, a lawyer practising in Chişinău.

3. The Government were represented by their Agent at the relevant time, Mr O. Rotari.

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

5. The applicants are two individuals with intellectual disabilities who periodically undergo treatment at Chişinău Clinical Psychiatric Hospital, also known as Codru Psychiatric Hospital (“the hospital”). The first applicant was treated there some 24 times since 2006, while the second applicant some 28 times since 1986. In the past they were usually taken there at the request of the police and/or members of their families, particularly in the first applicant’s case, at the request of his mother P.L., who is his guardian, because they were having a crisis and represented a danger to themselves and others. They spent twenty-one to thirty days at the hospital. The parties have not informed the Court of the exact circumstances in which each applicant was admitted to the hospital, notably whether they signed any documents confirming their free and informed consent to be treated there.

I. COMPLAINT TO THE COUNCIL FOR EQUALITY AND FOR THE PREVENTION AND ELIMINATION OF DISCRIMINATION

6. On 13 January 2014 P.L. lodged a complaint with the Council for Equality and for the Prevention and Elimination of Discrimination (“the Council”). She complained that her son (the first applicant) was being discriminated against at the hospital on the grounds of his intellectual disability. She alleged that the living conditions at the hospital were inhuman.

7. On 21 February 2014 the Council informed the hospital of its intention to carry out a fact-finding visit there between 27 February and 4 March 2014 to verify the allegations. However, on 27 February 2014 the hospital’s director and the unit heads E.C., V.F., N.C. and L.C. did not allow the Council’s representatives to visit the hospital premises.

8. On 11 April 2014 the Council issued a decision. It stated that it had heard the first applicant and his mother, several persons who had been treated at the hospital, including the second applicant, as well as representatives from the hospital and the Ministry of Health.

9. In that decision the Council noted that P.L.’s description of the material conditions at the hospital was as follows: the first applicant could not wash himself and needed assistance with this; however, he did not receive such assistance at the hospital and she came once every seven to ten days to help him. As a result, he was not always clean, and on several occasions he had returned from the hospital with skin diseases. He was in his room virtually all the time and had no access to walks in the fresh air; P.L. had been told that this was because there were insufficient staff, given that her son was likely to try to escape and needed supervision during walks. Because of that, she was also discouraged from taking him for a walk. There was a strong unpleasant smell in the hospital and cigarette smoke, and the toilets and bathroom were in a deplorable state. The first applicant made similar statements, adding that his belongings were occasionally stolen by other patients and when he defended himself against them by using force he was tied to his bed for seven

to nine hours by staff members. During his last stay at the hospital he had been beaten by two staff members in unit 8 and then tied to his bed for six hours.

10. The decision also noted that the Ministry of Health had submitted that the prosecutor's office had jurisdiction over the investigation into the alleged inhuman treatment; that there was no evidence of the first applicant having had skin diseases after his treatment at the hospital; that there was no legal obligation for doctors to help patients wash themselves, as medical and health institutions offered assistance which was strictly medical, and not spiritual or cultural services or those relating to accommodation; that washing a person deprived of legal capacity, even with the permission of his or her guardian, would raise serious issues relating to protection of that person's privacy. It argued that the hospital had an obligation to maintain the hygiene of persons of whom it had guardianship; since P.L. and not the hospital was the first applicant's guardian, it was her responsibility to provide him with care. The ministry added that persons with limited legal capacity could have walks in the fresh air under their guardian's supervision.

11. The decision further noted the response of the hospital which had been set out in a letter dated 31 January 2014: there was no evidence of the first applicant having had any skin disease during his treatment at the hospital; walks in the fresh air were allowed, but were temporarily suspended for certain persons with serious conditions such as that of the first applicant; and the conditions in the hospital guaranteed that patients could maintain their personal hygiene on a daily basis. In a further letter of 31 March 2014 the hospital submitted a detailed description concerning organisational, sanitary and other measures ensuring that persons were treated well during their stay at the hospital.

12. The witness R.P., who was cited in the Council's decision, stated that he was a doctor and a relative of P.L. She had asked him to help with washing the first applicant at the hospital and he had done so, with the permission of the hospital's staff. He had noted that it was cold in the unit; that the bathroom was in a deplorable state; that some of the floor tiles were missing and had been replaced by pieces of wood, and that patients showered using a simple water hose. There was no soap or shampoo in the bathroom. In the summer of 2013 he had bought ointments for treating skin diseases for P.L., since the first applicant had needed to be treated during his hospital stay.

13. The witness V.B., also cited in the Council's decision, stated that he had been treated in various units of the hospital, including unit 8, where only one person had had the right to walks in the fresh air while he had been there. During the first applicant's last stay at the hospital he had been beaten and tied up by the staff because he had tried to call the police for help. In units 31 and 37 there was an unofficial hierarchy like in prison, which helped the staff maintain order in the units. Patients in unit 8 "were beaten less than in other units".

14. The second applicant was heard as a witness. She told the Council that she had been treated in unit 14 of the hospital. The conditions there were deplorable. There was no hot water in the evening and people had to carry hot water from the kitchen to the bathroom themselves in a container, if they had good relations with someone in the kitchen. In the bathroom, people could easily catch a skin disease if they walked around barefoot. Before 2010 the patients had been forced to clean the toilet and their unit and then carry food to the table in the dining area. This, in her opinion, had caused a dysentery outbreak and a quarantine. No one was allowed walks in the fresh air, except during the last three days of treatment. She added that she had not seen anyone being ill-treated by the hospital staff.

15. The witness V.F., who is the head of unit 8 at the hospital, where the first applicant was treated, told the Council that no recent cases of skin diseases at the hospital had been recorded, and a dermatologist treated such illnesses when they were discovered. In 2012 the first applicant had been diagnosed with pyoderma on one occasion upon his admission to the hospital, but he had not been treated or subsequently examined because it had been unnecessary. He had the right to move around the unit freely, but walks in the fresh air were possible only when he was accompanied, otherwise he might run away. Unfortunately, there were not enough staff to ensure individual supervision during walks in the fresh air. Doctors attributed codes to patients, which had been a practice since Soviet times, and this made it clear to any other doctor what a patient's current state was, and whether he or she was permitted to do certain things (walk freely about the unit, have access to walks in the fresh air). These codes were unofficial and the decision to attribute one code or another, or to move patients from one category to another, was not recorded anywhere. The first applicant had been attributed the "1-1-A" code for the most part of his treatment at the hospital since he was in a more serious state; he was subsequently transferred to the next category and thus had the right to move about by himself within the hospital unit. There was no known unofficial hierarchy at the hospital. Patients at the hospital were often asked to carry out tasks and have jobs. Doctors were not there at night and thus could not fully control what the personnel did during that period or whether some patients were involved in cleaning the premises.

16. G.L., the doctor in charge of the first applicant's treatment, made statements similar to those of V.F. She added that no force had been used against the first applicant since he had agreed to have a sedative injection whenever he became agitated. The doctor had not noticed any signs on the first applicant's body indicating that he had been beaten or tied to his hospital bed.

17. In its decision of 11 April 2014, the Council found that the hospital had not satisfied it that the first applicant had received appropriate treatment, notably in respect of access to walks in the fresh air and assistance with his personal hygiene. The witness statements and the hospital's refusal to give

the Council access to its premises in order to verify the conditions there contrasted with the unproved statements of the hospital's representatives. Accordingly, the Council concluded that the facts in its possession proved the lack of reasonable accommodation for a patient with a disability in relation to accessing medical services.

II. CRIMINAL INVESTIGATION INTO THE APPLICANTS' ALLEGED INHUMAN AND DEGRADING TREATMENT

18. On 10 February 2014 the Council notified the Prosecutor General's Office ("the PGO") that a criminal offence against patients had possibly been committed at the hospital. On 12 March 2014 the PGO started a criminal investigation into possible acts of inhuman or degrading treatment.

19. On 11 June 2014 the applicants were recognised and heard as injured parties. They complained that they had not been allowed to go for walks outside; that the second applicant had, in the past, been forced to clean the toilets and her room; that the first applicant had been beaten by other patients and had his food and property stolen by them (he was too afraid to have a mobile phone because he thought it would be stolen); and that the first applicant had occasionally been restrained in his bed and had contracted a skin disease in the hospital owing to the poor sanitary conditions and the bad smell.

20. The prosecutor heard doctors G.L., R.S., C.L. and F.V., who were all unit heads at the hospital and denied all the allegations. He also ordered a psychiatric and psychological examination of the applicants at the hospital, but on 7 July 2014 both applicants refused to undergo such an examination, stating that they did not trust the doctors at the hospital.

21. On 24 September 2014 the prosecutor in charge of the case discontinued the investigation. The reasons given were the lack of evidence that an offence had been committed and the applicants' refusal to submit to a psychiatric and psychological evaluation.

22. On 13 October 2014 the applicants' lawyer asked for information about the course of the investigation and to have access to the documents in the file if the investigation had been discontinued. On 3 November 2014 the lawyer complained to a higher-ranking prosecutor that she had not received a copy of the decision of 24 September 2014, and had been only verbally informed of its content by the prosecutor. She also asked for the decision to be annulled. She referred, *inter alia*, to the United Nations Convention on the Rights of Persons with Disabilities (CRPD).

23. The higher-ranking prosecutor upheld that decision on 11 November 2014. Reiterating the statements of the applicants and the witnesses from the hospital, the prosecutor found no evidence that an offence had been committed, and that the alleged victims were "persons with limited legal capacity, and in these circumstances, [were] not always able to fully and

correctly understand the things that happen[ed] in certain circumstances”. Moreover, they had refused to submit to a psychiatric and psychological evaluation aimed at establishing the events in which they had been involved while being treated at the hospital, leaving the prosecution service unable to gauge the truthfulness of their statements.

24. In her complaint to the Centru District Court in Chişinău, the applicants’ lawyer referred, *inter alia*, to the fact that the prosecutors had relied on her clients’ diagnosis and their refusal to submit to an evaluation. She argued that the prosecutors had not taken any measures aimed at obtaining evidence and verifying the victims’ statements.

25. On 30 December 2014 the court rejected the applicants’ complaint against the decisions of 24 September and 11 November 2014.

26. In an appeal, the lawyer repeated the arguments she had made to the Centru District Court, and added that the prosecution service had not taken into account reports by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) or heard current and former patients from the hospital. She argued that the prosecution service had not made it clear why her clients needed to submit to the evaluation, or how this could be done objectively by the same hospital about which they were complaining. The lawyer submitted that her clients felt stigmatised, and that the authorities’ attitude reflected an unwillingness to hear persons with disabilities when they complained of inhuman treatment by psychiatric institutions.

27. On 2 March 2015 the Chişinău Court of Appeal accepted the applicants’ appeal. It found that the prosecutor had only heard four unit heads from the hospital, in whose units the alleged offences had been committed and who were thus interested witnesses, since they could not have been unaware of the alleged inhuman treatment in the units which they headed. Moreover, it was unclear what actions had been taken in order to verify the submissions from the Council, such as the applicants’ evaluation by specialists in institutions other than the hospital about which they were complaining. The court found that the investigation had been superficial and incomplete, and the decision taken was insufficiently reasoned.

28. On 13 April 2015 the applicants’ lawyer asked the prosecutor in charge of the case to, *inter alia*, take all actions aimed at identifying and preserving evidence of the alleged offence. On 5 May 2015 she was informed that the criminal investigation had been restarted and that the request had been annexed to the case material. On 13 July 2015 the lawyer enquired about the progress of the investigation, notably what actions had been taken. In reply, she was informed that her request had been annexed to the case material for subsequent examination.

29. On 2 March 2016 the lawyer again enquired about the course of the investigation and asked for copies of the procedural decisions taken after the court decision of 2 March 2015.

30. On 16 March 2016 the prosecutor informed the lawyer that he had discontinued the investigation on 30 July 2015 for lack of evidence that an offence had been committed. Before reaching that decision, the prosecutor had heard the applicants, the four heads of units at the hospital, as well as several persons who were being treated at the hospital at the time. Except for the applicants, none of those people had confirmed any violence, bad smells, other bad conditions or forced labour. On 28 May 2015 the prosecutor had visited units 8 and 20 at the hospital and photographed the conditions there, finding that they were good. The prosecutor added “the alleged facts of precarious conditions in the medical institution and [substandard] medical treatment cannot be considered inhuman or degrading treatment by the medical institution’s staff”. He noted that since the applicants had voluntarily submitted to treatment at the hospital, their case was not similar to that of persons who were treated there against their will or who were under the hospital’s guardianship. Therefore, their treatment at the hospital had been neither illegal nor arbitrary; moreover, they had not complained of illegal detention or forced treatment at the hospital. The prosecutor wrote that the applicants had limited legal capacity and thus were not always able to fully and correctly understand what happened to them.

31. In her complaint against that decision, the applicants’ lawyer noted, *inter alia*, that she had not received a copy of it on time and that neither she nor her clients had been invited to participate in the prosecutor’s visit to the hospital to verify the conditions there. She submitted that treating her clients’ statements as not credible because of their diagnosis was a form of abuse and discrimination.

32. On 20 April 2016 a higher-ranking prosecutor upheld the decision of 30 July 2015. On 4 October 2016 the Centru District Court in Chişinău upheld the decisions of 30 July 2015 and 20 April 2016, essentially repeating the prosecutors’ arguments, including the one concerning the applicants’ inability to fully understand what was happening to them owing to their diagnosis. It added that since the applicants had voluntarily undergone treatment at the hospital on numerous occasions, they would hardly have chosen to return there had they been subjected to inhuman or degrading treatment. Moreover, the applicants had been free to communicate with the outside world and could have warned their family members if they had felt that they were being ill-treated. The court noted that Article 166¹ of the Criminal Code (see paragraph 35 below) did not apply to the treatment complained of, in the absence of evidence that the applicants had been subjected to treatment contrary to Article 3 of the Convention. Moreover, the sanitary conditions at the hospital could not be considered to constitute inhuman or degrading treatment, and the applicants could claim compensation from the hospital in civil proceedings.

33. On 17 November 2016 the Chişinău Court of Appeal upheld the lower court’s decision, largely reproducing that court’s reasons.

34. It appears from the parties' submissions that the second applicant continued to be periodically treated at the hospital. The last time she was admitted there was on 25 August 2021, at the request of the police, whose assistance had been requested by her mother (the second applicant was agitated, irritable and had attacked her mother).

RELEVANT DOMESTIC AND INTERNATIONAL LEGAL FRAMEWORK

I. RELEVANT DOMESTIC LAW AND PRACTICE

35. The relevant part of the Criminal Code of the Republic of Moldova, enacted by Law no. 895 of 18 April 2002, reads as follows:

Article 166¹

Torture, inhuman or degrading treatment

“(1) A public legal entity or a person who *de facto* exercises public power, or a person who acts officially or with the express or tacit approval of such a [public legal entity], who intentionally causes physical or psychological pain or suffering which constitutes inhuman or degrading treatment

shall be punished by [a term of] imprisonment of 2 to 6 years or a fine ...

(2) The actions provided for in paragraph (1):

(a) when intentionally committed against a minor or a pregnant woman, [and] abuse of a victim's known state of helplessness owing to his or her advanced age, illness, physical or mental disability or other factors

... shall be punished by [a term of] imprisonment of 3 to 8 years or a fine ...”

36. Under Article 5 of the Code of Civil Procedure, every person has the right of access to a court of justice in order to have his or her rights protected. Judicial protection must not be refused because of a lack of legislation, or because of the existence of an imperfection, discrepancy or ambiguity in the legislation.

37. The relevant part of Law no. 1402 of 16 December 1997 on psychiatric assistance (which was renamed in 2008 and became a Law “on mental health”), in force since 21 May 1998, reads as follows:

Section 5

The rights of persons suffering from mental disorders

“1. Persons suffering from mental disorders shall enjoy all citizens' 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 in other normative acts. ...

3. It shall be prohibited to limit the rights and freedoms of persons suffering from mental disorders on the sole grounds of their psychiatric diagnosis, of their observation

through hospitalisation, or of their confinement in a psychiatric ward or a neuropsychiatric institution. ...”

Section 27

Grounds for in-patient treatment in a psychiatric institution

“... ”

(3) In-patient treatment in a psychiatric institution, with the exception of [involuntary treatment] is based on the person’s request or free consent.

...

(5) The consent for in-patient assistance shall be noted in the medical documents and shall be signed by the person concerned or his/her legal guardian, as well as by the psychiatry doctor.”

Section 46

Procedure and time-limits for challenges

“(1) A person benefiting from psychiatric assistance may challenge the actions of the medical staff and other specialists ... which breach his or her rights and lawful interests, directly before the courts, the higher-ranking authority or the prosecutor’s service.

...”

38. According to the periodic report for 2022 by the national Centre for Human Rights, there were three psychiatric hospitals in the Republic of Moldova, in Chişinău, Orhei and Bălţi. During 2022 some 84 cases of inter-patient aggression had been recorded. It also found that, owing to the humidity and degraded state of floors in sanitary installations, there was an increased risk of injury and that patients often spent most of their time in their rooms for lack of alternative activity.

II. INTERNATIONAL LAW

A. The United Nations

39. 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 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;

...”

40. 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, the Oviedo Convention) was signed on 4 April 1997 and entered into force on 1 December 1999, and with respect to the Republic of Moldova on 1 March 2003. Article 5, entitled “General rule”, in Chapter II on Consent, provides 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.”

41. The relevant parts of the United Nations Committee on the Rights of Persons with Disabilities (CRPD) concluding observations on the initial report of the Republic of Moldova, UN Doc. CRPD/C/MDA/CO/1, 18 May 2017, read as follows:

**Freedom from torture and cruel, inhuman or degrading treatment or punishment
(art. 15)**

“30. The Committee is concerned about the inhuman and degrading treatment of persons with disabilities in institutions perpetrated by staff members, caregivers or other residents, including acts of neglect and the use of chemical and physical restraints, solitary confinement and forced medication as punishment. It is also concerned about the inefficiency and inadequacy of complaints systems, delays in investigations and lack of monitoring of institutions.

31. The Committee urges the State party to take measures to protect persons with disabilities who remain institutionalized from forced, inhuman or degrading treatment or punishment and to prohibit all such acts. It recommends that the State party develop an effective investigation and monitoring system to prevent all forms of inhuman or degrading treatment or punishment against persons with disabilities in institutions, and to ensure the prompt investigation of such cases.”

42. The relevant part of the report of the United Nations 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. ...”

43. The relevant part of the concluding observations on the third periodic report of the Republic of Moldova by the United Nations Committee Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/MDA/CO/3, 21 December 2017) reads as follows:

Treatment of persons in psychiatric, psychoneurological and other residential institutions

“31. The Committee is seriously concerned at reports that persons with mental disorders and psychosocial and intellectual disabilities are confined to psychiatric hospitals and psychoneurological residential institutions in conditions that include inadequate food and hygiene ...”

B. The Council of Europe

44. 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 9 – Environment and living conditions

“1. Facilities designed for the placement of persons with mental disorder should provide each such person, taking into account his or her state of health and the need to protect the safety of others, with an environment and living conditions as close as possible to those of persons of similar age, gender and culture in the community. Vocational rehabilitation measures to promote the integration of those persons in the community should also be provided.

...”

45. The relevant part of the report by the CPT on its visit to the Republic of Moldova from 28 January to 7 February 2020 (CPT/Inf (2020) 27) reads as follows:

“The CPT notes the improvements made to the material conditions at Chişinău Psychiatric Hospital. However, a number of the shortcomings identified by the CPT during its previous visits persisted. In particular, all the premises were bare and austere, no improvement was observed as regards the equipment in patients’ rooms which was still limited to beds and a few bedside tables and conditions in several rooms were cramped. Further, the communal toilets and shower rooms were in a poor state of cleanliness and repair and still provided very little privacy to the patients.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

46. The applicants complained that they had been treated in inhuman and degrading conditions, that the first applicant's ill-treatment by other patients had been condoned by the hospital staff, and that the investigation into that ill-treatment had not been effective. They relied on Article 3 of the Convention, which reads as follows:

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

A. Admissibility

47. The Government argued that the applicants had failed to exhaust available domestic remedies. In particular, after the criminal investigation into their allegations had been discontinued, they had been informed of their right to lodge a civil court action for damages, but they had failed to do so. Moreover, under Article 5 of the Code of Civil Procedure (see paragraph 36 above), a court action had to be examined even where there was a lack of legislation or where the legislation contained an imperfection, discrepancy or ambiguity.

48. The applicants submitted that their initial complaint under non-discrimination legislation had been examined by the Council. In the Council's view, the facts of the case had showed that an offence had possibly been committed against the applicants. They had had no reason to doubt that the prosecutor's office would fully cooperate in investigating their complaint.

49. The Court reiterates that the purpose of Article 35 § 1 of the Convention is to afford the 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; *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 who has exhausted a remedy that is apparently effective and sufficient cannot be required also to have tried others that were available but probably no more likely to be successful (see *L.F. v. Hungary*, no. 621/14, § 50, 19 May 2022).

50. In the present case, the Government did not prove that the criminal investigation into the applicants' allegations was a remedy which was ineffective in principle. This is emphasised by the fact that the prosecutor's office actually investigated the material conditions at the hospital, as well as

the alleged ill-treatment by other patients or staff, and adopted a decision in that regard which was subsequently reviewed in detail by the courts. Moreover, under Section 46 of the law on mental health (see paragraph 37 above) a patient could choose to challenge the actions of medical personnel before the prosecutor's service, which the applicants have done.

The Court also considers that a civil claim against the State in respect of the failure to conduct an effective investigation into the applicants' allegations of inhuman treatment in the hands of State agents – in the present case the hospital personnel – and ill-treatment by third persons could not have provided them with any redress in terms of ensuring the effectiveness of that investigation and prosecution (see *Mircea Pop v. Romania*, no. 43885/13, § 61, 19 July 2016). The Government's objection as to the non-exhaustion of domestic remedies must therefore be dismissed.

51. The Court notes that the application 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

52. The applicants argued that they had been treated in inhuman and degrading conditions, which exceeded the threshold of severity required to engage Article 3 of the Convention. In particular, they had had no access to fresh air, the sanitary conditions had been bad and access to hot water had been restricted, and they had feared violence from other patients and had suffered neglect on a daily basis. They referred to various reports reflecting those conditions and argued that the prosecutor in their case had visited units 8 and 20, while they had been treated in units 14 and 17. As regards receiving treatment, they argued that they had had no alternatives to that hospital.

53. Moreover, the investigation into their allegations of inhuman treatment had not been effective. The prosecution service had relied on their diagnosis and refusal to undergo a psychiatric and psychological evaluation as grounds for discontinuing the criminal investigation, without making a genuine attempt to verify the truthfulness of their allegations. In addition, no other witness except for the applicants had been asked to undergo such an examination. The focus of the prosecutor's activity had been on undermining the credibility of the applicants' allegations rather than searching for evidence which could support those allegations.

(b) The Government

54. The Government submitted that the applicants had been treated in good conditions comprising good-quality meals, central heating,

well-equipped and clean toilets and showers, large windows, and clean and tidy rooms, as evidenced by the prosecutor's visit and the photographs taken. Moreover, the hospital regularly allocated funds for improving the patients' conditions. The units in which each of the two applicants had been treated (units 14 and 17) had been renovated before the Government had been given notice of the present case in January 2021.

55. The investigation into the applicants' allegations had been thorough, and the prosecutor had carried out all reasonable investigative actions. Thus, the prosecutor had heard the applicants and ordered a psychiatric and psychological assessment of them, had heard witnesses, and had visited the relevant units, taking photographs confirming the good conditions there. Two witnesses had testified that they had never been beaten or otherwise humiliated during their treatment at the hospital, either by staff or other patients, and had no complaints about the material conditions. Moreover, if any ill-treatment had happened, the applicants would have alerted their relatives, with whom they had remained in contact and who had been able to visit them. However, no complaints had been made by either the applicants or their relatives. Even the second applicant's own statement confirmed that she had not been ill-treated by the hospital staff (see paragraph 14 above).

(c) Third-party intervener

56. The Council of Europe Commissioner for Human Rights submitted that the general attitude towards mental health was undergoing a profound paradigm shift at international level. In particular, coercion could no longer be taken for granted in psychiatry; the free and informed consent of the persons concerned had to be the basis for decisions taken in relation to them. Closed psychiatric institutions were generally a breeding ground for human rights violations: isolating a person from the community and support networks which he or she ordinarily relied on allowed violations to be committed easily and with impunity, and largely prevented opportunities to gather evidence. The dismissive and discriminatory attitude of prosecutors worsened the situation. Even voluntary patients often lost control of their treatment choices once they entered the system, with institutional and coercive logic taking over; for example, they could be confined to certain spaces or forcibly medicated by staff. Patients in such situations often had no means of challenging these practices.

57. In the Commissioner's view, people with psychological disabilities often faced insurmountable barriers in accessing justice. When assessing the effectiveness of judicial proceedings, power asymmetries between patients and hospital staff which might be reflected in investigations deserved special attention. In this context, the existence of reports of systemic human rights violations from credible sources could create a strong presumption in favour of the applicants and shift the burden of proof. The Commissioner lastly submitted that the widespread and systemic nature of human rights violations

caused by coercion-based mental health services required a wide array of general measures in accordance with the legal and medical paradigm shift that was currently in progress around the globe.

2. *The Court's assessment*

(a) **General principles**

58. The Court reiterates that 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). The Court has also pointed out that in the case of mentally ill patients, consideration has 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).

59. 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*, no. 18968/07, § 101, 8 November 2011, and *V.I. v. the Republic of Moldova*, no. 38963/18, § 96, 26 March 2024). 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 un rebutted presumptions of fact (see, among other authorities, *Akopyan v. Ukraine*, no. 12317/06, § 103, 5 June 2014).

60. In order to determine whether the threshold of severity for the application of Article 3 has been reached, the Court also takes other factors into consideration, in particular (*Khlaifia and Others v. Italy* [GC], no. 16483/12, § 160, 15 December 2016):

(a) The purpose for which the ill-treatment was inflicted, together with the intention or motivation behind it, although the absence of an intention to humiliate or debase the victim cannot conclusively rule out its characterisation as “degrading” and therefore prohibited by Article 3.

(b) The context in which the ill-treatment was inflicted, such as an atmosphere of heightened tension and emotions.

(c) Whether the victim is in a vulnerable situation.

61. 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)).

62. However, the Court has also considered that States have positive obligations under Article 3 of the Convention which comprise, firstly, 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).

(b) Application of these principles to the present case

63. The Court notes that in the present case the applicants were hospitalised on a voluntary basis. This distinction between voluntary and involuntary hospitalisation is an important factor in assessing the scope of the State’s obligations under the Convention. Voluntary patients are generally presumed to have consented to treatment and to retain a greater degree of autonomy than those who are involuntarily detained. However, this voluntary status does not relieve the State of its duty to protect persons in vulnerable situations. Mental health patients, even when admitted voluntarily, may still be in a fragile state due to the very nature of their illness. In this connection, albeit in the context of the States’ obligations under Article 2 of the Convention (see *Fernandes de Oliveira v. Portugal* [GC], no. 78103/14, § 124, 31 January 2019), the Court has previously held that:

“There is no doubt that as a person with severe mental health problems A.J. was in a vulnerable position. The Court considers that a psychiatric patient is particularly vulnerable even when treated on a voluntary basis. Due to the patient’s mental disorder, his or her capacity to take a rational decision to end his or her life may to some degree be impaired. Further, any hospitalisation of a psychiatric patient, whether involuntary or voluntary, inevitably involves a certain level of restraint as a result of the patient’s medical condition and the ensuing treatment by medical professionals. In the process of treatment, recourse to further kinds of restraint is often an option. Such restraint may take different forms, including limitation of personal liberty and privacy rights. Taking all of these factors into account, and given the nature and development of the case-law

referred to ... above, the Court considers that the authorities do have a general operational duty with respect to a voluntary psychiatric patient to take reasonable measures to protect him or her from a real and immediate risk of suicide. The specific measures required will depend on the particular circumstances of the case, and those specific circumstances will often differ depending on whether the patient is voluntarily or involuntarily hospitalised. Therefore, this duty, namely to take reasonable measures to prevent a person from self-harm, exists with respect to both categories of patient. However, the Court considers that in the case of patients who are hospitalised following a judicial order, and therefore involuntarily, the Court, in its own assessment, may apply a stricter standard of scrutiny.”

64. Bearing in mind the above considerations, the Court notes that in the present case neither of the applicants was formally subjected to involuntary treatment, which required a court decision. However, there is nothing in the case file to confirm that the applicants signed any documents giving their free and informed consent to their treatment at the hospital (see paragraphs 5 and 37 above; see also Article 25(d) of the CRPD, cited in paragraph 39 above, and Article 5 of the Oviedo Convention, cited in paragraph 40 above). Assuming that such documents were signed, it is unclear whether the applicants had benefitted from any assistance in fully understanding their situation, at a time when their state of mind required their urgent hospitalisation into a psychiatric hospital, so as to express a truly informed consent.

65. In any event, as noted by the Court (see paragraph 63 above) and as pointed out by the Council of Europe Commissioner for Human Rights (see paragraph 56 above), hospitalisation of a psychiatric patient, whether involuntary or voluntary, inevitably involves a certain level of restraint. Even persons who are admitted to psychiatric treatment voluntarily often lose control over their treatment choices once they enter the system, with institutional and coercive logic taking over. Patients in such situations often have no means of challenging these practices. This appears to have been the case with the applicants, since they were denied access to outside walks and, as the first applicant alleged, he was sometimes tied to his bed and force was used against him (see paragraphs 9, 14 and 15 above). He had to submit to an injection of a sedative or face possible use of force (see paragraph 16 above). The testimony of another patient (V.B., see paragraph 13 above) and of one of the doctors (V.F., see paragraph 15 above), confirms that there was a general policy of restricting certain rights, such as taking walks in the fresh air because of a lack of staff. The practice of assigning code numbers to patients, which restricted their rights to varying degrees was unofficial, unrecorded and therefore not open to challenge in any way (*idem*). The closed nature of the institution is also illustrated by the inability of a State authority specialising in the protection against discrimination to assess the conditions in the hospital after having informed it in advance of its visit (see paragraph 7 above). Finally, it is noted that the Government have not provided any

evidence that the applicants were informed of their right to leave the hospital at their own discretion.

66. Given the findings above, the Court concludes that, even assuming that the applicants were admitted to the relevant hospital voluntarily, there were sufficient elements of coercion so as to treat their subsequent stay and treatment there as being *de facto* involuntary.

(i) *Investigation into the first applicants' complaints*

67. The Court notes that the first applicant complained of his ill-treatment to the Council (see paragraph 9 above), which on 10 February 2014 asked the prosecutor's office to determine whether an offence had been committed. In particular, he claimed that he had been hit by other patients, and that when he had resisted them by force the staff had immobilised him for many hours (see paragraph 9 above). He also claimed that during his last stay at the hospital he had been beaten by two staff members. Moreover, another patient who had been treated at the same time and in the same unit as the first applicant testified before the Council that "he [had been] beaten and tied up by the staff because he had tried to call the police for help", and that "patients in unit 8 were beaten less than in other units" (see paragraph 13 above).

68. It is apparent that the prosecution service considered this initial information sufficiently serious to initiate a criminal investigation and to recognise both applicants as injured parties (see paragraph 18 and 19 above). However, the investigation was started more than a month later (on 12 March 2014, see paragraph 18 above), while the applicants were heard on 11 June 2014, three months later. These delays are incompatible with the requirement of promptness and reasonable expedition implicit in such cases (see, for instance, *Trocin v. the Republic of Moldova*, no. 23847/19, § 58, 16 March 2021).

69. During the first phase of the investigation, which lasted one year, only the applicants and the doctors at the hospital were heard. The only other measure ordered was the applicants' psychiatric and psychological examination by doctors from the same hospital about which they were complaining, which they both refused. As the Court of Appeal found in its decision of 2 March 2015, the doctors were interested parties and the prosecution service did not explore the possibility of arranging for the applicants to be examined by doctors from another institution. More generally, that court found that the investigation had been "superficial and incomplete, and the decision taken was insufficiently reasoned" (see paragraph 27 above).

70. Lastly, it is noted that the applicants and their lawyer were insufficiently informed of the course of the investigation, and the lawyer had to ask for updates on a number of occasions (see paragraphs 28-31 above). It is striking that neither the applicants nor their lawyer were informed of the decision to discontinue the investigation, taken on 30 July 2015, until March

2016, and even then they were only informed because the lawyer had requested updated information (see paragraph 30 above). Moreover, neither the applicants nor their lawyer were informed of the prosecutor's visit of 28 May 2015 (see paragraph 30 above) and thus could not contribute in any manner (for instance, by giving details of the specific rooms or installations to check, identifying patients who could have witnessed the alleged events and formulating questions to the hospital staff or other witnesses). This was also a good occasion to clearly determine in which units each applicant had been treated: 8 and 20 which were visited by the prosecutor or 14 and 17 as subsequently claimed by the applicants. Therefore, it is clear that the applicants were not able to participate effectively in the investigation (see *X and Others v. Bulgaria*, cited above, § 189).

71. The above considerations are sufficient for the Court to conclude that there has been a breach of Article 3 of the Convention in respect of the manner in which the investigation into the applicants' allegations was conducted.

(ii) *Alleged inhuman and degrading material conditions at the hospital*

72. The Court notes the applicants' description of their conditions in the hospital where they were treated (see paragraphs 9 and 14 above). In particular, they referred to the fact that during their three to four-week stays there they had not been allowed any walks in the fresh air (except, in the second applicant's case, during the last few days of her stay there), that the shower area had been insalubrious, and that there had been a strong smell and cigarette smoke in the hospital. The first applicant had needed help with his personal hygiene, but had received this only from his mother when she had visited him once every seven to ten days. He had been beaten by other patients and sometimes staff, especially when he had used force against other patients who had stolen his belongings. The second applicant had had to carry hot water from the kitchen to the bathroom in a container in order to take a shower. Before 2010 she and other female patients had been forced to clean toilets and rooms and then serve food to other patients.

73. The Court notes that on each occasion the applicants were treated at the hospital they were there for three to four weeks (see paragraph 5 above). It considers that keeping a person for such a period of time without providing any access to walks in the fresh air (and in the case of the first applicant not allowing him most of the time to move about the hospital unit in which he was treated, see paragraph 15 above) or a proper shower in healthy conditions, may constitute degrading or inhuman treatment. Moreover, in the present case, account must be taken of the applicants' particular vulnerability as persons with intellectual disabilities (see paragraph 58 above) and as persons on *de facto* involuntary treatment.

74. The statement from the Ministry of Health (see paragraph 10 above) confirms that there was no obligation on the hospital to help maintain the patients' personal hygiene; in the first applicant's case, that was the

responsibility of his guardian (his mother). The Court finds this disturbing, given that the first applicant's inability to maintain his personal hygiene was the result of his intellectual disability, which was the reason why he had been admitted to the hospital. Moreover, unlike the hospital staff, his mother was not there on a regular basis to help him.

75. The Court also notes that the parties disagreed as to the conditions in the bathrooms and toilets of the relevant units. The applicants relied on the statement of a doctor who visited the first applicant in the hospital and helped him (see paragraph 12 above). The Council's planned fact-finding visit to the hospital premises (see paragraph 17 above) could have dispelled any doubts as to the material conditions there, but the hospital's refusal to allow such a visit prevented that. The prosecutor's visit to the hospital (see paragraph 30 above) happened a year after the events, and thus cannot be conclusive as to the conditions there during the applicants' stay. Similarly, the fact that the relevant units were refurbished at some point before 2021, while welcome, does not affect the findings regarding the material conditions in those units during the relevant period. The Court lastly notes that various international officials visiting some Moldovan psychiatric institutions, including the hospital, confirmed the poor state of toilets and bathrooms in those facilities (see paragraphs 42, 43 and 45 above).

76. The Government argued that nobody would voluntarily return to an institution where conditions were inhuman. In this regard, the Court refers to its finding that although the applicants' treatment at the hospital was voluntary, they could not be considered to have given their consent to continue their treatment completely freely (see paragraph 65 above). It also notes that during his treatment at the hospital, it was considered that the first applicant might try to escape, even when accompanied by his mother, and this was the reason for advising her not to take him out for a walk in the fresh air (see paragraph 9 above). The "escape" or departure from the hospital of a voluntary patient in control of his or her state of mind would not be an event worth warning somebody about. It follows that the hospital doctors considered that the first applicant was a danger to himself and/or others while he was treated there. In such circumstances, his mother had no real choice but to consent to his treatment. Moreover, the Government did not show that in the event of an emergency such as a crisis necessitating a quick response, a person in the applicants' situation would have had a real option to choose which specialist institution the ambulance would take them to. Since both applicants were treated at the same hospital on a regular basis, they would presumably usually be taken there instead of to other institutions. Similarly, the second applicant's last hospitalisation was requested by the police with her mother's consent, since she was irritable and had attacked her mother (see paragraph 34 above). It is finally worth mentioning that the Chişinău Clinical Psychiatric Hospital was the only such institution in the city.

77. The Court finds that the unavailability of walks in the fresh air and the poor sanitary conditions of the bathrooms and toilets in the relevant units, lasting each time three to four weeks and when viewed in the light of the applicants' particular vulnerability, exceeded the minimum threshold of applicability of Article 3 (see paragraph 60 above).

78. There has accordingly been a violation of Article 3 of the Convention in respect of the material conditions in which the applicants were¹ treated.

79. The Court finds that although the first applicant made serious complaints about ill-treatment and the prosecution started an investigation, the case file does not contain sufficient material to allow a definitive conclusion in this regard, not the least because of the deficiencies in the investigation into those allegations (see paragraphs 67-71 above). Therefore, in the absence of *prima facie* evidence capable of shifting the burden of proof on to the respondent Government, the Court cannot draw a conclusion as to whether the first applicant was subjected to ill-treatment by the staff and/or other patients in the hospital. It concludes, therefore, that there has not been a violation of the substantive limb of Article 3 of the Convention in that connection.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 3

80. The applicants complained that they had been subjected to inhuman and degrading treatment because they were persons with psychological disabilities. They relied on Article 14 of the Convention, which 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.”

81. The Government disputed this allegation.

A. Admissibility

82. The Court has consistently held that Article 14 of the Convention complements the other substantive provisions of the Convention and the Protocols thereto. Article 14 has no independent existence, since it has effect solely in relation to “the enjoyment of the rights and freedoms” safeguarded thereby. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no

1. Rectified on 6 May 2025: the text was: “first applicant was”.

room for its application unless the facts at issue fall within the ambit of one or more of them (see, among many other authorities, *Molla Sali v. Greece* [GC], no. 20452/14, § 123, 19 December 2018, with further references).

83. The Court has found that the treatment to which the applicants were subjected amounted to a breach of Article 3 of the Convention (see paragraphs 71 and 78 above). It follows that Article 14 of the Convention, taken in conjunction with Article 3, is applicable in the present case.

84. 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

85. The applicants submitted that the reason for the inhuman and degrading treatment to which they had been subjected had been their psychological disabilities. They had felt neglected, their submissions had been disregarded on the basis of their diagnosis, and the prosecution service had focused on discrediting their submissions rather than investigating the case. Moreover, it was unclear why they had been asked to submit to a psychiatric and psychological examination, when the doctors and other witnesses for the hospital had not been required to do so.

86. The Government argued that the applicants had not been subjected to discrimination. The authorities had fully examined their complaints, in accordance with Article 3 standards.

87. The Court notes that the applicants' complaint under this head and that under Article 3 of the Convention taken alone are distinct from one another. It is true that the core element of each is the alleged failure of the authorities to take sufficient measures to protect the applicants' physical integrity and dignity. But the present complaint is based on a broader allegation: that this failure was not an isolated occurrence but was due to the general stereotypes held by the Moldovan authorities in respect of persons with intellectual disabilities. It cannot therefore be absorbed into the complaint under Article 3 taken alone, and has to be examined separately (see, *mutatis mutandis*, *Munteanu v. the Republic of Moldova*, no. 34168/11, §§ 76 and 80-83, 26 May 2020, and *Y and Others v. Bulgaria*, no. 9077/18, § 120, 22 March 2022).

88. In order for an issue to arise under Article 14 of the Convention there must be a difference in the treatment of persons in analogous or relevantly similar situations. Such a difference in treatment is discriminatory if it has no objective and reasonable justification. However, Article 14 does not prohibit a member State from treating groups differently in order to correct "factual inequalities" between them; indeed in certain circumstances a failure to attempt to correct inequality through different treatment may in itself give

rise to a breach of the Article that is contrary to the Convention may also result from a *de facto* situation (see *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 175, ECHR 2007-IV, and *Zarb Adami v. Malta*, no. 17209/02, §§ 75-76, ECHR 2006-VIII).

89. Once an applicant has shown that there has been a difference in treatment it is then for the respondent Government to show that that difference in treatment could be justified (see *D.H. and Others v. the Czech Republic*, cited above, § 177, and *Beeler v. Switzerland* [GC], no. 78630/12, § 94, 20 October 2020). As regards the question of what constitutes *prima facie* evidence capable of shifting the burden of proof on to the respondent State, in proceedings before the Court there are no procedural barriers to the admissibility of evidence or predetermined formulae for its assessment (*D.H. and Others*, cited above, § 178).

90. Moreover, the Court reiterates that if a restriction on fundamental rights applies to someone belonging to a particularly vulnerable group in society that has suffered considerable discrimination in the past, such as the mentally disabled, then the State's margin of appreciation is substantially narrower and it must have very weighty reasons for the restrictions in question. The reason for this approach, which questions certain classifications *per se*, is that such groups were historically subject to prejudice with lasting consequences, resulting in their social exclusion (see *Cînta v. Romania*, no. 3891/19, § 41, 18 February 2020, and *Strøbye and Rosenlind v. Denmark*, nos. 25802/18 and 27338/18, § 113, 2 February 2021).

91. Having regard to the arguments advanced by the applicants, the Court notes that the alleged difference in treatment of persons with intellectual disabilities in the Republic of Moldova did not result from the wording of any statutory provisions, but rather a *de facto* policy by State agents. Accordingly, the issue to be determined in the instant case is whether the manner in which the legislation was applied in practice resulted in the applicants' being subjected, on grounds of disability or of perceived disability, to different treatment without objective and reasonable justification.

92. The Court notes that in the initial phase of the investigation both the prosecution service and the courts relied on the applicants' diagnosis in order to uphold the discontinuation of the investigation. In particular, they found that the applicants were "persons with limited legal capacity, [who] in these circumstances, ... [were] not always able to fully and correctly understand the things that happen[ed] in certain circumstances" (see paragraphs 23 and 32 above).

93. The Court considers that the reasoning given by the judicial authorities reveals a difference in treatment between the applicants and other alleged victims of inhuman and degrading treatment ("the comparator", see *T.H. v. Bulgaria*, no. 46519/20, § 109, 11 April 2023). That difference was based on the applicants' intellectual disabilities and was one of the reasons for rejecting their complaints as unfounded (the ground of the alleged

distinction, *ibid.* § 109; *Fábián v. Hungary* [GC], no. 78117/13, § 96, 5 September 2017).

94. The first phase of the investigation consisted of hearing, on the one hand, the applicants and, on the other hand, four heads of units at the hospital. No other investigative action had taken place before discontinuing the investigation (see paragraph 19-21 above). The prosecutor solved the resulting discrepancy in the versions submitted by the two sides by referring to the applicants' psychological disabilities which, he found, prevented them from fully understanding the circumstances of their treatment at the hospital, and thus undermined the credibility of their claims. Their refusal to undergo a psychiatric and psychological examination to confirm or refute that conclusion was another major reason for discontinuing the investigation.

This type of argument would apparently suggest that persons with intellectual disabilities are unable to understand and are thus unreliable witnesses (see, *mutatis mutandis*, *Luca v. the Republic of Moldova*, no. 55351/17, § 105, 17 October 2023), unless they prove their ability to comprehend by undergoing psychiatric and psychological examinations.

95. In the Court's view, there was no objective and reasonable justification for rejecting the applicants' complaints on the sole basis of their disability and in the absence of any investigative actions other than hearing the party most interested in discontinuing the investigation. In *Cînta*, cited above, §§ 68 *et seq.*) the Court found that "relying on mental illness as the decisive element or even as one element among others may amount to discrimination when, in the specific circumstances of the case, the mental illness does not have a bearing on the [substantive issue in question]". In the Court's view, when ill-treatment happens, a victim's intellectual disability cannot affect that objective fact. It is true that such a disability may distort an alleged victim's perception of reality and cause that person to wrongly believe that he or she was ill-treated. However, as with other alleged victims, once a *prima facie* case is established indicating that inhuman treatment may have happened, any dismissal of such a complaint must be based on an objective analysis of all the evidence obtained as part of an effective investigation. In other words, the fact that a person complaining of such treatment has an intellectual disability is no reason for shifting the focus of the investigation from objectively verifying the facts to determining whether the person fully understands what happens to him or her.

96. It is also noticed that when dealing repeatedly with the applicants' complaints, the prosecution service relied on the statements of other patients at the hospital as evidence of appropriate conditions and of the lack of ill-treatment, without mentioning that they had been subjected to a psychiatric and psychological evaluation (see paragraph 30 above). In the case of those persons, treated at the hospital just like the applicants, no issue apparently arose as to their ability to fully understand what happened to them and thus as to the trustworthiness of their statements.

97. In the Court’s opinion, the fact that both the prosecution and the courts relied in respect of two different persons on their intellectual disability as a reason to discontinue the investigation, coupled with the CRPD’s concern “about the inefficiency and inadequacy of complaints systems, delays in investigations and lack of monitoring of institutions” (see paragraph 41 above), clearly demonstrates that the authorities’ actions were not simply an isolated failure to protect the applicants’ physical integrity and dignity, but in fact perpetuated a discriminatory practice in respect of the applicants as persons with an intellectual disability.

98. The Court lastly notes that the specialised Moldovan agency (the Council) also found that there had been a lack of reasonable accommodation for a patient with a disability (the first applicant) in relation to accessing medical services (see paragraph 17 above). That decision reinforces the Court’s own finding concerning the alleged discriminatory treatment.

99. There has accordingly been a violation of Article 14 of the Convention taken in conjunction with Article 3 in the present case.

III. REMAINING COMPLAINTS

100. The applicants also complained under Articles 8 § 1 and 14 of the Convention essentially about the same treatment as that examined under Articles 3 and 14 of the Convention above.

101. Having regard to the facts of the case, the submissions of the parties and its findings above, notably concerning the failure to hear C. by any trial court, the Court considers that it has dealt with the main legal questions raised by the case and that there is no need to examine this complaint (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no.47848/08, § 156, ECHR 2014).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

102. 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

103. The applicants each claimed 12,000 euros (EUR) in respect of non-pecuniary damage. They referred to the suffering caused to them by their treatment in insalubrious conditions and the discrimination against them. They did not submit a claim in respect of costs and expenses.

104. The Government argued that the sum claimed in respect of non-pecuniary damage was excessive and unjustified.

105. The Court considers that the applicants must have suffered a certain amount of stress and frustration as a result of the treatment contrary to Articles 3 and 14 of the Convention. Accordingly, ruling on an equitable basis, it awards each of the applicants EUR 7,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

FOR THESE REASONS, THE COURT

1. *Declares*, by a majority, the application admissible;
2. *Holds*, by six votes to one, that there has been a violation of Article 3 of the Convention in respect of the material conditions of the applicants' treatment;
3. *Holds*, by six votes to one, that there has been a violation of Article 3 of the Convention in respect of the investigation into the applicants' allegations;
4. *Holds*, unanimously, that there has been no violation of Article 3 of the Convention in respect of the first applicant's ill-treatment;
5. *Holds*, by six votes to one, that there has been a violation of Article 14 taken in conjunction with Article 3 of the Convention;
6. *Holds*, by six votes to one, that it is not necessary to examine the complaint under Article 8, taken alone or in conjunction with Article 14 of the Convention;
7. *Holds*, by six votes to one,
 - (a) that the respondent State is to pay each of the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 7,500 (seven thousand five hundred 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
8. *Dismisses*, unanimously, the remainder of the applicants' claim for just satisfaction.

CLİPEA AND GROSU v. THE REPUBLIC OF MOLDOVA JUDGMENT

Done in English, and notified in writing on 19 November 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Registrar

Arnfinn Bårdsen
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Derenčinović is annexed to this judgment.

DISSENTING OPINION OF JUDGE DERENČINOVIĆ*

1. The majority in this case have found a violation of Article 3 (substantive limb) and of Article 14 of the Convention. With all due respect for my colleagues, and bearing in mind the sensitivity of the case, given that the applicants were vulnerable, hospitalised patients with intellectual disabilities, I cannot support the majority position. In my opinion, the application should have been declared inadmissible because the facts of the case did not reach the severity threshold under Article 3. This would have entailed the inapplicability of Article 14 as well.

2. The judgment suggests that the applicants' voluntary hospitalisation and treatment became involuntary at a certain point on account of the restraint to which they were subjected as vulnerable patients with intellectual disabilities. However, it seems to me that the crucial aspect of this case was that the gist of the applicants' substantiated complaints (both domestically and before the Court) did not speak to the treatment itself but to the discrimination to which they were subjected as vulnerable patients who had been kept in deplorable material conditions during their stays in hospital. Their substantive and substantiated complaints related to issues such as lack of walks in the fresh air, lack of care for the patients' personal hygiene, the poor conditions of sanitary facilities, etc. The facts of the case and the Court's conclusions did not disclose any kind of restraint imposed on the patients by the hospital staff. The complaints involving alleged ill-treatment by hospital staff, alleged forced labour, and harassment by the other patients which the hospital administration failed to prevent were found to be unsubstantiated (in the absence of at least *prima facie* evidence that would have shifted the burden of proof to the Government). In addition, there was no indication that the applicants were not free to leave the hospital at any time (see paragraph 4 below and the lack of a complaint under Article 5). This means that the majority position on the inherently restraining nature of the applicants' hospitalisation is unsupported both by the facts of the case as presented by the applicants and the Court's conclusions on the merits.

3. The majority rely on the *Fernandes de Oliveira v. Portugal* judgment ([GC], no. 78103/14, 31 January 2019) to emphasise the difference in the level of the national authorities' discretion with regard to involuntary versus voluntary treatment. Accordingly, a stricter standard of scrutiny must be applied to involuntarily hospitalised patients. In the present case, the classification of the applicants' treatment as *de facto* involuntary and warranting a stricter level of scrutiny seems to be inaccurate. The majority justify this reasoning based on the inherently restraining nature of the treatment. In contrast to voluntary treatment, the decisive element in

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classifying treatment as involuntary is the person's consent (see European Union Agency for Fundamental Rights, *Involuntary placement and involuntary treatment of persons with mental health problems*, 2012). The majority regard the absence of any documents in the patients' files as an indication of the absence of their consent, referring to Article 5 of the Oviedo Convention.

4. Again, the evidence presented before the Court seems insufficient to conclude that the applicants' treatment was involuntary. The applicants did not rely on this assumption, as they did not complain of illegal detention or unlawful deprivation of liberty under Article 5 of the Convention. Moreover, this assumption has not been confirmed by the doctors and nurses at the hospital and remains unsubstantiated in the absence of court documents pertaining to the applicants' legal capacity or guardianship. The argument based on the inherently restraining nature of the treatment cannot be accepted as the pivotal factor that changes hospitalisation or treatment from voluntary to *de facto* involuntary. This would mean that all treatment and hospitalisation become *de facto* involuntary unless accompanied by a court decision finding a lack in legal capacity, in which case treatment or hospitalisation would be *de iure* involuntary. This would effectively render the distinction between voluntary and involuntary treatment meaningless and create significant complications for the States' obligations towards hospitalised persons and margin of appreciation. It would also undermine a person's freedom to make individual and informed choices about his or her (mental) health, such as choosing to undergo or terminate voluntary treatment or rehabilitation.

5. Furthermore, I am not convinced that the standard established in *Fernandes de Oliveira*, which concerned the State's positive obligation to prevent the risk of suicide by mentally disabled patients who had been admitted to hospital voluntarily (Article 2), can be applied, by analogy, in the context of positive obligations under Article 3. That judgment established the authorities' obligation to take reasonable measures to protect the voluntarily admitted patient against the real and immediate risk of suicide (*Fernandes de Oliveira*, cited above, § 124). This obligation cannot be applied by analogy in the context of the State's positive obligations under Article 3 of the Convention regarding voluntary treatment and hospitalisation, where the patients' alleged ill-treatment was caused by material conditions at the hospital. The obligation to take operational measures under Article 3 of the Convention is triggered where the authorities knew or ought to have known at the time of the existence of a real and immediate risk of ill-treatment of an identified individual from the criminal acts of a third party (see *Dorđević v. Croatia*, no. 41526/10, § 139, ECHR 2012). In my opinion, it would be difficult, if not nearly impossible, to define the exact content of this obligation if its scope of application were extended to the material conditions of facilities such as psychiatric institutions. This is because, first, the alleged ill-treatment

would not be inflicted by an identifiable individual and, second, the risk in question could hardly be classified as “real and immediate”.

6. The majority conclude that “the unavailability of walks in the fresh air and the poor sanitary conditions of the bathrooms and toilets in the relevant units, lasting each time three to four weeks and when viewed in the light of the applicants’ particular vulnerability, exceeded the minimum threshold of applicability of Article 3” (paragraph 77 of the judgment). Given that the applicants cannot be considered persons deprived of their liberty, it seems to me that this represents an extension of the applicability of Article 3 that might not be in line with the Court’s case-law. It must not be forgotten that, even in the case of persons deprived of their liberty, whether in pre-trial detention, serving their prison sentences, or involuntarily hospitalised, the Court usually finds that the threshold of severity has been reached if poor material conditions are accompanied by other concerns (overcrowding, for instance). In landmark cases, the Court has refrained from examining the application of this obligation to the material conditions of detention (see, for instance, *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, ECHR 2011; *Tarakhel v. Switzerland* [GC], no. 29217/12, ECHR 2014 (extracts); and *Khlaifia and Others v. Italy* [GC], no. 16483/12, 15 December 2016).

7. To conclude, I agree that States have certain positive obligations even in the context of the voluntary hospitalisation and treatment of patients with intellectual disabilities, but they are less strict and the margin that States have in this regard is much broader. Likewise, violations of Article 3 are very serious and due caution is required when it comes to the threshold issue. By contrast, I would hypothetically agree on the threshold issue if this case were tested from the perspective of positive obligations under Article 8.