



Forced abortions and birth-control measures carried out on residents of a neuropsychiatric asylum – violation of Convention

The case of [G.M. and Others v. the Republic of Moldova](#) (application no. 44394/15) concerned the imposition of abortions and birth-control measures on three intellectually disabled women, residents in a neuropsychiatric asylum, after they had been repeatedly raped by one of the head doctors there, and the investigation into their complaints.

In today's **Chamber** judgment¹ in the case, the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 3 – substantive aspect (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights as regards the inadequate legal protection of the physical integrity of women with intellectual disabilities, the forced abortions of the three applicants and the contraception imposed on the first applicant; and

a violation of Article 3 – procedural aspect (prohibition of inhuman or degrading treatment: obligation to conduct an effective investigation) as regards all three applicants.

The Court found in particular that the authorities had failed to carry out an effective investigation into the applicants' allegations of ill-treatment despite it having been reopened on four occasions following their appeals. The inquiry had not factored in their vulnerability as intellectually disabled women exposed to sexual abuse in an institutional context. It found that the domestic criminal law had not provided effective protection against such invasive medical interventions carried out without the patient's valid consent.

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

Principal facts

The applicants, G.M., T.M. and M.P., are three Moldovan nationals. G.M. and T.M. were born in 1984 and M.P. was born in 1973. They have intellectual disabilities of varying levels of severity and were all institutionalised in the Bălți neuropsychiatric residential asylum at some point in time, during which they retained full legal capacity.

Having been raped on various occasions by one of the head doctors in the asylum, all three claim to have fallen pregnant and been forced to have an abortion and to have had contraceptive coils implanted without their consent.

G.M. was resident in the Bălți asylum from 2002 to 2013. In November 2003 the doctors at the asylum learned that she was between 17 and 18 weeks pregnant. She alleged that she had been raped by F.S., one of the head doctors. She was sent to the Bălți maternity hospital on 3 December 2003 where her waters were broken and she underwent a dilatation and curettage (D&C) under anaesthetic. She never had any children after that. In 2014 a gynaecological medical examination revealed what was thought to be an intrauterine contraceptive device.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

T.M. has been resident in the Bălți asylum since 2001. In November 2007 the doctors at the asylum learned that she was seven weeks pregnant. Five days later she was given a D&C at the Bălți maternity hospital. Her medical file states that she was taken into hospital with vaginal bleeding and abdominal pain due to a “spontaneous” miscarriage, for which the doctor prescribed laboratory tests and a D&C for medical reasons.

According to T.M., in 2014 during a medical check-up, the doctor extracted a contraceptive coil, which she believes must have been inserted whilst she was in hospital. At the time of lodging her application in 2015, she did not have any children. Since then, she has had two miscarriages and given birth to two children.

M.P. was resident in the Bălți asylum from 1988 to 1998 and again from 2009 onwards. She alleges that she became pregnant in 1998 after being raped by F.S. and was forced to have an abortion, before being transferred to another psychiatric asylum. She has no children and submits that a contraceptive device was implanted in her uterus without her knowledge following the abortion. There are no medical records of her alleged pregnancy or of a medical intervention in the Bălți maternity hospital.

In April 2014 the applicants lodged criminal complaints concerning the abortions and birth-control measures practised on them without their consent. The police replied that the termination of their pregnancies had been lawful and provided for by domestic law.

The applicants appealed mainly because the response simply made reference to ministerial regulations without actually investigating their lack of consent. They argued that G.M. had not consented to the termination of her pregnancy or to the birth-control measure, that the consent allegedly signed by T.M. was flawed (it was not clear who had signed it – there was a handwritten “M.” in the fields for the patient’s name and signature – and there was no patient identification data or description of the medical procedure to be carried out), and that no investigation had been carried out into the complaints concerning M.P.

The domestic investigation focused on whether there had been illegal termination of pregnancies, illegal sterilisation or medical negligence, and concluded that there had not. It found on several occasions that before 2006 the domestic law had not required consent for the medical interventions due to the applicants’ intellectual disability and that, in any case, G.M. and T.M. had consented to the abortions. It concluded that in the absence of relevant medical files, the allegations concerning the termination of M.P.’s pregnancy and the birth-control measures in respect of all three applicants were unsubstantiated. As a result, the prosecutor refused on four occasions to open a criminal investigation into the complaints.

On 19 November 2019 F.S. was finally convicted of raping a total of 16 female residents of the Bălți asylum, including all three applicants. He was sentenced to 15 years’ imprisonment and ordered to pay 70,000 Moldovan lei (MDL) (equivalent to 3,570 euros (EUR)) to G.M., and MDL 50,000 (equivalent to EUR 2,550) each to T.M. and M.P. The final judgment cited two witness statements mentioning M.P.’s pregnancy and her referral to the Bălți maternity hospital for an abortion.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life) of the Convention, the applicants complained that they had been subjected to involuntary abortions and birth-control measures and that the authorities had failed to carry out an effective investigation into the matter.

The application was lodged with the European Court of Human Rights on 2 September 2015.

Third-party interventions were submitted by Validity, ORDO IURIS and the European Centre for Law and Justice.

Judgment was given by a Chamber of seven judges, composed as follows:

Jon Fridrik **Kjølbro** (Denmark), *President*,
Carlo **Ranzoni** (Liechtenstein),
Branko **Lubarda** (Serbia),
Pauliine **Koskelo** (Finland),
Jovan **Ilievski** (North Macedonia),
Gilberto **Felici** (San Marino),
Diana **Sârcu** (the Republic of Moldova),

and also Hasan **Bakırcı**, *Section Registrar*.

Decision of the Court

Article 3

The Court considered that the invasive medical interventions, combined with the applicants' vulnerability due to their gender, disability and institutionalisation, were sufficiently serious to come within the scope of Article 3 of the Convention and decided, therefore, to examine the case from that standpoint.

The Court first observed that the domestic authorities had been prompt to initiate a preliminary inquiry into their allegations, interviewing them and certain medical staff at the Bălți asylum and the Bălți maternity hospital, who had partially confirmed the applicants' statements. However, no criminal investigation had been initiated to assess the credibility of the claims, clarify the circumstances of the case and identify those responsible. The inquiry had relied essentially on the content of G.M.'s and T.M.'s medical files and had not attempted to check their accuracy. It had simply focused on whether the facts revealed elements of various criminal offences, none of which appeared to concern non-consensual medical interventions.

The Court therefore concluded that the authorities had failed to carry out an effective investigation into the applicants' allegations of ill-treatment despite it having been reopened on four occasions following their appeals. The inquiry had not factored in their vulnerability as intellectually disabled women exposed to sexual abuse in an institutional context. The Court found, therefore, that there had been **a violation of the procedural limb of Article 3 in respect of all three applicants**.

Regarding the State's substantive obligations under Article 3, the Court examined whether G.M., T.M. and M.P., who were intellectually disabled but not deprived of legal capacity, had been subjected to invasive medical procedures without their informed consent. It assessed the adequacy of the legal framework governing the conduct of doctors in carrying out those medical interventions and how the relevant laws were applied in practice, as well as the adequacy of the legal framework governing the conduct of the authorities in investigating the applicants' complaints.

The Court observed the paternalistic tone of the 1994 ministerial order concerning termination of pregnancies in respect of persons with intellectual disabilities. On the one hand, the order indicated intellectual disability as a contraindication for pregnancy without any further assessment of medical risks, which by itself was contrary to international standards. On the other hand, the order excluded the women concerned from being involved in the decision-making process concerning their own pregnancies.

The domestic authorities had concluded that before 2006 the domestic law had not required consent for the medical procedures, while the Government argued that the domestic law had required verbal consent, not prior written consent. The Court noted that the text of the Moldovan law had established a system of presumed consent for all medical interventions which did not "pose significant risks for the patient or which [were] not likely to violate his or her intimacy" but that, in

any event, the presumed consent was to be confirmed in writing by the doctor in the patient's medical file. In view of the nature of the medical interventions, the Court considered that the applicants' actual consent had been required under domestic law with written confirmation by the doctor or the patient in the medical file.

The Court found that the Government had failed to demonstrate the existence of any legal provisions, safeguards and mechanisms meant to enable persons like G.M., T.M. and M.P., who were intellectually disabled but had not been deprived of their legal capacity, to express valid and fully informed consent for medical interventions. Even the 2020 updated national standards seemed to transfer the decision to the legal representative.

The Court found that the existing legal framework fell short of the requirement inherent in the State's duty to establish and apply effectively a system providing protection to women living in psychiatric institutions against serious breaches of their integrity. The criminal legislation was inadequate and therefore unable to protect the applicants from non-consensual abortion and contraception. Also, when the Court assessed the individual circumstances of each applicant, it found that, although there was no indication that the medical staff had acted with the intention of ill-treating G.M. and T.M., they had nevertheless displayed gross disregard for their right to autonomy and choice as patients. The Court therefore concluded that there had been a **violation of the substantive limb of Article 3 of the Convention on account of the inadequate legal protection of all three women and on account of G.M. and T.M. being forced to abort.**

It observed that the difficulty in determining whether there was any substance to M.P.'s allegations of ill-treatment stemmed from the authorities' failure to investigate her complaints effectively. They had limited their inquiry to her medical file, establishing thus that she had never been pregnant. However, witness statements revealed, on the one hand, that abortions among women at the Bălți asylum were common practice and, on the other hand, that she had indeed been pregnant at a certain point in time. The proven rape of multiple residents of the asylum (including M.P.), the forced abortions carried out on G.M. and T.M., and the deficiencies in the legal framework led the Court to conclude in favour of her version of events. It found, therefore, that there had also been a **violation of Article 3 of the Convention in its substantive limb in respect of M.P.**

As regards the applicants' complaints concerning the birth-control measures, the difficulty in determining whether there was any substance to G.M.'s allegations of ill-treatment also stemmed from the authorities' failure to investigate her complaints effectively. The Court noted that the Government had failed to produce any evidence to cast doubt on her submission that the foreign body described by her doctor had been a contraceptive device implanted in her body while she was under State control in the Bălți asylum. The Court therefore considered that fact proven and concluded that there had been a **violation of the substantive limb of Article 3 of the Convention in respect of G.M. on that account.** In view of that, the Court did not find it necessary to examine separately her complaint concerning her alleged inability to procreate.

T.M. and M.P. were still residents of the asylum. T.M. submitted that in 2014 a contraceptive coil had been extracted from her body but failed to provide the Court with any evidence. Likewise, M.P. did not submit any evidence or details in support of her allegation that she had been fitted with an intrauterine contraceptive device. Therefore, given that no effective investigation had been carried out, the Court was unable to draw a conclusion as to whether T.M. and M.P. had been subjected to forced contraception. It concluded, therefore, that there had not been a violation of the substantive limb of Article 3 of the Convention in their respect on that account.

[Just satisfaction \(Article 41\)](#)

The Court held that the Republic of Moldova was to pay 30,000 euros (EUR) to G.M. and EUR 25,000 each to T.M. and M.P. in respect of non-pecuniary damage and EUR 5,000 jointly to the three applicants in respect of costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.