



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

FOURTH SECTION

CASE OF VASILE PRUTEANU AND OTHERS v. ROMANIA

(Application no. 9308/18)

JUDGMENT

Art 6 § 1 (criminal) and Art 6 § 3 (d) • Fair hearing • Examination of witnesses
• Equality of arms • Applicants' inability to challenge witness statements in court proceedings, leading to their convictions for human trafficking and pimping, given during a criminal investigation and before a Moldovan court
• Good reasons for the witnesses' non-attendance • Need to protect victims of human trafficking and sexual exploitation • Statements, albeit important, not sole nor decisive basis for convictions • Sufficient counterbalancing factors allowing for fair and proper assessment of reliability of untested evidence • Defence rights not restricted to an extent incompatible with Art 6 guarantees

Prepared by the Registry. Does not bind the Court.

STRASBOURG

14 January 2025

FINAL

14/04/2025

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

In the case of Vasile Pruteanu and Others v. Romania,

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

Lado Chanturia, *President*,
Tim Eicke,
Lorraine Schembri Orland,
Anja Seibert-Fohr
Ana Maria Guerra Martins,
Anne Louise Bormann,
Sebastian Rădulețu, *judges*,

and Simeon Petrovski, *Deputy Section Registrar*,

Having regard to:

the application (no. 9308/18) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by three Romanian nationals, Mr Vasile Pruteanu (“the first applicant”), Ms Tatiana Pruteanu (“the second applicant”) and Mr Vasile Pruteanu (“the third applicant”), on 31 January 2018;

the decision to give notice to the Romanian Government (“the Government”) of the complaints concerning the fairness of the criminal proceedings against the applicants and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 10 December 2024,

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

INTRODUCTION

1. The application concerns the applicants’ criminal convictions on the basis of witness statements which they did not have the opportunity to test. It also concerns the allegation that certain judges should have withdrawn from sitting in the case. The Government were given notice of the application under Article 6 §§ 1 and 3 (d) of the Convention.

THE FACTS

2. A list of the applicants is set out in the appendix. The first applicant is the second and third applicants’ son. They were represented by Ms A. Dîlgoci, a lawyer practising in Bucharest.

3. The Government were represented by their Agent, Ms O.F. Ezer, of the Ministry of Foreign Affairs.

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

I. PROCEEDINGS BEFORE THE BRAȘOV COUNTY COURT

5. On 11 February 2013 the prosecutor's office committed the applicants for trial before the Brașov County Court on charges of human trafficking and pimping, in relation to acts allegedly performed by some of the individuals they had hired as masseuses in the three massage parlours they owned in Romania. Several of the masseuses had been recruited from the Republic of Moldova. The prosecutor relied on the transcripts of intercepted telephone communications, the reports on searches carried out at the applicants' homes and massage parlours, victim interviews (including those carried out via letters of request (*comisie rogatorie*) sent to the Republic of Moldova), witness statements and the reports written by two undercover police officers who had visited the massage parlours to enquire about the services offered. Five of the Moldovan masseuses, M.O., L.R., B.N.V., C.L.C. and Z.O., became civil parties to the proceedings.

6. On 12 February 2013 Judge B.B. of the County Court placed the applicants in pre-trial detention. On 15 February 2013 a three-judge panel of the Court of Appeal, on which Judge S.F. sat, upheld that order.

7. On 20 March 2013 the applicants' lawyer complained to the County Court that the letter-of-request proceedings (see paragraph 5 above) had been unlawful, notably because he had not been present during the witness interviews and the Moldovan prosecutor's office charged with collecting the witnesses' statements had lacked jurisdiction for that purpose. For those reasons, he asked the court to declare the proceedings relating to the letters of request null and void. The prosecutor replied that those interviews had been organised in accordance with proper procedure and the applicable Moldovan law and that, in addition, a member of the investigation team from the Romanian prosecutor's office had been present during the interviews in the Republic of Moldova. The court examined the complaint and found that the investigation had complied with the legal requirements. It therefore recognised the witness statements as valid and dismissed the request to send the case back to the prosecutor's office to start the investigation afresh. The court further noted that some of those witnesses had later reiterated their statements before the court.

8. Between 4 April and 17 September 2013 the County Court (Judge B.B. – see paragraph 6 above) heard statements from two of the five civil parties (M.O. and L.R. – see paragraph 5 *in fine* above) and the witnesses (other women who had worked for the applicants either as masseuses or receptionists, as well as some of the clients of the massage parlours) in the presence of the applicants and their lawyers who were able to put questions to the witnesses. The remaining civil parties (B.N.V., C.L.C. and Z.O.) were not examined by the court, as they were not in Romania during the proceedings.

9. The civil parties examined declared that the applicants had promised them jobs as cleaners or receptionists. Some of the civil parties declared that the applicants had helped them obtain their passports or visa for Romania (M.O., L.R. and B.N.V.) and had transported them to the applicants' various properties in Romania (M.O., L.R., B.N.V. and C.L.C.). They had felt threatened as their passports had been taken by the applicants (M.O.) or they had been left without identify papers (Z.O.) and their activity had been monitored by the applicants (M.O., Z.O., B.N.V.). Once they had arrived in Romania, however, the women had been put to work as masseuses and M.O. declared that she had only been allowed to leave the house in the applicants' presence. They felt financially dependent on the applicants who also threatened some of them (M.O., Z.O., B.N.V. and C.L.C.) that if they did not comply, their families would be told about what they were doing in Romania. Their subordinate status had led them to feel pressured by the second applicant to give erotic massages to, and even have sexual intercourse with, clients of the massage parlours. The statements collected by the prosecutor's office from the absent civil parties, which were available in the file, recounted the same version of events.

10. Some twenty masseuses (mainly Romanian nationals) gave statements, all indicating that they had either chosen to perform sexual acts, or had at least been aware of them being offered, in the massage parlours. Eleven clients were also examined by the court, and all declared that they either had had sexual intercourse with the masseuses or had been offered it but had refused.

11. One of the witnesses interviewed during the criminal investigation, who had been placed under protection by the prosecutor's office and referred to as "Maria" throughout the proceedings, did not appear in court. She and her lawyer were contacted on several occasions by the police and the prosecutor's office on behalf of the court. On 6 June 2013 Maria informed the prosecutor that she had returned to the Republic of Moldova and that, in order to protect her mental health, her psychiatrist had advised against her reliving the events. On 11 November 2013 she further submitted, through her lawyer, that her health did not allow her to travel to Romania (as she was about to undergo a scheduled surgical operation). At a hearing which took place on 12 November 2013 the court noted that it had become objectively impossible to hear new evidence from Maria and decided to take into account, for the purpose of the deliberations, the statements she had made during the investigation stage of the proceedings which were available in the file.

12. The County Court examined the evidence. In addition to the witness and civil-party statements, it had at its disposal: the job advertisements for receptionist positions, placed by the applicants in Moldovan newspapers, which led to the hirings at issue; the advertisements, placed by the applicants in Romanian newspapers, for erotic massages in their massage parlours and jobs for erotic masseuses and erotic dancers, all having the second applicant

as the contact person; the transcripts of discussions on various online forums among clients about sexual acts being offered in the applicants' massage parlours; the transcripts of the applicants' intercepted telephone conversations, which had been authorised by the court during the investigation; the reports written by the undercover police officers (paragraph 5 above); and the material evidence seized in the massage parlours, notably condoms and sex toys.

13. The applicants and their counsel were present and able to actively participate throughout the proceedings. They denied having committed any crime and contested the factual situation presented by the civil parties and some of the witnesses.

14. On 23 December 2013 the County Court (Judge B.B. – see paragraphs 6 and 8 above) convicted the second and third applicants of eight acts of pimping and six acts of human trafficking, sentencing the second applicant to four years and six months' imprisonment and the third applicant to three years and six months' imprisonment. The first applicant was convicted of four acts of human trafficking and three acts of pimping and was given a three-year suspended prison sentence.

15. The court found, based on the evidence in the file, that the applicants had lured the victims to go with them to Romania under false promises of lawful employment with their company. As they had not had Romanian nationality or identity papers, a work permit, or any money of their own, the victims had been in a vulnerable situation and depended on the applicants, who had exploited that situation. The court further observed that the applicants had facilitated opportunities for their masseuses to have sexual intercourse with clients of the massage parlours in exchange for money, of which they had retained a significant percentage (according to the statements given by the masseuses in the proceedings up to 70% of the money paid by the clients).

16. The five civil parties (see paragraph 5 *in fine* above) were awarded 10,000 euros (EUR) each in respect of non-pecuniary damage.

II. PROCEEDINGS BEFORE THE BRAȘOV COURT OF APPEAL

17. The applicants and the prosecutor appealed and the case was heard by a two-judge panel of the Brașov Court of Appeal on which Judge S.F. (see paragraph 6 above) was sitting. The applicants and their counsel were present and able to actively participate throughout the proceedings.

18. The applicants contested the manner in which the County Court had established the facts and interpreted the evidence, as well the outcome of the case. In their written pleadings of 19 March 2014 (reasons for appeal) and 26 May 2016 (written conclusions for the purpose of the deliberations) they provided their own version of the facts and their own interpretation of the evidence.

19. They also pointed out that three of the civil parties (B.N.V., C.L.C. and Z.O. – see paragraph 5 *in fine* above), as well as the protected witness, Maria (see paragraph 11 above), had not been heard by the County Court. They complained that the statements made by those individuals during the investigation had been used by the court to secure their convictions.

20. The applicants asked for several witnesses to be examined again by the court, proposed new witnesses and asked that the intercepted telephone conversations which had been used as evidence (see paragraph 5 above), as well as their transcripts, be heard in open court. From the documents submitted it does not follow that the applicants complained that the county court would have failed to read out the statements made during the investigation by the absent witnesses. The court allowed some of the applicants' requests in respect of the evidence. In particular, it decided to send letters of request to the Republic of Moldova where the absent civil parties were believed to be, in order to summon them and two witnesses proposed by the applicants (C.A. and U.O.) to a hearing and examine the additional witnesses proposed by the applicants.

21. The Court of Appeal heard statements from the applicants and from several witnesses. As some of the intercepted telephone conversations contested by the applicants had been held in Russian, they were heard by the court in the presence of a Russian-language interpreter.

22. Throughout the proceedings the Court of Appeal repeatedly summoned Maria (see paragraph 11 above) and tried by various means to secure her presence, including by ordering the police to escort her to the hearing. However, her lawyer repeatedly stated that she was not in Romania and that her health prevented her from attending the court hearings. Her lawyer also confirmed that she maintained the statements made during the investigation. In two new written statements presented to the court, Maria explained that she had suffered tremendously at the hands of the applicants and was unwilling to relive that physical and psychological trauma (a written statement was handed to the police on 5 June 2014 and a statement made before a notary on 16 September 2014).

23. The applicants' lawyer asked for T.N., whom they believed was the protected witness Maria, to be interviewed via the letter-of-request procedure (see paragraph 5 above). The prosecutor refused to reveal Maria's identity and explained that she had to remain protected throughout the proceedings. The prosecutor further argued, and the court agreed, that hearing a new witness, T.N., was not relevant for the present proceedings as she could bring nothing new to the discussion.

24. B.N.V. (see paragraph 5 *in fine* above) and two witnesses proposed by the applicants (C.A. and U.O.) were examined by a court in the Republic of Moldova; the Court of Appeal had previously transmitted to that court, by means of a letter of request, the questions formulated by all parties to the proceedings.

25. B.N.V. maintained her statements given during the investigation, and confirmed before the court acting on the letter of request that during her stay in Romania, the second applicant had taken her passport; had monitored all her movements and telephone conversations; had forced her to have intimate relations with clients of the massage parlour; and had threatened to tell her family in the Republic of Moldova about what she had been doing in the massage parlour.

26. U.O. (see paragraph 24 above) declared, before the above-mentioned court and in the applicants' presence, that she had willingly performed erotic massages and sexual acts and had received 30% of the amount paid by the clients for her services. C.A. (see paragraph 24 above) stated, in the applicants' presence, that she had visited the applicants in Romania and met some of the civil parties, but had not known that acts of prostitution had been taking place in the massage parlours.

27. Some of the witnesses proposed by the applicants declared before the Court of Appeal that they had not known that acts of prostitution had been taking place in the massage parlours. Others stated that they had been aware that the civil parties had been performing erotic massages but had believed they had been doing them willingly, as they had not shown any signs of coercion or fear towards the applicants.

28. The court examined in detail the evidence before it. It noted that the applicants were able to participate in the proceedings following the letters of request, either by addressing their questions to the Court of Appeal (for B.N.V. – see paragraph 24 above), or by physically attending the interviews before the requested court (see paragraph 26 above), and that those proceedings complied with the law.

29. Noting the provisions of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ 2012 L 315, p. 57, ("the Victims' Rights Directive" – see paragraph 41 below), and bearing in mind the vulnerability of victims of human trafficking and the need to avoid secondary victimisation, the court recognised the statements made by B.N.V. to the requested court as valid; it observed that she had provided answers to all the questions raised by the applicants in writing. Moreover, the evidence she had given was consistent with the remaining evidence in the file.

30. Citing the principles of the same Directive, the court recognised the statements given by Maria in the course of the proceedings (see paragraphs 11 and 22 above) as valid. The court observed that although she had been summoned to appear at every hearing, and despite the additional measures taken to secure her attendance, she had failed to appear in court. However, she had consistently informed the courts that she maintained the statements given during the investigation, and those statements recounted the same facts

as those in the statements made by the other women who had worked for the applicants.

31. The court also noted that two of the civil parties, Z.O. and C.L.C. (see paragraphs 5 *in fine* and 19 above), could not be examined either directly or by way of letters of request, as they had left their home country (the Republic of Moldova) and their whereabouts were unknown to the Moldovan authorities. In addition, at that time Moldovan courts were not equipped with video-conferencing systems, therefore hearing the parties via the letter-of-request procedure would have taken several months, significantly extending the length of the proceedings.

32. It therefore examined the statements those individuals had given during the criminal investigation (directly or before the requested authorities in the Republic of Moldova in the case of Z.O. and C.L.C.) and concluded that they corroborated the remaining evidence. The court observed that the statements given by Z.O. and C.L.C. before the prosecutor in Moldova, following the letters of request issued by the Romanian prosecutor, presented the same situation as that which appeared from Maria's statements and from the remaining evidence examined by the court (notably other witness statements, and the evidence described in paragraph 12 above).

33. The court concluded that the evidence in the file supported the County Court's findings of fact. It thus found that the applicants had promised the women administrative jobs, food, lodgings and money to apply for Romanian visas. Once they arrived in Romania with the applicants, they had been placed in a vulnerable position, at the applicants' mercy, without valid identity documents and money, and without the option of seeking other employment. Moreover the second applicant had threatened some of the women, telling them that she would expose them to their families. They had therefore been, at the very least, emotionally coerced into prostitution.

34. Consequently, by a final decision of 29 June 2016 the court upheld the findings of criminal liability. It reduced the sentence to three years each for the second and third applicants, and to a two-year suspended sentence for the first applicant. It also reduced the award in respect of non-pecuniary damage to EUR 5,000 for each of the five civil parties.

35. The decision was made available to the parties on 31 July 2017.

RELEVANT LEGAL FRAMEWORK

I. DOMESTIC LAW

36. Article 64 § 4 of the new Code of Criminal Procedure ("the new CCP"), as in force since 1 February 2014, provides that a judge who decided on the arrest and detention of an individual during the criminal investigation (*judecătorul de drepturi și libertăți*) is not able to participate in the same proceedings as a pre-trial judge (*judecător de cameră preliminară*) or a judge

examining the same case at first instance (*instanță de fond*) or at the appeal stage (*instanță de apel*) of the proceedings in question. A similar provision was present in Article 48 § 1 (a) of the old CCP which remained in force until 31 January 2014.

37. Article 51 of the old CCP, and now Article 67 of the new CCP, allowed for the recusal of a judge who, despite being disqualified to hear the case, failed to withdraw from the proceedings.

38. The relevant provisions of the CPP (both its old and new versions) concerning the hearing of witnesses are summarised in *D and Others v. Romania* (no. 75953/16, § 44, 14 January 2020). In addition, in accordance with Articles 111 § 4 and 123 § 2 of the new CCP, the hearing of the injured party and of the witness, respectively, during the criminal investigation, will be recorded by audio or audio-video technical means if the prosecutor deems it necessary or if the injured party or witness, respectively, expressly requests it, provided that the recording is possible. Furthermore, under Article 381 § 7 of the new CCP, if it is no longer possible to hear a witness who gave a statement during the earlier stages of the proceedings, the court will order that that statement be read out and will take it into account in the examination of the case.

II. COUNCIL OF EUROPE MATERIAL

39. The Convention on Action against Trafficking in Human Beings (“the Anti-Trafficking Convention”), in force since 1 February 2008 both in the Council of Europe and in respect of Romania, reads as follows in so far as relevant (for further details, see *S.M. v. Croatia* ([GC], no. 60561/14, §§ 152-71, 25 June 2020):

Article 11 – Protection of private life

“(1) Each Party shall protect the private life and identity of victims. Personal data regarding them shall be stored and used in conformity with the conditions provided for by the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108).

(2) Each Party shall adopt measures to ensure, in particular, that the identity, or details allowing the identification, of a child victim of trafficking are not made publicly known, through the media or by any other means, except, in exceptional circumstances, in order to facilitate the tracing of family members or otherwise secure the well-being and protection of the child.

(3) Each Party shall consider adopting, in accordance with Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms as interpreted by the European Court of Human Rights, measures aimed at encouraging the media to protect the private life and identity of victims through self-regulation or through regulatory or co-regulatory measures.”

Article 12 – Assistance to victims

“1 Each Party shall adopt such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery. Such assistance shall include at least:

...

(e) assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders; ...”

Article 30 – Court proceedings

“In accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms, in particular Article 6, each Party shall adopt such legislative or other measures as may be necessary to ensure in the course of judicial proceedings:

(a) the protection of victims’ private life and, where appropriate, identity;

(b) victims’ safety and protection from intimidation,

in accordance with the conditions under its internal law and, in the case of child victims, by taking special care of children’s needs and ensuring their right to special protection measures.”

40. The Committee of Ministers and the Parliamentary Assembly adopted several recommendations concerning trafficking and criminalisation of pimping, summarised in *S.M. v. Croatia* (cited above, §§ 173-80).

III. EUROPEAN UNION LAW

41. Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ 2012 L 315, p. 57 (“the Victims’ Rights Directive” – see paragraph 29 above), in so far as relevant, provides as follows:

“Whereas:

...

12. The rights set out in this Directive are without prejudice to the rights of the offender. The term ‘offender’ refers to a person who has been convicted of a crime. However, for the purposes of this Directive, it also refers to a suspected or accused person before any acknowledgement of guilt or conviction, and it is without prejudice to the presumption of innocence.

...

41. The right of victims to be heard should be considered to have been fulfilled where victims are permitted to make statements or explanations in writing.

...

53. The risk of secondary and repeat victimisation, of intimidation and of retaliation by the offender or as a result of participation in criminal proceedings should be limited by carrying out proceedings in a coordinated and respectful manner, enabling victims to establish trust in authorities. Interaction with competent authorities should be as easy as possible whilst limiting the number of unnecessary interactions the victim has with them through, for example, video recording of interviews and allowing its use in court proceedings. As wide a range of measures as possible should be made available to practitioners to prevent distress to the victim during court proceedings in particular as a result of visual contact with the offender, his or her family, associates or members of the public. To that end, Member States should be encouraged to introduce, especially in relation to court buildings and police stations, feasible and practical measures enabling the facilities to include amenities such as separate entrances and waiting areas for victims. In addition, Member States should, to the extent possible, plan the criminal proceedings so that contacts between victims and their family members and offenders are avoided, such as by summoning victims and offenders to hearings at different times.

...

57. Victims of human trafficking, terrorism, organised crime, violence in close relationships, sexual violence or exploitation, gender-based violence, hate crime, and victims with disabilities and child victims tend to experience a high rate of secondary and repeat victimisation, of intimidation and of retaliation. Particular care should be taken when assessing whether such victims are at risk of such victimisation, intimidation and of retaliation and there should be a strong presumption that those victims will benefit from special protection measures.”

Article 18 **Right to protection**

“Without prejudice to the rights of the defence, Member States shall ensure that measures are available to protect victims and their family members from secondary and repeat victimisation, from intimidation and from retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying. When necessary, such measures shall also include procedures established under national law for the physical protection of victims and their family members.”

Article 19 **Right to avoid contact between victim and offender**

“1. Member States shall establish the necessary conditions to enable avoidance of contact between victims and their family members, where necessary, and the offender within premises where criminal proceedings are conducted, unless the criminal proceedings require such contact.

2. Member States shall ensure that new court premises have separate waiting areas for victims.”

Article 20 **Right to protection of victims during criminal investigations**

“Without prejudice to the rights of the defence and in accordance with rules of judicial discretion, Member States shall ensure that during criminal investigations:

(a) interviews of victims are conducted without unjustified delay after the complaint with regard to a criminal offence has been made to the competent authority;

(b) the number of interviews of victims is kept to a minimum and interviews are carried out only where strictly necessary for the purposes of the criminal investigation; ...”

Article 22

Individual assessment of victims to identify specific protection needs

“1. Member States shall ensure that victims receive a timely and individual assessment, in accordance with national procedures, to identify specific protection needs and to determine whether and to what extent they would benefit from special measures in the course of criminal proceedings, as provided for under Articles 23 and 24, due to their particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation.

...

3. In the context of the individual assessment, particular attention shall be paid to victims who have suffered considerable harm due to the severity of the crime; victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics; victims whose relationship to and dependence on the offender make them particularly vulnerable. In this regard, victims of terrorism, organised crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence, exploitation or hate crime, and victims with disabilities shall be duly considered.

...”

Article 23

Right to protection of victims with specific protection needs during criminal proceedings

“1. Without prejudice to the rights of the defence and in accordance with rules of judicial discretion, Member States shall ensure that victims with specific protection needs who benefit from special measures identified as a result of an individual assessment provided for in Article 22(1), may benefit from the measures provided for in paragraphs 2 and 3 of this Article. A special measure envisaged following the individual assessment shall not be made available if operational or practical constraints make this impossible, or where there is an urgent need to interview the victim and failure to do so could harm the victim or another person or could prejudice the course of the proceedings.

2. The following measures shall be available during criminal investigations to victims with specific protection needs identified in accordance with Article 22(1):

(a) interviews with the victim being carried out in premises designed or adapted for that purpose;

(b) interviews with the victim being carried out by or through professionals trained for that purpose;

(c) all interviews with the victim being conducted by the same persons unless this is contrary to the good administration of justice;

(d) all interviews with victims of sexual violence, gender-based violence or violence in close relationships, unless conducted by a prosecutor or a judge, being conducted by a person of the same sex as the victim, if the victim so wishes, provided that the course of the criminal proceedings will not be prejudiced.

3. The following measures shall be available for victims with specific protection needs identified in accordance with Article 22(1) during court proceedings:

(a) measures to avoid visual contact between victims and offenders including during the giving of evidence, by appropriate means including the use of communication technology;

(b) measures to ensure that the victim may be heard in the courtroom without being present, in particular through the use of appropriate communication technology;

(c) measures to avoid unnecessary questioning concerning the victim's private life not related to the criminal offence; and

(d) measures allowing a hearing to take place without the presence of the public."

IV. UNITED NATIONS INSTRUMENTS

42. The relevant provisions of the 1949 United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (which was ratified by Romania on 15 February 1955) are described in *S.M. v. Croatia* (see above, §§ 107-08).

43. The United Nations Convention against Transnational Organized Crime (UNTOC) was adopted in 2000 and entered into force in 2003. It was ratified by Romania on 4 December 2002. Its relevant provisions read as follows:

Article 24. Protection of witnesses

"1. Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by this Convention and, as appropriate, for their relatives and other persons close to them.

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(b) Providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communications technology such as video links or other adequate means.

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

4. The provisions of this article shall also apply to victims insofar as they are witnesses."

Article 25. Assistance to and protection of victims

"1. Each State Party shall take appropriate measures within its means to provide assistance and protection to victims of offences covered by this Convention, in particular in cases of threat of retaliation or intimidation.

2. Each State Party shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Convention.

3. Each State Party shall, subject to its domestic law, enable views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.”

Article 26. Measures to enhance cooperation with law enforcement authorities

“1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in organized criminal groups:

(a) To supply information useful to competent authorities for investigative and evidentiary purposes on such matters as:

(i) The identity, nature, composition, structure, location or activities of organized criminal groups;

(ii) Links, including international links, with other organized criminal groups;

(iii) Offences that organized criminal groups have committed or may commit;

(b) To provide factual, concrete help to competent authorities that may contribute to depriving organized criminal groups of their resources or of the proceeds of crime.

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.

3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.

4. Protection of such persons shall be as provided for in article 24 of this Convention.

5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.”

44. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime (the Palermo Protocol) was also adopted in 2000 and entered into force in 2003. Romania ratified it on 4 December 2002. The relevant provisions of the Palermo Protocol are presented in *S.M. v. Croatia* (cited above, §§ 109-22). In addition, the Palermo Protocol provides as follows for the protection of victims of trafficking:

Article 6. Assistance to and protection of victims of trafficking in persons

“1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.

2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:

(a) Information on relevant court and administrative proceedings;

(b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.

3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:

(a) Appropriate housing;

(b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;

(c) Medical, psychological and material assistance; and

(d) Employment, educational and training opportunities.

4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.

5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.

6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.”

45. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted in 1979 by the UN General Assembly and ratified by Romania on 7 January 1982. The relevant provisions of CEDAW as well as those of the additional documents adopted by UN were summarised in *S.M. v. Croatia* (cited above, §§ 123-26) and *Napotnik v. Romania* (no. 33139/13, § 49, 20 October 2020).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (d) OF THE CONVENTION AS REGARDS THE PRINCIPLE OF EQUALITY OF ARMS AND THE RIGHT TO EXAMINE WITNESSES

46. The applicants complained that the criminal proceedings leading to their conviction had not been fair, as they had not been able to challenge in

court the witness statements on which their convictions had been based. They relied on Article 6 §§ 1 and 3 (d) of the Convention, which reads as follows:

“(1) In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law.

...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

...”

A. Admissibility

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

B. Merits

1. The parties' submissions

(a) The applicants

48. The applicants submitted that the key witnesses B.N.V., C.L.C., Z.O. (see paragraph 5 *in fine* above) and Maria (the protected witness – see paragraph 11 above) had never been examined by the courts and that their statements, given during the police investigation following letters of request, had not even been read out in court. In any case, given the importance of those witness statements for their convictions, simply reading the statements given during the investigation would not have been sufficient for safeguarding the rights of the defence.

49. The applicants argued that Maria's statements had been decisive for their conviction and that there had been no serious reason for her absence, especially since her identity was known to the applicants who had diligently indicated it to the courts (see paragraph 23 above).

50. Lastly, they contended that the statements made by the witnesses who had denied any coercion or even prompting from the applicants to have sexual relations with the massage parlours' clients had been disregarded by the courts.

(b) The Government

51. The Government contended that both the protected witness, Maria, and the remaining absent witnesses had serious reasons not to attend the proceedings. The courts had made efforts to ensure their participation in the proceedings by the various procedural means available, including by ordering their attendance at the hearings under police escort (see paragraph 22 above).

52. Admittedly, Maria had not been examined by the court and had only given a sworn statement before a notary public (see paragraph 22 above). However, neither her statements nor those of the other absent witnesses had played a crucial role in the conviction of the applicants. They had only been used by the courts in so far as they corroborated the remaining evidence.

53. As for the measures taken to safeguard the rights of the defence, the courts had sent letters of request which included the questions asked by the applicants to those witnesses (see paragraph 24 above). In addition, the applicants, who had been represented by counsel throughout the proceedings, had been able to propose additional evidence which had been examined by the courts.

2. The Court's assessment

(a) General principles

(i) Principles on the admission of untested evidence of prosecution witnesses absent from trial

54. The Court reiterates that the guarantees in paragraph 3 (d) of Article 6 are specific aspects of the right to a fair hearing set forth in paragraph 1 of that Article which must be taken into account in any assessment of the fairness of proceedings. In addition, the Court's primary concern under Article 6 § 1 is to evaluate the overall fairness of the criminal proceedings (see *Schatschaschwili v. Germany* [GC], no. 9154/10, §§ 100-01, 15 December 2015, and *Taxquet v. Belgium* [GC], no. 926/05, § 84, 16 November 2010, with further references therein). In making this assessment the Court will look at the proceedings as a whole, having regard to the rights of the defence but also to the interest of the public and the victim(s) in seeing crime properly prosecuted (see *Schatschaschwili*, cited above, § 101, and *Gäfgen v. Germany* [GC], no. 22978/05, § 175, ECHR 2010) and, where necessary, to the rights of witnesses (see, amongst many authorities, *Al-Khawaja and Tahery v. the United Kingdom* [GC], nos. 26766/05 and 22228/06, § 118, ECHR 2011). It is also noteworthy in this context that the admissibility of evidence is a matter for regulation by national law and the national courts and that the Court's only concern is to examine whether the proceedings have been conducted fairly (see *Gäfgen*, cited above, § 162, and the references therein).

55. In *Al-Khawaja and Tahery* (cited above, §§ 119-47) the Grand Chamber set out the principles to be applied in cases where prosecution witness did not attend the trial and statements previously made by him or her were admitted in evidence. These principles may be summarised as follows (see *Seton v. the United Kingdom*, no. 55287/10, § 58, 31 March 2016):

- (i) The Court should first examine the preliminary question whether there was a good reason for admitting the evidence of an absent witness, keeping in mind that witnesses should as a general rule give evidence during the trial and that all reasonable efforts should be made to secure their attendance.
- (ii) Typical reasons for non-attendance are, as in the case of *Al-Khawaja and Tahery* (cited above), the death of the witness or the fear of retaliation. There are, however, other legitimate reasons why a witness may not attend trial.
- (iii) When a witness has not been examined at any prior stage of the proceedings, allowing the admission of a witness statement in lieu of live evidence at trial must be a measure of last resort.
- (iv) The admission in evidence of statements of absent witnesses results in a potential disadvantage for the defendant, who, in a criminal trial should, in principle, have an effective opportunity to challenge the evidence against him or her. In particular, he or she should be able to test the truthfulness and reliability of the evidence given by the witnesses, by having them orally examined in his or her presence, either at the time the witness is making the statement or at some later stage of the proceedings.
- (v) According to the “sole or decisive rule”, if the conviction of a defendant is solely or mainly based on evidence provided by witnesses whom the accused is unable to question at any stage of the proceedings, his or her defence rights will be unduly restricted.
- (vi) In this context, the word “decisive” should be narrowly understood as indicating evidence of such significance or importance as is likely to be determinative of the outcome of the case. Where the statement of an absent witness is supported by corroborative evidence, the assessment of whether it is decisive will depend on the weight of that supporting evidence: the stronger the other incriminating evidence, the less likely it is that the evidence of the absent witness will be treated as decisive.
- (vii) However, as Article 6 § 3 of the Convention should be interpreted in the context of an examination of the overall fairness of the proceedings, the “sole or decisive rule” should not be applied in an inflexible manner.
- (viii) In particular, where a hearsay statement is the sole or decisive evidence against a defendant, its admission in evidence will not automatically result in a breach of Article 6 § 1. At the same time,

where a conviction is based solely or decisively on the evidence of absent witnesses, the Court must subject the proceedings to the most searching scrutiny. In view of the risk of admitting such evidence, it would constitute a very important factor to be weighed in the balance and one which would require sufficient counterbalancing factors, including the existence of strong procedural safeguards. The question in each case is whether there are sufficient counterbalancing factors in place, including measures that permit a fair and proper assessment of the reliability of that evidence. This would ensure that a conviction is based on such evidence only if it is sufficiently reliable, given its importance to the case.

56. Those principles were clarified in *Schatschaschwili* (cited above, §§ 111-31), where the Grand Chamber confirmed that the absence of good reason for the non-attendance of a witness could not, of itself, be conclusive of the lack of fairness of a trial, although it remained a very important factor to be weighed in the balance when assessing the overall fairness, and one which might tip the balance in favour of finding a breach of Article 6 §§ 1 and 3 (d). Furthermore, given that its concern was to ascertain whether the proceedings as a whole were fair, the Court considered that it should not only review the existence of sufficient counterbalancing factors in cases where the evidence of the absent witness was the sole or the decisive basis for the applicant's conviction, but also in cases where, even though it was unclear whether the evidence in question was sole or decisive, it could nevertheless be said to carry significant weight and its admission might have hampered the defence. The extent of the counterbalancing factors necessary in order for a trial to be considered fair would depend on the weight of the evidence of the absent witness. The more important the evidence, the more weight the counterbalancing factors would have to carry in order for the proceedings as a whole to be considered fair.

57. In *Schatschaschwili* (cited above, §§ 125-31, with further references) the Court identified some of the counterbalancing factors which would compensate for the impediments under which the defence might labour as a result of the admission of evidence given by a prosecution witness who is absent from the trial. These counterbalancing factors must permit a fair and proper assessment of the reliability of that evidence. They include the following:

- (i) Whether the domestic courts approached the statement of an absent witness with caution, having regard to the fact that such evidence carries less weight, and whether they provided detailed reasoning as to why they considered that evidence to be reliable, while having regard also to the other evidence available. Any directions given to the jury by the trial judge regarding the absent witness's evidence is another important consideration.

- (ii) Projection at the trial of a video-recording of the absent witness's questioning at the investigation stage in order to allow the court, prosecution and defence to observe the witness's demeanour under questioning and to form their own impression of his or her reliability.
- (iii) Availability at trial of corroborative evidence supporting the witness statement at issue, such as statements made at trial by persons to whom the absent witness reported the events immediately after their occurrence; further factual evidence, forensic evidence and expert reports; similarity in the description of events by other witnesses, in particular if such witnesses are examined at trial.
- (iv) Possibility for the defence to put their own questions to the witness indirectly, for instance in writing, in the course of the trial.
- (v) Possibility for the applicant or defence counsel to question the witness at the investigation stage. In particular, where the investigating authorities have taken the view that a witness will not be called to give evidence at the trial, it is essential to give the defence an opportunity to have questions put to that witness during the preliminary investigation.
- (vi) The defendant must be afforded the opportunity to give his or her own version of the events and to cast doubt on the credibility of the absent witness, pointing out any incoherence or inconsistency with the statements of other witnesses. Where the identity of the witness is known to the defence, they are able to identify and investigate any motives the witness may have for lying, and can therefore contest effectively the witness's credibility, albeit to a lesser extent than in a direct confrontation.

(ii) *Principles on witnesses in cases of sexual offenses*

58. The Court must also have regard to the special features of criminal proceedings concerning sexual offences. Such proceedings are often perceived as an ordeal by the victim, in particular when the latter is unwillingly confronted with the defendant. In the assessment of the question whether or not in such proceedings an accused received a fair trial, account must be taken of the right to respect for the private life of the alleged victim. Therefore, the Court accepts that in criminal proceedings concerning sexual abuse certain measures may be taken for the purpose of protecting the victim, provided that such measures can be reconciled with an adequate and effective exercise of the rights of the defence (see *A.S. v. Finland*, no. 40156/07, § 55, 28 September 2010; *S.N. v. Sweden*, no. 34209/96, § 47, ECHR 2002-V; and *Vronchenko v. Estonia*, no. 59632/09, § 56, 18 July 2013).

59. Having regard to the special features of criminal proceedings concerning sexual offences, Article 6 § 3 (d) cannot be interpreted as requiring in all cases that questions be put directly by the accused or his or her defence counsel, through cross-examination or by other means (see *S.N. v. Sweden*, cited above, § 52). Moreover, since a direct confrontation between the defendants charged with criminal offences of sexual violence and their alleged victims involves a risk of further traumatising of the latter, personal cross-examination by defendants should be subject to most careful assessment by the national courts, all the more so when the questions are intimate (see *Y. v. Slovenia*, no. 41107/10, § 106, ECHR 2015 (extracts)).

60. However, this does not mean that such measures, particularly the non-attendance of a witness to give evidence at the trial, are applicable automatically to all criminal proceedings concerning sexual offences. There must be relevant reasons adduced by the domestic authorities for applying such measures (see *P.S. v. Germany*, no. 33900/96, § 28, 20 December 2001) and, as regards the possibility of excusing a witness from testifying on grounds of fear, the trial court must be satisfied that all available alternatives, such as witness anonymity and other special measures, would be inappropriate or impracticable (see *Al-Khawaja and Tahery*, cited above, § 125, and *Lučić v. Croatia*, no. 5699/11, § 75, 27 February 2014).

(b) Application of those principles to the facts of the case

61. The Court observes that two of the five civil parties, notably C.L.C. and Z.O. (see paragraph 5 *in fine* above) as well as the protected witness Maria (see paragraph 11 above), were not examined directly by the court at the trial. Another civil party, B.N.V., was not examined by the Romanian courts dealing with the applicants' case but by a court of the Republic of Moldova (see paragraph 24 above). The statements they gave during the criminal investigation and the statements given before the Moldovan court (following letters of request sent to the Republic of Moldova – see paragraph 5 above) were used in the court proceedings against the applicants (see paragraph 19 above).

62. The Court must therefore ascertain whether the rights of the defence were observed by the domestic authorities, in the light of the principles set out in its case-law (see paragraphs 54-60 above).

(i) Whether there was a good reason for the absence of witnesses

63. A good reason for the absence of a witness must exist from the trial court's perspective, that is, the court must have had good factual or legal grounds not to secure the witness's attendance at the trial. If there was a good reason for the witness's non-attendance in that sense, it follows that there was a good reason, or justification, for the trial court to admit the untested statements of the absent witness in evidence (see *Schatschaschwili*, cited

above, § 119). In determining whether there are good reasons for the absence and the fairness of the proceedings regard must also be had, where necessary, to the rights of the witnesses (see *Al-Khawaja and Tahery*, cited above, § 118 with reference to *Doorson v. the Netherlands*, 26 March 1996, § 70, Reports of Judgments and Decisions 1996-II, and *D.T. v. the Netherlands* (dec.), no. 25307/10, § 47, 2 April 2013). The Court reiterates that it has already recognised the special features of criminal proceedings concerning sexual offences, which are often conceived as an ordeal by the victim, in particular when the latter is unwillingly confronted with the defendant. In such cases measures should be taken for the purpose of protecting the victim, to the extent that they can be reconciled with an adequate and effective exercise of the rights of the defence (see *Lučić*, cited above, § 75, with reference to *S.N. v. Sweden*, cited above, § 47, and *Zdravko Petrov v. Bulgaria*, no. 20024/04, § 35, 23 June 2011). This also applies to victims of human trafficking and sexual exploitation who tend to experience a high rate of secondary and repeat victimisation and who are entitled to benefit from special protection measures. This is also reflected in Article 23 of the Victims' Rights Directive which provides that victims of such offences benefit from special protection measures also during criminal proceedings, including measures to avoid visual contact between victims and offenders and measures to ensure that the victim may be heard in the courtroom without being present, in particular through the use of appropriate communication technology (see Article 30 of the Anti-Trafficking Convention, cited in paragraph 39 above; Articles 18-23 of the Victims' Rights Directive cited in paragraph 41 above; and Article 6 of the Palermo Protocol, cited in paragraph 44 above; as well as, *mutatis mutandis*, *J.L. v. Italy*, no. 5671/16, § 120, 27 May 2021).

64. However, the Court reiterates that this does not mean that measures, such as the non-attendance of a witness to give evidence at the trial, are applicable automatically to all criminal proceedings concerning sexual offences (see *Lučić*, cited above, § 75). As regards the possibility of excusing a witness from testifying on grounds of fear, the trial court, apart from adducing relevant reasons for the absence, must be satisfied that all available alternatives, such as witness anonymity and other special measures (see paragraph 57 above, and also Article 24 (2) (b) of the UNCTOC cited in paragraph 43 above and Article 6 of the Palermo Protocol, cited in paragraph 44 above"), would be inappropriate or impracticable (see *Al-Khawaja and Tahery*, cited above, § 125; for the relevance of countervailing measures see paragraphs 74-83 below).

65. In the present case, the courts were informed that the protected witness, Maria, had returned to the Republic of Moldova and that her health (mental and physical) prevented her from participating in the proceedings (see paragraphs 11 and 22 above). As for witnesses B.N.V., C.L.C. and Z.O., who were no longer in Romania when the courts heard the case, alternative methods for securing their participation in the proceedings were assessed (see

paragraphs 8, 20, 24 and 31 above). The court of appeal examined the option that they be heard by video-conference and discarded it as unfeasible because of lack of equipment in the Moldovan courts (see paragraph 31 above, and contrast *Gabrielyan v. Armenia*, no. 8088/05, § 81, 10 April 2012). Eventually B.N.V. was interviewed, at the court of appeal's request, by a court in the Republic of Moldova (see paragraph 24 above), and it was only C.L.C. and Z.O. who could not be interviewed, as their whereabouts were unknown to the authorities (see paragraph 31 above).

66. The Court observes that all the absent witnesses were former employees of the massage parlours and alleged victims of human trafficking at the hands of the applicants (see paragraphs 9, 15 and 33 above).

67. In the light of the above, and bearing in mind the need to protect victims of human trafficking and sexual exploitation (see *mutatis mutandis* the case-law cited in paragraphs 58-59 above), the Court accepts that the domestic authorities adduced good reasons for the four witnesses non-attendance at the court proceedings (see, *mutatis mutandis*, *Przydział v. Poland*, no. 15487/08, § 51, 24 May 2016, and *Vronchenko*, cited above, § 58).

(ii) *Whether the evidence was the sole or decisive basis for the conviction*

68. The extent of the counterbalancing factors necessary in order for a trial to be considered fair will depend on the weight of the evidence of the absent witness (see *Schatschaschwili*, cited above, § 116). In determining the weight of the evidence given by an absent witness and, in particular, whether the evidence given by him or her was the sole or decisive basis for an applicant's conviction, the Court has regard, as a starting point, to the domestic courts' assessment. The Court must make its own assessment of the weight of the evidence given by an absent witness if the domestic courts did not indicate their position on that issue or if their position is not clear (*ibid.*, § 124).

69. In the present case the statements of the absent witnesses contributed to the conviction of the applicants.

70. However, in addition to the statements of the absent witnesses in question, the courts had several items of evidence at their disposal which allowed them to conclude that the applicants' employees had either engaged in sexual acts or had known that they were being performed, and the applicants had facilitated those acts in their massage parlours. Furthermore the evidence showed that the applicants had transported the victims to Romania under false pretence of lawful employment, had left M.O. and Z.O. without identity papers, had monitored the victims' movements and conversations, and had forced them into prostitution under threats of exposure. That evidence included: the witness statements given in court in the applicants' presence (see paragraphs 8-10, 21 and 25-27 above), advertisements in newspapers, transcripts of telephone conversations and

social media discussions, the reports written by the undercover police officers and certain objects found on the premises (see paragraphs 12 and 31 above).

71. It is therefore apparent that, while the evidence given by the absent witnesses constituted an important element for the prosecution, it corroborated the remaining evidence and was neither sole nor decisive in securing the applicants' criminal convictions (see, *mutatis mutandis*, *Przydział*, cited above, § 52, with further references; contrast *Lučić*, § 81, and *Vronchenko*, § 59, both cited above).

72. Consequently, having regard to the fact that a narrow interpretation of the term decisive is required (see *Schatschaschwili*, cited above, § 123), the Court concludes that the evidence provided by the absent witnesses was not decisive in the present case.

73. However, the Court recognises that those statements carried at least some weight and that their admission may have handicapped the defence. In order to assess the overall fairness of the proceedings, the Court will thus review the existence of sufficient counterbalancing factors (see *Strassenmeyer v. Germany*, no. 57818/18, § 79, 2 May 2023, and *Schatschaschwili*, cited above, § 116).

(iii) *Whether there were sufficient counterbalancing factors*

74. The Court points out that the following elements are relevant in determining whether there were sufficient counterbalancing factors: the trial court's approach to the untested evidence; the availability and strength of further incriminating evidence; and the procedural measures taken to compensate for the lack of opportunity to directly examine the witnesses at the trial (see *Schatschaschwili*, cited above, § 145).

75. At the outset, the Court observes that the courts approached the statements given by the absent witnesses with caution. They only relied on the untested evidence after assessing that the statements in question were corroborated by the other evidence and when it became clear that their presence in court could not be ensured (see paragraphs 7, 11, 22 and 31-33 above; see also, *mutatis mutandis*, *Przydział*, cited above, § 57; and, in contrast, *Lučić*, cited above, § 85).

76. Before accepting the untested evidence given by the protected witness Maria, the courts took measures to secure her attendance by repeatedly issuing summonses to appear and by involving the police and the prosecutor's office (see paragraphs 11 and 22 above). Moreover, the Court of Appeal was satisfied that its decision to abstain from hearing Maria and the absent civil party B.N.V. complied with the State's international obligations with respect to the protection of the victims of sexual offences and, in doing so, relied expressly on the provisions of the Victims' Rights Directive (see paragraphs 29-30 and 41 above).

77. The courts also verified the reliability of the remaining evidence which had not been tested in court, notably the witness statements made by

Z.O. and C.L.C. and placed them in the factual context of the case before deciding to accept them (see notably paragraphs 7 and 31-32 above)

78. The Court also reiterates its conclusion, in paragraphs 65-67 above, that there was a good reason for the witnesses' absence from the trial.

79. It cannot therefore be said that, in the circumstances of the case, there was an overreliance by the courts on the untested statements (see, *mutatis mutandis*, *S.M. v. Croatia* [GC], no. 60561/14, § 344, 25 June 2020).

80. In addition (as detailed in paragraph 70 above), the courts had at their disposal other strong evidence implicating the applicants.

81. In terms of procedural measures taken by the courts (see *Schatschaschwili*, cited above, § 145), the statements made by the absent witnesses were available in the file and the applicants and their counsel were able to consult and challenge them in court (see paragraphs 9, 11 and 32 above). In this regard, the Court notes that the documents submitted by the parties do not allow to ascertain whether those statements had been read out in court during the proceedings before the county court, as provided for by the applicable law, but the applicants did not complain about that matter before the court of appeal (see paragraphs 20 and 38 above). In addition, their complaint that the witness statements had not been collected in accordance with the proper procedure for letters of request was examined in depth by the County Court and the fact that it was eventually dismissed in accordance with the domestic law, does not per se amount to a violation of the fair trial principle (see paragraph 7 above). It is also relevant that, while complaining that the witness statements had allegedly not been read out in court (see paragraph 48 above), the applicants did not contest that those statements had been fully available to them throughout the court proceedings. In the same vein, the Court cannot but note that there is no mention in the file of any video recordings of the interviews held with the witness during the criminal investigation (see, for instance, paragraphs 12 and 28 above), although the applicable law requires that such recording be made when possible (see paragraph 38 above). Regrettably as that may be, the absence of such recordings, which does not seem to have been raised by the applicants during the domestic proceedings (see paragraphs 7 and 18-20 above), was undoubtedly caused by the lack of necessary equipment observed by the court of appeal (see paragraph 31 above). Moreover, the written statements available in the file were examined by the courts (see paragraphs 12 and 32 above).

82. Furthermore, the applicants were able to put their questions to the absent witnesses C.A., U.O. and B.N.V. via the letters of request sent by the Court of Appeal (see paragraph 24 above). They were also present for the interviews of witnesses C.A. and U.O. before the Moldovan court acting on the letters of request (see paragraph 26 above). More generally, the applicants and their counsel were present and actively participated in the court proceedings (see paragraphs 8, 13 and 17 above). Their requests for evidence

were examined and for the most part accepted (see, in particular, paragraphs 20, 21 and 24 above). When the Court of Appeal refused to accept evidence proposed by the applicants, it gave reasons for its decisions (see paragraph 23 above). The applicants were thus fully able to present and support their defence and to give their own version of the facts (see paragraphs 13 and 18 above as well as the case-law cited in paragraph 57 (vi) above). Nothing suggests that when they examined the evidence (see paragraphs 12 and 33 above) the courts disregarded statements which the applicants considered to support their case (see paragraphs 50, 10 and 26-27 above).

83. It is also to be noted that both decisions adopted by the courts in this case, and in particular the final decision of 29 June 2016, contained relevant and sufficient reasoning for the conclusions reached by the courts, based on what appears to be an exhaustive examination of the evidence and of all the arguments raised by the parties (see paragraphs 14-15 and 28-34 above).

(iv) Conclusion

84. Having regard to the above, in particular the evidence supporting the absent witnesses' statements as well as the thorough reasoning provided by the domestic courts in this regard, the Court finds that these counterbalancing factors allowed for a fair and proper assessment of the reliability of the untested evidence.

85. Consequently, and assessing the overall fairness of the proceedings, the Court finds that the applicants' defence rights were not restricted to an extent that was incompatible with the guarantees provided for by Article 6 of the Convention.

Accordingly, it finds no violation of Article 6 §§ 1 and 3 (d) of the Convention on account of the applicants' inability to challenge witness statements in court and of the alleged breach of the principle of equality of arms.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON THE GROUND THAT JUDGES SHOULD HAVE WITHDRAWN FROM THE PROCEEDINGS

86. The applicants complained that judges B.B. and S.F., who had respectively ordered and upheld their pre-trial detention, thus expressing their opinion concerning the applicants' guilt, had later also sat in the proceedings on the examination of the merits of the accusations brought against them, in disregard of the requirement of impartiality enshrined in Article 6 of the Convention (see paragraphs 6, 8, 14 and 17 above).

87. The Government pointed out that the applicants had failed to challenge the judges' impartiality during the domestic proceedings (see paragraph 37 above).

88. The applicants argued that, by contesting in their appeal the manner in which the judges of the County Court had interpreted the evidence (see paragraphs 17-20 above), they had raised, in substance, the issue of lack of impartiality of those judges and stressed that, in any case, the appearance of impartiality was also important. They further argued that the challenge to a judge's impartiality is never accepted by the domestic courts and the Government had failed to bring examples of case-law demonstrating the alleged effectiveness of that remedy.

89. The Court refers to the well-established principles of its case-law concerning the requirement to exhaust domestic remedies (as reiterated notably in *Gherghina v. Romania* (dec.) [GC], no. 42219/07, §§ 83-89, 9 July 2015; *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014; and, more recently, *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC], no. 21881/20, §§ 138-45, 27 November 2023). In particular, the obligation to exhaust domestic remedies requires applicants to make normal use of remedies which are available and sufficient in respect of their Convention grievances. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see *Gherghina*, cited above, § 85, and *Communauté genevoise d'action syndicale (CGAS)*, cited above, § 139, with further references).

90. Turning to the facts of the present case, the domestic law explicitly excludes from the examination of the merits of a case any judge who sat at the preliminary stages of the proceedings (see paragraph 36 above). However, the applicants and their counsel, who were present throughout the proceedings (see paragraphs 13 and 17 above), do not appear to have challenged the impartiality of the judges in question or to have requested their recusal, as allowed by Article 51 of the old CCP and Article 67 of the new CPP (see paragraph 37 above; see also, *mutatis mutandis*, *Rarinca v. Romania* (dec.), no. 10003/16, § 107, 12 January 2021); the appeal lodged by the applicants against the County Court's decision, as well as their written conclusions, focused exclusively on the interpretation of the evidence and the accuracy of the findings of facts by the lower court (see paragraph 18 above). There is therefore no indication that they raised the matter with the domestic courts.

91. Accordingly, this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning the equality of arms and the right to examine witnesses admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 6 §§ 1 and 3 (d) of the Convention.

Done in English, and notified in writing on 14 January 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Simeon Petrovski
Deputy Registrar

Lado Chanturia
President

APPENDIX

List of applicants
Application no. 9308/18

No.	Applicant's name	Year of birth	Nationality	Place of residence
1.	Vasile Pruteanu	1987	Romanian	Braşov
2.	Tatiana Pruteanu	1965	Romanian	Săcele
3.	Vasile Pruteanu	1960	Romanian	Săcele