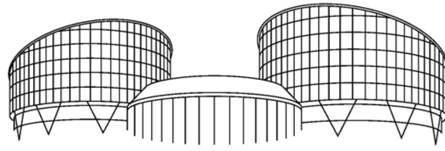

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF V.I. v. THE REPUBLIC OF MOLDOVA

(Application no. 38963/18)

JUDGMENT

Art 3 (substantive and procedural) • Inhuman and degrading treatment • Involuntary placement in a psychiatric hospital and psychiatric treatment (including with neuroleptics and tranquilisers), without proven medical necessity and any safeguards, of an orphaned 15 year old child with a mild intellectual disability in the State's care • Material conditions of applicant's subsequent placement in the adults' section and his being subjected to chemical restraint, in the absence of a therapeutic necessity • Requisite threshold of severity attained • Failure to carry out an effective investigation into arguable allegations • No consideration to applicant's vulnerability, age or disability aspects of his complaint concerning institutionalised neglect and medical violence committed against him • Failure to protect applicant's physical integrity and dignity • Existing legal framework falling short of the requirement inherent in the State's positive obligation to establish and apply effectively a system providing protection to intellectually disabled persons in general and to children without parental care against serious breaches of their integrity • Lack of independent review of involuntary placement in a psychiatric hospital, involuntary psychiatric treatment, the use of chemical restraint, and other mechanisms to prevent abuse of children without parental care and, in general, intellectually disabled persons
Art 3 (substantive and procedural) • Inhuman or degrading treatment • Ineffective investigation into allegations of violence and abuse at the hands of other patients during the applicant's stay in the adult section • Resulting difficulty in determining whether there was any substance to his allegations • Absence of prima facie evidence capable of shifting the burden of proof on to respondent Government
Art 14 (+ Art 3) • Art 13 • Discrimination • Effective remedy • Authorities' actions amounting to a perpetuated a discriminatory practice in respect of the applicant as a person and, particularly, as a child with an actual or perceived intellectual disability • Absence of convincing reasons to rebut the presumption of discrimination against the applicant on intellectual disability grounds • Failure to provide for an appropriate mechanism capable of affording redress to people with intellectual disabilities, particularly children
Art 46 • Execution of judgment • Systemic problem • Respondent State to take general measures aimed at reforming the system of involuntary placement in a psychiatric hospital and of involuntary psychiatric treatment of persons with intellectual disabilities, particularly children • Measures to address discrimination and to include legal safeguards and mechanisms

Prepared by the Registry. Does not bind the Court.

STRASBOURG

26 March 2024

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of V.I. v. the Republic of Moldova,

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

Arnfinn Bårdsen,
Jovan Ilievski,
Pauliine Koskelo,
Saadet Yüksel,
Lorraine Schembri Orland,
Frédéric Krenc,
Diana Sârcu*, judges*,

and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 38963/18) against the Republic of Moldova lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Moldovan national, Mr V.I. (“the applicant”), on 8 August 2018;

the decision to give notice to the Moldovan Government (“the Government”) of the complaints under Articles 3, 8, 13 and 14 of the Convention and to declare the remainder of the application inadmissible;

the decision not to disclose the applicant’s name;

the parties’ observations;

Having deliberated in private on 20 February 2024,

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

INTRODUCTION

1. The application concerns the involuntary placement of the applicant in a psychiatric hospital and his psychiatric treatment, which, along with the material conditions and the conduct of the medical staff and other patients, allegedly amounted to ill-treatment. He also complained that the investigation into those allegations had been ineffective. The applicant relied on Articles 3, 8 and 13 of the Convention and Article 14 read in conjunction with his other complaints.

THE FACTS

2. The applicant was born in 1998 and lives in Vincenza, Italy. He was represented by the Validity Foundation, a non-governmental organisation (NGO), with its seat in Budapest, and Mr I. Schidu and Mr V. Mămăligă, lawyers practising in Chișinău and associated with the NGO Moldovan Institute for Human Rights.

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

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

5. The applicant is affected by a mild intellectual disability. After his mother's death in 2005 and his father's imprisonment and subsequent death in 2009 he was in the exclusive care of his aunt from 2005 to 2012. From 24 December 2012 to 7 November 2014 the mayor of Ciutești acted as the applicant's guardian and legal representative.

6. In 2013 the applicant was placed temporarily in the children's resocialisation centre Casa Așchiuța and subsequently in the placement centre Regina Pacis. On account of a lack of available places, the applicant was discharged and, after further attempts to identify foster care arrangements had failed, he was enrolled for the 2013-14 academic year in the Rezina boarding school.

7. The applicant was repeatedly placed for treatment in the Codru Psychiatric Hospital: once in 2012 from 27 November to 24 December and twice in 2013 from 18 March to 9 April and from 18 June to 11 July.

8. On 29 May 2014 the Rezina boarding school administration called the mayor of Ciutești and asked him to identify a summer placement for the applicant, as his staying at the boarding school would not be possible over the summer because all the children would be leaving.

I. THE APPLICANT'S PLACEMENT AND STAY IN THE CODRU PSYCHIATRIC HOSPITAL

9. According to the applicant, on 3 June 2014 a doctor from the Nisporeni hospital, V.G., referred him for placement in a psychiatric hospital and for psychiatric treatment, citing a diagnosis of "mild mental disability and decompensated psychopathiform syndrome (*sindrom psihopatiform*) with irritability and nervousness". The applicant submitted that the doctor had issued this referral without ever seeing him.

10. On 9 June 2014 the Rezina boarding school administration issued the following assessment of the applicant:

> "[V.I.] was enrolled in the school on 13 July 2013 as an orphaned child ... Diagnosed with personality disorder F 07.0, he has adapted with difficulty. He has average intellectual development but is not interested in school, he refuses to attend and to be involved in classes and when he attends, he creates various conflicts, uses swear words and insults the teachers and students. He finds the school curriculum very easy and has never manifested any interest in grades and learning; he graduated with six and seven [out of ten]. During classes he is an impulsive, disobedient and insolent student. He reacts aggressively, swears in response to any remarks and defies all disciplinary rules in school. He searches for means to get money in order to buy cigarettes and alcohol. He seeks contact with people outside the school to elicit their mercy because he is orphaned. If [that is to no avail], he collects scrap metal and steals whatever he can from people, [including from] colleagues and the school staff. Being an impulsive child, he vehemently slams doors, pounds on the walls with his legs and upsets the girls and weaker colleagues. He manages to withhold violence only in respect of colleagues who are able to reciprocate with violence. He does not exhibit tenderness or any gratitude or kindness towards people around him. Certain positive qualities surface only when he seeks something. He behaved nicely only for the New Year's school play. He

memorised and recited his part well. A lot of resocialisation work was carried out with this child but the results have been minimal. He needs ongoing psychiatric treatment."

11. On 13 June 2014 the Nisporeni Committee for the Protection of Children at Risk examined the applicant's case and recommended his "treatment in a specialised clinic in accordance with his diagnosis" and afterwards his "placement in a local care service". The Committee cited the following reasons: "[The applicant] requires treatment in a specialised clinic two times per year. He has no family in the area (*raion*)."

12. On the same day, with reference to the above-mentioned Committee's advisory decision, the mayor of Ciutești ordered the applicant's transfer from the Rezina boarding school to the Codru Psychiatric Hospital for treatment "for a duration prescribed by a doctor". The decision designated the Ciutești social assistant T.P. as responsible for its implementation.

13. On 16 June 2014 the applicant was brought by T.P. and E.T., an employee of the Nisporeni child protection authority, to the Codru Psychiatric Hospital. According to the applicant, T.P. had told him that they were going to a summer camp. The Government provided the Court with a copy of the consent form for the applicant's admission, signed by T.P.

14. The medical record of his admission on the same day cited the diagnosis of "mild intellectual disability, psychopathiform syndrome" with the diagnosis code F 70 and gave the following reasons for admission:

"[V.I.] complains of headaches, vertigo and memory difficulties; he lags behind in mental development and experiences nervousness and aggressiveness; he runs away from school and smokes. He graduated from the ninth grade of the auxiliary school and has difficulty assimilating the school curriculum. His last hospital admission was in July 2013. He is being urgently admitted to the children's section".

15. The first page of the applicant's medical file, submitted to the Court by the Government, reads, under the diagnosis for psychiatric referral and the diagnosis at admission, "Mild intellectual disability. Psychopathiform syndrome," and the diagnostic code F 70.1.

16. According to the applicant, he had protested against his admission, even though he had been told that he would only be there for three weeks.

17. On 7 July 2014 the applicant's treatment was completed but no one came to arrange for his discharge and further placement. On 22 July 2014 the hospital administration demanded that the mayor of Ciutești urgently arrange for someone to pick up the applicant from the hospital because his treatment had been completed.

18. The medical record from 25 July to 22 September 2014 reads as follows:

"5 July 2014 – The patient is impulsive, aggressive towards other children, does not follow the instructions of the medical staff, is negativist ...

28 July 2014 – [He is in] satisfactory somatic condition, [he had a] good night's sleep; during the day [he exhibits] free behaviour, is active [and] periodically beats disobedient children. ...

1 August 2014 – [He had a] good night's sleep; during the morning visit he was with the other children; he replies to questions without any interest and reacts to grievances with indifference. A call was made in respect of discharging him but no reply followed from the social assistance authorities.

25 August 2014 – According to the information provided by the night team, the doctor on duty was called yesterday evening on account of [V.I.'s exhibiting] uncontrolled and aggressive behaviour and a sedative treatment was administered. Now he is among the other children, is insolent and provocative, beats the other children openly [and] is hard on the weakest. ... Somatic state: no irregularities, no complaints.

28 August 2014 – Behavioural disorders persist and he is difficult to communicate with for correction; he does not draw conclusions from any grievances expressed. Has told the staff that he plans to escape from the hospital if no one comes for him by 1 September. The hospital legal team informed the staff that the legal guardian had been informed repeatedly by phone and by mail and that he had promised to come to discharge him after 1 September.

2 September 2014 – [He exhibits] undisciplined and aggressive behaviour, does not respect the internal rules, smokes and swears at the medical staff. He threatens to escape. No one has come to arrange for his discharge and no one replies to phone calls. Treatment: levomepromazine three times per day.

5 September 2014 – The patient is negativist, refuses to attend classes and spends most of his time on the steps of the building next to the entry door asking about his discharge, waiting for his legal guardian and planning his escape. Among his peers, he acts aggressively and beats and pushes other children. A call was made to the legal team of the hospital, to the deputy director of the hospital and to the representatives of the Nisporeni child protection service. The Ciutesti administration is not answering the phone. Treatment: risperidone two times per day.

16 September 2014 – His behaviour remains aggressive, negativist and oppositional; he does not react to grievances, becomes agitated after several reprimands, manifests impulsive reactions and smokes. He has refused to speak to the social worker who came to see him in view of finding a solution for his discharge. A phone call to the Nisporeni child protection service was made.

19 September 2014 – According to the information provided by the night shift team, [V.I.] went into the girls' room, was accused of stealing and pushed patient [U.M.] forcibly, which resulted in her falling and hitting the floor with the back of her head. The patient is rude to the staff, becomes suddenly agitated and is impulsive. Treatment: diazepam and diphenhydramine.

22 September 2014 – According to the information provided by the night shift team, the patient became upset with the mothers of the other children in the unit and the other children; he was upset about not getting cigarettes; he broke the glass on a window in the room and categorically refuses to admit his guilt.

Medical summary upon [the patient's] transfer

[V.I.] was in the [children's] section from 16 June 2014, after being diagnosed with "mild intellectual disability and psychopathiform syndrome"; he was examined and administered a calming treatment. During the treatment he manifested a negativist, asocial and aggressive behaviour, did not respect the rules of the unit, did not comply with the requirements of the staff and had difficulty communicating during productive psychological correction. In view of his asocial behaviour, increased aggressivity and

reduced impulse control, with the consent of the deputy director, the boy is being transferred [to the adults' section]."

19. On 22 September 2014 the applicant was transferred to the adults' unit (somatic-psychiatric unit).

20. On 29 September 2014 the hospital administration repeatedly requested the mayor of Ciutești and then the Rezina boarding school to collect the applicant from the hospital because his treatment had been completed. In the absence of any reply, on 10 October 2014 the hospital administration sought the intervention of the Nisporeni local council. In the absence of any reaction from those authorities, the hospital administration contacted the Ombudsperson and the Centre for Human Rights.

21. On 6 October 2014 the applicant was visited in the hospital by the Nisporeni Psycho-pedagogical Assistance Service in order to carry out a comprehensive assessment of his development and needs. This was the only visit the applicant received during his stay at the hospital. The relevant parts of the assessment read as follows:

"... The language development corresponds to the child's age.

The cognitive development corresponds to the child's age. The child exhibits communication and learning skills. ...

The child has emotional difficulties. As a consequence of the absence of parental warmth (early death of the mother and the father's death in prison), [V.I.'s] behaviour is rather a reaction to the difficulties in his education and care, with a resulting underdeveloped ability to cope with social and stressful situations. The development of his adaptive behaviour corresponds to his age. ...

[V.I.] is a student with personality (*cu caracter*) who is easily aroused emotionally but who easily establishes contact with others. He has friends among his classmates and can take decisions independently in difficult circumstances. He respects the adults, behaves adequately in various circumstances and shows self-control. He is sociable and replies to questions addressed to him. His socio-emotional behavioural development corresponds to his age. ...

General conclusion: the child's condition does not correspond to the category of children with special educational needs."

22. On 15 October 2014 the Nisporeni child protection authority assessed the applicant's case and, noting the absence of any family and his ongoing stay in the psychiatric hospital, concluded that there was a need to find a placement for the applicant in a residential institution.

23. On 5 November 2014 the applicant's cousin, A.B., became his guardian and on 7 November 2014 the applicant was discharged from the psychiatric hospital into A.B.'s care. In subsequent criminal proceedings A.B. submitted that she had found that the applicant was frightened, barely spoke, was very reserved and that he had a puffy face, he had not eaten anything in the first two weeks after his discharge and he spent most of his time sleeping, while his condition gradually improved.

II. MATERIAL CONDITIONS AND MEDICAL TREATMENT

24. The applicant submitted that three employees had taken him by force to the children's section. During his stay there, he had received medication, the name and purpose of which had never been made known to him. According to the medical records, upon his admission the applicant was prescribed a tranquiliser (diazepam in tablet form) and from July to September 2014 (see paragraph 18 above), he was administered tranquilisers (diazepam and diphenhydramine) and neuroleptics (risperidone and levopromazine).

25. The applicant submitted that in the adults' section he had initially been placed in room no. 1 of unit no. 24, where the patients were in serious condition and did not leave their beds for most of the day. After one week he had been transferred to another room which held nineteen adult men, some with criminal records. He had been the only child placed in that unit. There had been a strong odour of cigarettes in the unit and some of the patients had been in an acute psychiatric condition. The applicant had only been allowed three walks outdoors during his stay in the adults' section. He submitted that his medication had been changed and as a result he had spent most of his days sleeping and eating little to no food because he had lost his appetite. He had been afraid for his life and had become very anxious because other patients in the section had previously been convicted, because he had seen a person die there and because he had heard that some patients spent their entire lives in the hospital.

26. The head of the section told A.B. about an adult patient who had befriended the applicant and who had allegedly given him gifts (a bracelet and a ring).

27. According to his medical records from September to November 2014 the applicant was administered, among, other medications, neuroleptics (chlorpromazine (Aminazin), risperidone (Ripsolept) and levopromazine (Tizercine)), tranquilisers (diazepam and diphenhydramine (Dimedrol)), anti-convulsives (valproic acid), nootropics (vinpocetine (Cavinton forte)), drugs to counteract tranquiliser overdoses (diethylamide of nicotinic acid (Cordiamine)) and heart medication (beta-blockers (Metoprolol)).

III. PSYCHOLOGICAL ASSESSMENT OF THE APPLICANT

28. On 14 January 2016 the Botanica Mental Health Community Centre carried out a psychological assessment of the applicant at the request of the applicant and his guardian. The relevant parts of this assessment read as follows:

> "1. [V.I] perceived his placement in the psychiatric hospital and his transfer to the adults' section as a punishment for his behaviour at school and in the children's section. From his description, he experienced anxiety, fear, helplessness, a state of depersonalisation and a loss of reality and of identity. As a result, he suffered from sleep

disorders, difficulty concentrating, irritability, agitation, exaggerated vigilance and fear. ...

2. [V.I.] re-lives his placement in the psychiatric hospital as a traumatic experience ... [and he is] having flashbacks. Any contact with events or discussions which may remind him of his traumatic experience result in a reaction of intense anxiety. ...

3. Immediately after his discharge, [V.I.] experienced three main types of issues: [1] persistent re-living of the traumatic experience (related nightmares, flashbacks and intense emotional reactions – fear, nervousness, sadness and physiological symptoms of sweating and muscular tension), [2] persistent avoidance of stimuli associated with the traumatic events (avoiding discussion about it, especially as regards the period in which he was in the adults' section), memory gaps, loss of interest in normal activities, feelings of isolation and detachment from others, emotional numbness and limited future prospects (lack of plans for the future, which he is unable to foresee) and [3] persistent symptoms of neurophysiological hyperactivation (agitated sleep, anger and irritability, difficulty focusing, a continual search for signs of danger and nervous outbreaks).

4. In the light of his age and vulnerability at the time of his admission to the hospital, one may conclude that [his stay there] had major effects on his psyche and on his emotional state ... According to him, he felt the following while in the hospital:

- sadness and a foul mood (feeling worthless in the world and that no one existed who could save him from that nightmare);

- a loss of interest in daily activities (all the days were the same, nothing changed and everything was dark);

- a loss of energy and strength (powerlessness to change the situation);

- a loss of self-esteem and trust in others (feeling that he was nothing and that all the people around him were telling lies just to make him suffer more);

-feeling that life was not worth living (thoughts to the effect that if he were to die his suffering would end);

- difficulty focusing;

- constant fatigue;

- trouble sleeping (he could not fall asleep and he had thoughts that the adults in the unit would hurt or even kill him).

Conclusion: [V.I.]'s placement in a psychiatric hospital and, in particular, his placement in the adults' section, was a traumatic event with major effects on his psyche resulting from the inhuman treatment he suffered at the hands of the hospital staff, which caused major emotional suffering and depression and put him at risk of committing suicide."

29. The Government provided the Court with a medical opinion, dated 14 June 2023 and issued by three doctors in the Codru Psychiatric Hospital at the request of the Government Agent, concerning the medical treatment administered to the applicant on the basis of his medical record. The relevant parts read as follows:

"The medical file does not include any information concerning the allegedly 'harmful effects of the medication'. The administered treatment corresponds to the clinical manifestations and to his predominant behaviour, which consisted of behaving

aggressively towards others (entry under 19 September 2014 [see paragraph 18 above]), injuring a minor patient U.M., breaking a window (entry under 22 September 2014), kicking a child and pushing a nurse (entry under 24 August 2014).

The neuroleptic medications administered in the hospital were not taken all at once and some medication replaced others which were found to be inefficient, all with the purpose of calming and balancing his emotional state.

All treatment was administered while his blood circulation, laboratory results and emotional condition were under close surveillance.

Furthermore, a neurologist examined [V.I.] and he did not indicate any of the secondary effects of the administered treatment complained of. The speech therapist also did not indicate any pathologies.

Patients had daily walks according to their curative programme and depending on their condition; in the present case the medical file shows [that V.I.] took walks and played outdoors (entry under 25 July and 25 August 2014).

The record shows an almost continual aggressive, destructive and violent behaviour towards younger patients, [V.I.] representing a direct and imminent danger to the other children's lives and well-being; for this reason it was eventually decided to transfer him to the somatic-psychiatric unit, conditions with which the teenager complied immediately. ... Upon his discharge, the patient's condition had improved.

Conclusion: the medical file excludes any allegedly negative effects on the patient's health due to the medical and social assistance provided in the psychiatric hospital; the patient's health condition at discharge (upon his return home) was not related to the treatment administered in the hospital; it is thus necessary to examine other social factors to which he had been directly exposed."

30. The Government provided the Court with a reply from the Ministry of Health, dated 3 July 2023, concerning the applicant's case. The reply, in so far as relevant, reads as follows:

"According to international studies, typical and atypical antipsychotic drugs (chrolpromazinum and risperidonum respectively) are used worldwide to treat aggressive children and adolescents. Considering the applicant's medical history, his aggressiveness since 2013 and his first placement in the Codru Psychiatric Hospital, international recommendations were followed. This treatment, however, cannot be considered punishment, torture or ill-treatment; while the side effects described, being frequent and well-known manifestations of antipsychotics, unfortunately often necessitate the interruption of the treatment, their presence does not prove that the treatment was prescribed by the doctor with the intention of punishing the patient by means of those side effects."

IV. INVESTIGATION INTO THE APPLICANT'S PLACEMENT IN AND DELAYED DISCHARGE FROM THE PSYCHIATRIC HOSPITAL

31. On 13 January 2015 a lawyer, instructed by the applicant's guardian with the support of the Ombudsperson's Office and of an NGO, lodged a complaint concerning the applicant's placement and psychiatric treatment at the Codru Psychiatric Hospital from June to November 2014, including acts of violence and potential sexual abuse perpetrated by other patients. The

applicant noted that his aunt had never been provided with any support from the authorities and that his opinion had never been sought in respect of his placement in the psychiatric hospital and treatment, although he had clearly opposed being admitted every time he returned there. He challenged his diagnosis and the need for in-patient psychiatric treatment, referring to various assessments which attested to his normal development (for one example of the various documents reflecting the applicant's academic results with passing grades, see paragraph 10 above; for the development assessment of 6 October 2016, see paragraph 21 above). He noted that in 2014 he had stayed in the hospital for 144 days – whereas the average treatment period lasted twenty-one days – and his stay had come to an end only after the Ombudsperson had intervened. He argued that the authorities had never provided him with any psychosocial support and, against his will, had placed and abandoned him in the psychiatric hospital without any external monitoring or support. He also complained of the conditions of his placement, the lack of information about its duration and his placement in the adults' section (see paragraphs 24-25 above). He had feared that he would be interned there for life. He also complained about having been administered tranquilisers and neuroleptic drugs (see paragraph 27 above), despite his age and diagnosis and contrary to the medical protocols, which had made him continuously sleepy and passive. Moreover, he noted that inferring from the adjuvant treatment (meant to address his variable blood pressure, high heart rate and rigid muscles) prescribed to him after the administration of neuroleptics, it appears that he had developed neuroleptic malignant syndrome, which was a life-threatening condition. He relied on Articles 3, 5 and 14 of the Convention and requested an investigation into negligence and ill-treatment on discriminatory grounds.

32. On 16 January 2015 the Nisporeni prosecutor initiated a criminal investigation into charges of negligence (Article 329 § 1 of the Criminal Code) in respect of the applicant's placement in and delayed release from the psychiatric hospital after completing twenty-one days of treatment. On 23 October 2015 the Ciutești mayor was charged with negligence which had resulted in serious consequences (Article 329 § 2 (b) of the Criminal Code) and the case was sent for trial.

33. On 15 June 2016 the Nisporeni District Court acquitted the mayor on all charges, concluding that he had not failed to fulfil any of the tasks entrusted to him. In particular, the court found that the applicant's admission had been carried out by T.P. and E.T. and that it had been the task of the Nisporeni child protection authority, and not the mayor of Ciutești, to secure the applicant's placement after his discharge from the hospital.

34. The applicant appealed against that judgment, arguing that the main care duties in respect of him had been exercised by the mayor of Ciutești (local public administration) and not by the Nisporeni child protection authority (territorial administration). He argued that instead of providing him

with support and care, his legal guardian, the mayor of Ciutești, had placed him in a psychiatric institution and then failed to take action with regard to his discharge.

35. The prosecutor also appealed against that judgment, noting that it had been the mayor, and not the Nisporeni child protection authority, who had signed the applicant's admission to the hospital and who had exercised legal guardianship. The prosecutor referred to evidence in the case file, according to which a "normal child" had been admitted to the psychiatric hospital (with reference to the statements of the specialist who had carried out the assessment on 6 October 2014 cited in paragraph 21 above). The prosecutor cited the statements of V.A., the deputy director of the psychiatric hospital who had contacted the Ombudsperson and the Centre for Human Rights in the Republic of Moldova to intervene in the case after his repeated requests to the mayor of Ciutești and his staff had failed to secure their presence for the applicant's discharge from the hospital. The prosecutor argued that the mayor had failed to provide care to the applicant and noted that the applicant's admission to the hospital had been carried out in haste, in the absence of any placement solution, because all the admission documents, such as the referral to the hospital and the placement decision (see paragraphs 9 and 12 above) had been issued without a doctor ever talking to or seeing the applicant. Moreover, the prosecutor argued that had the admission been planned, there should not have been any delays in his discharge and subsequent placement.

36. On 6 June 2017 the Chișinău Court of Appeal upheld the appeals and convicted the mayor of Ciutești on charges of negligence, sentencing him to two and a half years' imprisonment, but suspended the enforcement of the sentence for two years. The court awarded the applicant 60,000 Moldovan lei (equivalent to 3,000 euros) in compensation for the non-pecuniary damage sustained. The court concluded that the mayor had failed in his duty of care when he had left the applicant in the psychiatric hospital for 144 days instead of twenty-one days, without any support or external monitoring, thereby inflicting on the applicant serious emotional suffering.

37. The applicant lodged an appeal on points of law against that judgment. The applicant argued that the court had found the mayor guilty of failing to act in respect of his discharge from the psychiatric hospital but had never ruled on the mayor's responsibility for his placement in the psychiatric hospital, considering that the applicant had not needed psychiatric treatment as confirmed by evidence in the case file (see paragraph 31 above). The applicant also argued that the sentence was excessively lenient.

38. On 12 December 2017 the Supreme Court of Justice reversed the appellate judgment and acquitted the mayor of Ciutești on all charges. The court concluded that the prosecutor had failed to provide evidence of "serious consequences" or "serious bodily injury or serious damage to one's health", which was a qualifying element for the offence of negligence. The consequences suffered by the applicant had not been "serious", as they had

been "approximate (*au un caracter estimativ*) and their extent could not be determined with certainty". Moreover, the court concluded that there had been no issue with the length of the placement because it had constituted "a duration prescribed by a doctor", as indicated in the mayor's decision of 13 June 2014. The court found that the social worker T.P., and not the mayor, had been responsible for the follow-up on the placement because she had been delegated to implement the decision. The judgment was final and was served on 12 January 2018.

V. INVESTIGATION INTO ILL-TREATMENT IN THE PSYCHIATRIC HOSPITAL

39. On 9 February 2015 the applicant sought information about the prosecutor's decision in respect of the part of his complaints concerning ill-treatment during his stay in the psychiatric hospital (Article 166/1 of the Criminal Code).

40. On 16 February 2015 the Nisporeni prosecutor replied that the complaint had been premature, since the circumstances of his stay in the hospital had not yet been established beyond doubt. The prosecutor referred to the investigation into charges of negligence and to other preliminary inquiries meant to clarify whether the elements of the offence of ill-treatment had been met.

41. The applicant appealed against the prosecutor's refusal, noting that there was sufficient prima facie evidence to launch a formal investigation specifically into the applicant's placement in the adults' section, the administration of neuroleptics despite the applicant's age and diagnosis and the serious consequences for his health, such as the possible development of neuroleptic malignant syndrome. There was also sufficient information to investigate the material conditions in the psychiatric hospital and the violence to which he had been subjected at the hands of other patients.

42. As a result, on 24 March 2015 the Nisporeni prosecutor initiated a criminal investigation into charges of torture and ill-treatment (Article 166/1 § 2 of the Criminal Code) in respect of allegations concerning the administration of neuroleptics, the applicant's transfer to the adults' section and the material conditions in the hospital.

43. On 29 September 2015 the Chișinău prosecutor decided to discontinue the investigation. He noted that the applicant's transfer to the adults' section had been due to the deterioration of his health condition and his aggressive and dangerous behaviour in respect of other patients and the medical staff in the children's section. The prosecutor found that the applicant had not been subjected to any intimidation or violence by other patients. The prosecutor cited several witness statements given by the medical staff, which attested to the applicant's allegedly violent and uncontrollable behaviour while in the children's section. After he had not been discharged on 7 July 2014 upon the

completion of his treatment, he had become increasingly frustrated, insolent and aggressive towards other children. On 22 September 2014 he had broken a window and had subsequently been transferred to the adults' section. The prosecutor concluded that there was no evidence that the medical staff had deliberately subjected the applicant to any suffering in order to debase or humiliate him.

44. The applicant appealed against that decision, noting that the investigation was incomplete.

45. On 22 January 2016 the hierarchically superior prosecutor rejected the applicant's appeal.

46. The applicant lodged an appeal with the investigating judge, reiterating his previous arguments.

47. On 20 April 2016 the Rîșcani investigating judge upheld the applicant's appeal and ordered the reopening of the investigation, noting that an expert assessment of the applicant was a mandatory piece of evidence missing from the file.

48. On 14 November 2016 an expert psychiatric and psychologic assessment of the applicant was carried out, the relevant parts of which read as follows:

> "[V.I.] is alert and aware ... Emotionally he is slightly depressed, stating that he does 'not wish to stay in the hospital'. In respect of the criminal case in which he has the procedural standing of a victim, he stated that the boarding school administration had brought him to the hospital while lying to him, telling him that he would be taken to a summer camp ... [he stated] that he had been left at the hospital against his will, that he had been 'quiet' in the children's section where he had stayed before but that when his discharge had not been executed when promised, he had become upset, had broken a window and pushed nurses; [he also stated that] instead of being discharged he had been transferred to the adults' section, where he had felt bad, had been administered injections which made him feel ill, had been afraid of other patients and had stayed in the hospital for four months instead of three weeks. ...
>
> The psychologist's conclusion: ...His behaviour is adequate if a little tense. He maintains a stable mood corresponding to the situation of being examined. He is unhappy with the way he was placed in the hospital and the late discharge from the hospital. He stated: 'They lied, saying that they were taking me to a summer camp, and then for two months no one came to take me from the hospital.' He is focused essentially on the limitation of his freedom and not on how he was treated in the hospital. He is focused on the secondary effects of events, as he is generally egocentric, by protesting against a situation. His emotional reaction to the reproduction of events is dull and unexpressive. ... His IQ is 65. [He exhibits] emotional-volitional instability and shows dissent in stressful circumstances. He shows a tendency towards respectful and affectionate behaviour to compensate for his abandonment complex, manifesting in his being demonstrative and provocative with reactions of protest and opposition. ... His intellectual ability and memory correspond to a mild intellectual disability.
>
> His statements are egocentric, subjective and assessed in the light of his personal life experiences and his dissatisfaction with limitations imposed on his personal freedom, to which he reacts with insubordination. In these circumstances, [V.I.] has not suffered a psychological trauma. No symptoms of a psychological trauma have been discerned. The psychological assessment does not show manifestations of the allegedly inhuman

> treatment. [His psychological condition] stems from the limitation of his freedom and his abandonment issues, developed in the situation described."

49. On 30 May 2017 the Chișinău prosecutor again decided to discontinue the criminal investigation, reiterating most of the reasons given previously (see paragraph 43 above). In addition, the prosecutor concluded that the applicant's admission to the psychiatric hospital had taken place with the applicant's informed consent and with the written consent of the guardianship authority. The prosecutor referred to the expert assessment which concluded that the applicant had not suffered psychological trauma from his placement in the psychiatric hospital, as he had mainly opposed his being admitted to the hospital through deception and had had no issue with the treatment itself while he was there. The prosecutor concluded that there was no evidence that the medical staff had deliberately subjected the applicant to any suffering in order to debase him.

50. The applicant appealed against that decision. He argued that the expert assessment had not refuted the negative impact his placement had had on his mental health, but had construed it as being related to his opposition to his deprivation of liberty and not to the medical treatment and conditions in the hospital. He asserted that the assessment had been carried out by experts who were affiliated to and not independent from the Codru Psychiatric Hospital. He noted that the prosecutor had failed to consider the more detailed assessment made by the Botanica Mental Health Community Centre (see paragraph 28 above). The applicant argued that the investigation was incomplete.

51. On 18 July 2017 the hierarchically superior prosecutor dismissed the applicant's appeal and upheld the decision to discontinue the investigation.

52. The applicant lodged an appeal with the investigating judge, reiterating his previous arguments (see paragraph 50 above).

53. On 1 December 2017 the Centru investigating judge dismissed the applicant's appeal.

54. The applicant lodged an appeal on points of law.

55. On 8 February 2018 the Chișinău Court of Appeal, by a final decision, upheld the decision to discontinue the investigation. The court concluded that there was no evidence that the medical staff had deliberately subjected the applicant to any acute mental or physical suffering.

RELEVANT DOMESTIC AND INTERNATIONAL LEGAL FRAMEWORK

I. RELEVANT DOMESTIC LAW AND PRACTICE

56. The relevant parts of the Criminal Code of the Republic of Moldova, enacted by Law no. 895 of 18 April 2002, as in force at the material time, read as follows:

Article 166/1
Torture, inhuman or degrading treatment

1. The intentional infliction of physical or psychological pain or suffering which corresponds to inhuman or degrading treatment, committed by an official ... or with the express or implied consent of such person, shall be punishable by a term of imprisonment of two to six years or by a fine of 800 to 1000 conventional units, in both cases with the deprivation of the right to hold a certain position or exercise a certain activity for between three and five years.

2. The act described in paragraph (1):

(a) carried out in respect of a minor or ... by taking advantage of a known or obvious vulnerability of the victim due to his or her advanced age, illness, physical or mental disability or another factor ... shall be punishable by a term of imprisonment of three to eight years or by a fine of 800 to 1000 conventional units, in both cases with the deprivation of the right to hold a certain position or exercise a certain activity for between five and ten years.

Article 169
Unlawful admission to a psychiatric institution

"1. The unlawful admission to a psychiatric institution of a person who is clearly mentally healthy shall be punishable by a term of imprisonment of up to three years with the deprivation of the right to hold a certain position or to exercise a certain activity for up to three years.

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

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

(a) a serious injury to bodily integrity or to health;

...

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

Article 329
Negligent performance of duties

"1. Failure to perform or the improper performance of duties by a public official as a result of a negligent or careless attitude towards such duties, provided that such action caused large-scale damage to the public interest or to the rights and legally protected interests of individuals or other legal entities, shall be punishable by a fine of up to 500 conventional units or by a term of imprisonment of up to two years, in both cases with (or without) the deprivation of the right to hold a certain position or exercise a certain activity for between two and five years.

2. The same deed, if it has resulted in:

(a) the death of a person;

(b) other serious consequences;

shall be punishable by a term of imprisonment of two to six years with the deprivation of the right to hold a certain position or exercise a certain activity for between five and ten years."

57. The relevant parts of the Law on the special protection of children at risk and of children without parental care, enacted under Law no. 140 on 14 June 2013, as in force at the material time, read as follows:

Section 6
Responsibilities of the local guardianship authority

"1. The local guardianship authority [the mayor] shall be responsible for: ...

(f) securing the emergency placement of children without parental care;

...

(j) issuing and sending the territorial guardianship authority's opinions about the planned placement of children; ...

2. The local guardianship authority shall exercise its powers either directly or through the child-protection specialist employed by the local administration."

Section 7
Responsibilities of the territorial guardianship authority

"The territorial guardianship authority [the territorial departments for social assistance and family protection] shall be responsible for:

...

(d) securing the planned placement of children who have no parental care; ..."

58. The relevant parts of Law no. 411 of 28 March 1995 on health protection as in force at the material time, read as follows:

Section 23
Consent for medical services

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

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

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

...

5. The provisions of paragraphs 1 through 4 shall be applicable to patients who have reached 16 years of age.

6. If the patient is younger than 16 years of age, consent shall be expressed by his or her legal representative. ...

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

Section 42
Medical assistance for mentally ill patients

"6. Psychiatric treatment shall not be administered in the absence of a psychiatric illness. The medical staff shall be liable under the terms of the law for administering psychiatric treatment in the absence of a psychiatric illness."

59. The relevant parts of Law no. 1402 of 16 December 1997 on mental health, as in force at the material time, read as follows:

Section 4
Free consent for requesting psychiatric assistance

"1. Psychiatric assistance shall be provided at the free request of a person or with his or her consent, except in the cases provided for in the present law.

2. Persons under the age of 18 (minors) and persons deprived of legal capacity under the law shall be provided with psychiatric assistance at the request or with the consent of their legal representative, as provided for by this law."

Section 5/1
Protection of minors

"1. Minors with psychiatric disorders shall benefit from all the rights and freedoms provided under the law for all citizens. The admission of minors to mental health institutions requires placement in areas separate from adults and in a safe environment adapted to their age and developmental needs.

2. Each minor admitted to a mental health institution shall have a legal representative to express his or her interests, including his or her consent to treatment. In his or her relations with the medical institution, the medical staff and other individuals or entities, the minor shall be represented by an adult as provided for by law. To the extent of his or her capacity to understand, the minor's wishes shall be taken into consideration when providing medical assistance. ..."

Section 10
Diagnosis and treatment

"1. The diagnosis of mental disorders shall be determined on the basis of universally recognised national and international standards and shall not be based on ... other factors which are unrelated to the person's mental health.

...

3. Medical means and methods shall be used only for diagnostic or therapeutic purposes and not as a punishment or in the interests of other persons."

Section 29

Measures for ensuring safety when providing psychiatric assistance

"1. In-patient psychiatric assistance shall be provided in minimally restrictive conditions in order to ensure the safety of the patient and of other persons, with [the patient's] rights and legitimate interests being respected by the medical staff.

...

3. Police officers shall be obliged to assist the medical staff during the involuntary admission of patients, to secure safe access to the patient for his or her examination and to take measures in order to respect [the patient's] pecuniary rights. If a measure is necessary to prevent actions which would endanger the life and health of others or if it is necessary to apprehend a patient, police officers shall operate according to the written or oral medical conclusion and as provided for under the Law on the police."

Section 30

Examination of minors or of persons deprived of legal capacity upon admission to a psychiatric hospital at the request or with the consent of their legal representatives

"1. A minor ... [who is] admitted to a psychiatric hospital at the request or with the consent of his or her legal representative shall be examined by a committee of psychiatrists from the hospital as provided under section 31(1). These patients shall also be examined by the committee of psychiatrists at least once per month so as to decide on the extension of their stay in hospital.

2. If the committee of psychiatrists or the hospital administration concludes that the legal representative of the minor ... has committed an abuse upon the minor's admission to the hospital, the administration of the hospital shall inform the guardianship authority or the law-enforcement authority."

Section 31

Examination of persons forcibly admitted to a psychiatric hospital

"1. A person admitted to a psychiatric hospital [contrary to his or her wishes] shall be subjected to a mandatory examination within forty-eight hours from his or her admission by a committee of psychiatrists who shall decide if the admission is necessary. If the admission is considered unnecessary, the admitted person shall be discharged immediately."

60. In 2019 and in 2022 the Children's Ombudsperson in the Republic of Moldova reported two cases in which children had been placed in psychiatric hospitals in the absence of proper safeguards for their placement, treatment and discharge, owing to their being neglected by their legal guardians. The case in 2019 concerned the referral of a child at risk to the psychiatric hospital for examination after other placement solutions had failed. The case in 2022 concerned the admission of a child, who had no parental care, to the psychiatric hospital and the failure of the guardianship authority to secure his discharge when the treatment was completed.

61. The relevant parts of the Children's Ombudsperson's thematic report on the rights of children with mental disorders, published in 2022, read as follows:

> "There is currently no methodology for a comprehensive approach to the situation of a child with mental health conditions and no mechanism for the interaction between various stakeholders meant to secure the best interests of the child to live in a family and to integrate into the community. The absence of any holistic vision results in the placement of children with mental health needs in the domain of medical services while neglecting the other elements related to his or her fundamental rights. Therefore, in the case of C.V., a minor from a rural community and a socially vulnerable family, the failure of the local public authority, acting as his legal guardian, to manage the situation of this child resulted in his admission to a psychiatric medical institution only because of the absence of any other easy solution, despite the wishes of the child and his best interests.
>
> ...
>
> Following the visits, it has been found that the admission of children was carried out on a formal basis upon the referral of a psychiatrist, who did not indicate the measures undertaken by the community centre to prevent the need for hospitalisation. Upon the children's admission, examinations were carried out in the children's section with the signed consent of the parent or legal representative without seeking the children's views, contrary to the Law on the rights of the child. In the specific case of a child at risk, the guardianship authority expressed its consent without referring to the information in the child's personal file and without assessing the child's situation and his best interests."

II. INTERNATIONAL LAW

A. United Nations

62. The relevant parts of General comment No. 12 (2009) The right of the child to be heard, adopted by the UN Committee on the Rights of the Child, UN Doc. CRC/C/GC/12, 20 July 2009, read as follows:

> "71. The best interests of the child, established in consultation with the child, is not the only factor to be considered in the actions of institutions, authorities and administration. It is, however, of crucial importance, as are the views of the child.
>
> ...
>
> 74. There is no tension between articles 3 [best interests] and 12 [right to be heard], only a complementary role of the two general principles: one establishes the objective of achieving the best interests of the child and the other provides the methodology for reaching the goal of hearing either the child or the children. In fact, there can be no correct application of article 3 if the components of article 12 are not respected. Likewise, article 3 reinforces the functionality of article 12, facilitating the essential role of children in all decisions affecting their lives.
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> ...
>
> 100. Children, including young children, should be included in decision-making processes, in a manner consistent with their evolving capacities. They should be provided with information about proposed treatments and their effects and outcomes, including in formats appropriate and accessible to children with disabilities.
>
> 101. States parties need to introduce legislation or regulations to ensure that children have access to confidential medical counselling and advice without parental consent,

irrespective of the child's age, where this is needed for the child's safety or well-being. Children may need such access, for example, where they are experiencing violence or abuse at home, or in need of reproductive health education or services, or in case of conflicts between parents and the child over access to health services. The right to counselling and advice is distinct from the right to give medical consent and should not be subject to any age limit."

63. The relevant parts of General comment No. 1 (2014) Article 12: Equal recognition before the law, adopted by the UN Committee on the Rights of Persons with Disabilities, UN Doc. CRPD/C/GC/1, 19 May 2014, read as follows:

"36. While article 12 of the Convention protects equality before the law for all persons, regardless of age, article 7 of the Convention recognizes the developing capacities of children and requires that "in all actions concerning children with disabilities, the best interests of the child ... be a primary consideration" (para. 2) and that "their views [be] given due weight in accordance with their age and maturity" (para. 3). To comply with article 12, States parties must examine their laws to ensure that the will and preferences of children with disabilities are respected on an equal basis with other children. ...

42. As has been stated by the Committee in several concluding observations, forced treatment by psychiatric and other health and medical professionals is a violation of the right to equal recognition before the law and an infringement of the rights to personal integrity (art. 17); freedom from torture (art. 15); and freedom from violence, exploitation and abuse (art. 16). ... States parties have an obligation to provide access to support for decisions regarding psychiatric and other medical treatment. Forced treatment is a particular problem for persons with psychosocial, intellectual and other cognitive disabilities. States parties must abolish policies and legislative provisions that allow or perpetrate forced treatment, as it is an ongoing violation found in mental health laws across the globe, despite empirical evidence indicating its lack of effectiveness and the views of people using mental health systems who have experienced deep pain and trauma as a result of forced treatment. The Committee recommends that States parties ensure that decisions relating to a person's physical or mental integrity can only be taken with the free and informed consent of the person concerned."

64. The relevant part of the Interim report of the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, UN Doc. A/63/175, 28 July 2008, reads as follows:

"63. Inside institutions, as well as in the context of forced outpatient treatment, psychiatric medication, including neuroleptics and other mind-altering drugs, may be administered to persons with mental disabilities without their free and informed consent or against their will, under coercion, or as a form of punishment. The administration in detention and psychiatric institutions of drugs, including neuroleptics that cause trembling, shivering and contractions and make the subject apathetic and dull his or her intelligence, has been recognized as a form of torture. In *Viana Acosta v. Uruguay*, the Human Rights Committee concluded that the treatment of the complainant, which included psychiatric experiments and forced injection of tranquillizers against his will, constituted inhuman treatment. The Special Rapporteur notes that forced and non-consensual administration of psychiatric drugs, and in particular of neuroleptics, for the treatment of a mental condition needs to be closely scrutinized. Depending on the circumstances of the case, the suffering inflicted and the effects upon the individual's health may constitute a form of torture or ill-treatment.

64. Many States, with or without a legal basis, allow for the detention of persons with mental disabilities in institutions without their free and informed consent, on the basis of the existence of a diagnosed mental disability often together with additional criteria such as being a 'danger to oneself and others' or in 'need of treatment'. The Special Rapporteur recalls that article 14 of CRPD prohibits unlawful or arbitrary deprivation of liberty and the existence of a disability as a justification for deprivation of liberty.

65. In certain cases, arbitrary or unlawful deprivation of liberty based on the existence of a disability might also inflict severe pain or suffering on the individual, thus falling under the scope of the Convention against Torture. When assessing the pain inflicted by deprivation of liberty, the length of institutionalization, the conditions of detention and the treatment inflicted must be taken into account."

65. The relevant parts of the Report of the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan E. Méndez, UN Doc. A/HRC/22/53, 1 February 2013, read as follows:

"32. The mandate has recognized that medical treatments of an intrusive and irreversible nature, when lacking a therapeutic purpose, may constitute torture or ill-treatment when enforced or administered without the free and informed consent of the person concerned. This is particularly the case when intrusive and irreversible, non-consensual treatments are performed on patients from marginalized groups, such as persons with disabilities, notwithstanding claims of good intentions or medical necessity. For example, the mandate has held that the discriminatory character of forced psychiatric interventions, when committed against persons with psychosocial disabilities, satisfies both intent and purpose required under the article 1 of the Convention against Torture, notwithstanding claims of "good intentions" by medical professionals.

...

64. The mandate continues to receive reports of the systematic use of forced interventions worldwide. Both this mandate and United Nations treaty bodies have established that involuntary treatment and other psychiatric interventions in health-care facilities are forms of torture and ill-treatment. Forced interventions, often wrongfully justified by theories of incapacity and therapeutic necessity inconsistent with the Convention on the Rights of Persons with Disabilities, are legitimized under national laws, and may enjoy wide public support as being in the alleged 'best interest' of the person concerned. Nevertheless, to the extent that they inflict severe pain and suffering, they violate the absolute prohibition of torture and cruel, inhuman and degrading treatment (A/63/175, paras. 38, 40, 41). Concern for the autonomy and dignity of persons with disabilities leads the Special Rapporteur to urge revision of domestic legislation allowing for forced interventions.

...

80. Persons with disabilities are particularly affected by forced medical interventions, and continue to be exposed to non-consensual medical practices. In the case of children in health-care settings, an actual or perceived disability may diminish the weight given to the child's views in determining their best interests, or may be taken as the basis of substitution of determination and decision-making by parents, guardians, carers or public authorities.

...

V. Conclusions and recommendations
B. Recommendations

85. The Special Rapporteur calls upon all States to:

...

(c) Conduct prompt, impartial and thorough investigations into all allegations of torture and ill-treatment in health-care settings; where the evidence warrants it, prosecute and take action against perpetrators; and provide victims with effective remedy and redress, including measures of reparation, satisfaction and guarantees of non-repetition as well as restitution, compensation and rehabilitation;

...

89. The Special Rapporteur calls upon all States to:

(a) Review the anti-torture framework in relation to persons with disabilities in line with the Convention on the Rights of Persons with Disabilities as authoritative guidance regarding their rights in the context of health-care;

(b) Impose an absolute ban on all forced and non-consensual medical interventions against persons with disabilities, including the non-consensual administration of psychosurgery, electroshock and mind-altering drugs such as neuroleptics, the use of restraint and solitary confinement, for both long- and short-term application. The obligation to end forced psychiatric interventions based solely on grounds of disability is of immediate application and scarce financial resources cannot justify postponement of its implementation."

66. The relevant parts of the Report of the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Niels Melzer, UN Doc. A/HRC/43/49, 14 February 2020, read as follows:

35. In order to amount to psychological torture, severe mental pain or suffering must not only be inflicted intentionally, but also 'for purposes such as obtaining from the victim or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person', or 'for any reason based on discrimination of any kind' (Art. 1 CAT). Although the listed purposes are only of an indicative nature and not exhaustive, relevant purposes should have 'something in common with the purposes expressly listed' (A/HRC/13/39/Add.5, para.35). At the same time, the listed purposes are phrased so broadly that it is difficult to envisage a realistic scenario of purposeful infliction of severe mental pain or suffering on a powerless person that would escape the definition of torture (A/72/178, para. 31).

...

37. It must be stressed that purportedly benevolent purposes cannot, *per se*, vindicate coercive or discriminatory measures. For example, practices such as involuntary abortion, sterilization, or psychiatric intervention based on 'medical necessity' of the 'best interests' of the patient (A/HRC/22/53, para.20, 32-35; A/63/175, para.49) ... generally involve highly discriminatory and coercive attempts at controlling or 'correcting' the victim's personality, behaviour or choices and almost always inflict severe pain or suffering. In the view of the Special Rapporteur, therefore, if all other defining elements are given, such practices may well amount to torture."

67. The relevant parts of the Report of the UN Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, on her

mission to the Republic of Moldova (8-14 September 2013), UN Doc. A/HRC/26/28/Add.2, 20 June 2014, read as follows:

“35. Children with mental or physical disabilities are too often unnecessarily institutionalized, which harms their health and impedes the effective exercise of a range of fundamental human rights... Approximately 7,000 children live in residential institutions ...

36. Despite a decrease of over 50 per cent in the overall number of children in residential institutions, since the start of the reform of the residential care system for children in 2007, the reform has had almost no impact on children with disabilities, who represent over 50 per cent of all children in residential care...

...

43. The Special Rapporteur visited several neuropsychiatric residential institutions and psychiatric hospitals and was appalled at some of the conditions. She was extremely troubled by the fact that the system in place favours the exclusion of persons with disabilities from society, in particular persons with mental or intellectual disabilities, and that no serious efforts are made towards their integration and no direct support is provided to care-giving families or other trusted supporters.

44. Article 19 of the Convention guarantees the right of persons with disabilities to live independently and be fully included in the community. Legislation, policies and practices that give rise to the institutionalization of persons with disabilities on the grounds of their disability must be abolished. As stated by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, there can be no therapeutic justification for the use of prolonged restraint of persons with disabilities in psychiatric institutions. Both prolonged seclusion and the use of restraints may constitute torture and ill-treatment and reinforce severe exclusion, leading to extreme poverty.

...

88. ... The Special Rapporteur recommends that the Republic of Moldova:

(i) Ensure the full implementation of the reform of the residential care system for children, paying particular attention to children with disabilities, and put in place adequate reintegration programmes, including the establishment of a family substitute, family support services and community-based support services; strengthen community and family-based services for children at risk and their families to prevent institutionalization, exploitation, neglect and exposure to violence;

...

(p) Put in place national mechanisms to systematically monitor, receive complaints and initiate prosecutions in cases of allegations of ill-treatment in the context of medical care and medical institutions and take measures to ensure that all patients, regardless of their mental health condition, have the possibility of submitting complaints against any abuse and mistreatment;

...

(t) Impose an absolute ban on all forced and non-consensual medical interventions with regard to persons with disabilities, including the non-consensual use of restraints and solitary confinement, both long- and short-term; and immediately fulfil the obligation to end forced psychiatric interventions based solely on grounds of disability, in line with international human rights standards.”

68. The relevant parts of the Report of the UN Special Rapporteur on the rights of persons with disabilities, Catalina Devandas-Aguilar, on her mission to the Republic of Moldova from 10 to 17 September 2015, UN Doc. A/HRC/31/62/Add.2, 2 February 2016, read as follows:

> “18. Negative and stereotyped perceptions of persons with disabilities and their potential to contribute as citizens permeate every facet of Moldovan society, and present a cross-cutting challenge to the promotion and protection of the rights of persons with disabilities. A geographically and culturally specific interpretation of the medical model of disability, sometimes referred to as the ‘defectology’ approach, has contributed to the widespread perception of persons with disabilities as ‘abnormal’, as distinct from ‘healthy’ persons. Owing to the persistent influence of this approach and the general lack of awareness about disability, persons with disabilities can experience feelings of deep stigma and be subject to discriminatory attitudes in their everyday lives.
>
> ...
>
> 20. The stigmatization and exclusion of persons with disabilities includes children with disabilities, and affect their ability to enjoy their human rights. Children with disabilities are often perceived as being abnormal or unhealthy, and are reportedly at times seen as a burden to their family. These stigmatizing views are interlinked with and are mutually reinforced by a lack of community support services that cater to their needs. The lack of such services limits the opportunities of children with disabilities to interact in society and thus to challenge stereotypes and stigma. Furthermore, societal stigma and the lack of support services are reportedly often behind the decision of parents to have their child interned in an institution, given that other options are not available to them.
>
> ...
>
> 47. ...[I]nstitutionalization in psychoneurological residential institutions (*internats*) and psychiatric facilities remains a major challenge in the Republic of Moldova. Urgent action should be taken to put an immediate end to these practices, which violate the fundamental rights of persons with disabilities. ...
>
> 48. During her mission, the Special Rapporteur paid special attention to the situation of persons with disabilities living in institutions, including psychoneurological residential institutions and psychiatric hospitals. Persons with disabilities in these institutions are arbitrarily deprived of their liberty for lengthy periods of time, sometimes for their entire life, on the basis of an actual or perceived disability. ... The Special Rapporteur is also deeply concerned about the treatment of persons with disabilities, including women and children, in such institutions. She received shocking reports of ill-treatment, violence, including sexual and gender-based violence, perpetrated by staff members, neglect, restraint, forced medication and seclusion. She was also informed of such practices as the administration of chemical and physical restraints and the use of solitary confinement as a form of control or medical treatment. Such practices violate the right of persons with disabilities to freedom from torture and other cruel, inhuman or degrading treatment or punishment.
>
> ...
>
> 51. The number of children in institutions has decreased drastically since 2007. ... According to government figures, in 2007, 11,000 children were placed in 65 residential institutions for children; in 2011, there were 3,808 children in 41 institutions. Many of those remaining in institutions, however, are children with disabilities, who suffer severe abuse of their human rights.

...

67. The Special Rapporteur recommends that the Republic of Moldova:

...

(c) Take immediate measures to protect persons with disabilities, including children, who remain institutionalized, and to eliminate any risk of exploitation, violence or abuse;

(d) Develop a comprehensive and effective monitoring system to prevent all forms of exploitation, violence and abuse against persons with disabilities, including children who remain institutionalized;

(e) Promptly and thoroughly investigate and prosecute any case of human rights abuse alleged by persons with disabilities and/or their families, whistle-blowers and/or revealed by regulatory bodies; ...”

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

“16. The Committee is concerned about stigmatizing attitudes towards children with disabilities which are reinforced by a lack of community services. It is also concerned that children with disabilities do not systematically participate in making decisions that affect their lives and lack opportunities to express their opinion on matters pertaining to them directly. It is particularly concerned about the life-long institutionalization, from early childhood, of children with disabilities, especially those with psychosocial and/or intellectual disabilities, in inhumane conditions, where they are exposed to neglect and segregated from the community.

17. The Committee recommends that the State party redouble efforts to promote a positive image of children with disabilities and increase the availability of mainstream support services to children with disabilities. It also recommends that the State party adopt safeguards to protect the right of children with disabilities to be consulted on all matters that affect them, and to guarantee disability- and age-appropriate support to realize that right. The Committee also recommends that the State party develop a national strategy for the deinstitutionalization of children with disabilities, which encompasses alternative care in family settings and inclusive support services and facilities in the community.

...

28. The Committee is concerned that:

(a) Legislation in place, particularly Law No. 1402 on mental health is not in line with the Convention and allows the forced internment in a psychiatric establishment and non-consensual psychiatric treatment of persons with disabilities, on the grounds of psychosocial and/or intellectual impairment;

...

(c) Persons with disabilities are arbitrarily deprived of their liberty and individual autonomy in institutions for lengthy periods of time, sometimes their entire life, on the basis of an actual or perceived impairment.

29. The Committee urges the State party to:

(a) Revise and repeal the legal provisions that authorize forced internment and non-consensual psychiatric treatment on the grounds of impairment;

...

(c) Take all legal and other measures necessary to stop the deprivation of liberty of persons with disabilities on the basis of an actual or perceived impairment."

70. The relevant parts of the UN Committee on the Rights of the Child Concluding observations on the combined fourth and fifth periodic report of the Republic of Moldova, UN Doc. CRC/C/MDA/CO/4-5, 20 October 2017, read as follows:

"29. The Committee welcomes the legislative measures taken to further protect the rights of children with disabilities, efforts to integrate children with disabilities into mainstream education ... However, it is concerned that:

(a) Children with disabilities continue to face discrimination and are not effectively integrated into all areas of social life, including the education system;

...

(c) There is a high rate of institutionalization of children with disabilities, especially those with psychosocial and/or intellectual disabilities, in facilities in inhumane conditions, where they are exposed to neglect and segregated from the community; ..."

71. The relevant part of the UN Committee against Torture Concluding observations on the third periodic report of the Republic of Moldova, UN Doc. 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, with particularly poor conditions reported at the Balti and Cocieri institutions; that many residents of these institutions have been deprived of legal capacity; that patients have been held in closed environment situations in psychoneurological placement homes, including for disciplinary purposes; that residents of boarding schools have been sent to psychiatric institutions as punishment, ...; that some persons deprived of their liberty are harmed by supervisory personnel through sexual exploitation and abuse; and that there are high mortality rates in neuropsychological institutions.

32. The State party should:

(a) As a matter of urgency, ensure that independent monitoring mechanisms have access to psychiatric hospitals and neuropsychological institutions, and provide for an independent complaints mechanisms for patients in all psychiatric hospitals and psychoneurological residential institutions and their family members;

(b) Ensure that prompt, impartial and effective investigations are undertaken into all allegations of abuse or violence, including any violence conducted or condoned by administrative and medical staff employed in such institutions; prosecute alleged perpetrators; and provide redress to victims;

(c) Ensure that no one is involuntarily placed in such institutions for nonmedical reasons, including by ensuring that patients have the right to be heard in person by the

judge ordering the hospitalization, that judges seek the opinion of a psychiatrist, and that such decisions can be appealed;

(d) Review all cases of persons who have been forcibly placed in psychiatric hospitals for non-medical reasons and provide them with an opportunity to be released and, as appropriate, receive redress;

(e) Undertake urgent measures to improve the material conditions, including food and hygiene, in all psychiatric hospitals and psychoneurological residential institutions.”

B. Council of Europe

72. The relevant parts of Recommendation Rec(2004)10 of the Council of Europe Committee of Ministers to member States concerning the protection of the human rights and dignity of persons with mental disorder read as follows:

“**Definitions**

For the purpose of this recommendation, the term:

‘competent body’ means an authority, or a person or body provided for by law which is distinct from the person or body proposing an involuntary measure, and that can make an independent decision;

...

Chapter III – Involuntary placement in psychiatric facilities, and involuntary treatment, for mental disorder
Article 16 – Scope of chapter III

The provisions of this chapter apply to persons with mental disorder:

...

ii. who do not have the capacity to consent and are objecting to the placement or treatment concerned.

Article 17 – Criteria for involuntary placement

1. A person may be subject to involuntary placement only if all the following conditions are met:

i. the person has a mental disorder;

ii. the person’s condition represents a significant risk of serious harm to his or her health or to other persons;

iii. the placement includes a therapeutic purpose;

iv. no less restrictive means of providing appropriate care are available;

v. the opinion of the person concerned has been taken into consideration.

...

Article 18 – Criteria for involuntary treatment

A person may be subject to involuntary treatment only if all the following conditions are met:

i. the person has a mental disorder;

ii. the person's condition represents a significant risk of serious harm to his or her health or to other persons;

iii. no less intrusive means of providing appropriate care are available;

iv. the opinion of the person concerned has been taken into consideration.

...

Article 20 – Procedures for taking decisions on involuntary placement and/or involuntary treatment

Decision

[Points 1 and 2 (combined)]: The decision to subject a person to involuntary placement/treatment should be taken by a court or another competent body. The court or other competent body should:

i. take into account the opinion of the person concerned;

ii. act in accordance with procedures provided by law based on the principle that the person concerned should be seen and consulted.

However, the law may provide that when a person is subject to involuntary placement the decision to subject that person to involuntary treatment may be taken by a doctor having the requisite competence and experience, after examination of the person concerned and taking into account his or her opinion.

...

Procedures prior to the decision

4. Involuntary placement, involuntary treatment, or their extension should only take place on the basis of examination by a doctor having the requisite competence and experience, and in accordance with valid and reliable professional standards.

...

Article 29 – Minors

1. The provisions of this Recommendation should apply to minors unless a wider measure of protection is provided.

2. In decisions concerning placement and treatment, whether provided involuntarily or not, the opinion of the minor should be taken into consideration as an increasingly determining factor in proportion to his or her age and degree of maturity.

3. A minor subject to involuntary placement should have the right to assistance from a representative from the start of the procedure.

4. A minor should not be placed in a facility in which adults are also placed, unless such a placement would benefit the minor.

...

Article 36 – Monitoring of standards

1. Member states should ensure that compliance with the standards set by this recommendation and by mental health law is subject to appropriate monitoring.

...

2. The systems for conducting such monitoring should:

...

ii. be organisationally independent from the authorities or bodies monitored; ...”

The relevant parts of the Explanatory Memorandum to Recommendation Rec(2004)10 of the Council of Europe Committee of Ministers to member States concerning the protection of the human rights and dignity of persons with mental disorder read as follows:

“95. If the person (whether adult or child) does not have the capacity to consent and under normal circumstances authorisation would be obtained from a representative, consideration should be given to the possibility of conflict of interest .... Thus, if it is thought that a representative is not basing his or her decisions on such principles, consideration should be given to seeking authorisation from an independent source, such as a court.

...

123. The terms ‘have the capacity to consent’ and ‘do not have the capacity to consent’ in [Article 16] have the same meanings as in the Convention on Human Rights and Biomedicine. Article 6 of that Convention makes clear that it is for national law to determine whether or not (under certain conditions) an adult or minor does not have the capacity to consent. In the Convention, it is considered that if a person has the capacity to consent to an intervention then the person also has the capacity to refuse it. However, when a person does not have the capacity to consent s/he does not have the capacity to refuse as such, but is able to express an objection. The wording of this Article follows the same usage.

124. Article 12.2 of this Recommendation provides an example of the general principle that when a person does not have the capacity to consent, authorisation for a proposed measure is sought from a representative, authority, person or body provided for by law. However, if the person objects to a proposed treatment or placement measure he or she falls within the scope of Chapter III irrespective of the views of the representative, authority, person or body and the relevant criteria and procedures should be satisfied prior to the implementation of a measure. In the case of young children it is necessary to evaluate their attitude in the light of their age and degree of maturity.

...

145. It is recommended that only officially recognised pharmaceutical products should be used involuntarily and that in view of reports of extensive, and frequently excessive, uses of medication, side effects and dosage regimes should be carefully monitored. Doses of medication should be reduced as soon as therapeutically appropriate. In the context of involuntary measures concern has been expressed about what is sometimes called ‘chemical restraint’. Medication is used as a restraint if it is used to control the person’s behaviour, is not medically necessary, and is not a clinically appropriate treatment for the person’s condition. Medication should never be used for the convenience of staff or as a means of coercion, discipline, or punishment.

...

151. Paragraph 1 [of Article 20] requires the decision on placement to be taken by a court or another competent body. The underlying principle is that a party that is independent of the person or body proposing the measure takes an independent decision. The body that takes the decision must be satisfied that the criteria in Article 17 are met.

152. Both paragraphs 1 and 2 emphasise that the court or competent body should act in accordance with procedures provided by law. These should comply with the guarantees of the European Convention on Human Rights and should be based on the principle that the person concerned should be seen and consulted. Such consultation enables the court or other competent body to form an independent view of the situation.
...

218. Minors may be placed in a wide range of facilities, including foster homes and community homes as well as hospitals...

219. With respect to paragraph 3 [of Article 29], although a parent would normally be the representative of a minor, in some cases the interests of the minor and the parent may conflict. Where the views of the minor and those of the parent conflict, consideration should be given to making another representative (for example, a social worker could fulfil this role) available to the minor who the minor trusts to represent his or her interests.

220. In respect of paragraph 4 [of Article 29] an example would be where the minor's interests and welfare would be better served by admission to an adult unit close to home – thus promoting contact with the family – rather than to a child and adolescent unit a long way from home."

73. The standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) concerning involuntary placement in psychiatric establishments, as summarised in 1998 (CPT/Inf(98)12-part), in so far as relevant, require that the following safeguards be put in place:

"**the initial placement decision**

52. The procedure by which involuntary placement is decided should offer guarantees of independence and impartiality as well as of objective medical expertise.
...

safeguards during placement

53. ... [A]n effective complaints procedure is a basic safeguard against ill-treatment in psychiatric establishments. Specific arrangements should exist enabling patients to lodge formal complaints with a clearly-designated body, and to communicate on a confidential basis with an appropriate authority outside the establishment.

...

discharge

56. Involuntary placement in a psychiatric establishment should cease as soon as it is no longer required by the patient's mental state. Consequently, the need for such a placement should be reviewed at regular intervals.

When involuntary placement is for a specified period, renewable in the light of psychiatric evidence, such a review will flow from the very terms of the placement.

However, involuntary placement might be for an unspecified period, especially in the case of persons who have been compulsorily admitted to a psychiatric establishment pursuant to criminal proceedings and who are considered to be dangerous. If the period of involuntary placement is unspecified, there should be an automatic review at regular intervals of the need to continue the placement. In addition, the patient himself should be able to request at reasonable intervals that the necessity for placement be considered by a judicial authority.

57. Although no longer requiring involuntary placement, a patient may nevertheless still need treatment and/or a protected environment in the outside community. In this connection, the CPT has found, in a number of countries, that patients whose mental state no longer required them to be detained in a psychiatric establishment nevertheless remained in such establishments, due to a lack of adequate care/accommodation in the outside community. For persons to remain deprived of their liberty as a result of the absence of appropriate external facilities is a highly questionable state of affairs."

74. The CPT standards concerning means of restraint in psychiatric establishments for adults, as summarised on 21 March 2017 (CPT/Inf(2017)6), in so far as relevant, provide:

"[C]hemical restraint (i.e. forcible administration of medication for the purpose of controlling a patient's behaviour);

...

1.3. All types of restraint and the criteria for their use should be regulated by law.

...

1.5. Means of restraint are security measures and have no therapeutic justification.

1.6. Means of restraint should never be used as punishment, for the mere convenience of staff, because of staff shortages or to replace proper care or treatment.

...

3.7. If recourse is had to chemical restraint, only approved, well-established and short-acting drugs should be used. The side-effects that medication may have on a particular patient need to be constantly borne in mind, particularly when medication is used in combination with mechanical restraint or seclusion."

75. The relevant parts of the Report on the visit to the Republic of Moldova carried out by the CPT from 28 January to 7 February 2020, CPT/Inf (2020) 27, read as follows:

"105. Chișinău Psychiatric Hospital, previously visited by the CPT in 1998, 2007 and 2011, is the biggest psychiatric hospital in Moldova. With an official capacity of 740 beds, it was accommodating at the time of the visit 607 patients (including 15 children). ... At the time of the visit, there were 132 forensic psychiatric patients in the hospital (placed in the hospital under Sections 99 to 101 of the Criminal Code) and two civil patients had been admitted under the civil involuntary placement procedure (Section 28 of the Law on Mental Health ('LMH')). The rest of the patients were formally regarded as voluntary. However, the information gathered during the visit indicates that the situation of a number of patients may be regarded as amounting to a *de facto* deprivation of liberty. ...

The average length of hospitalisation of patients was some 26 days on ward 2 and 22 days on ward 4; as for forensic patients on ward 12, the average length of stay was

approximately 3.5 years, with several patients having spent around ten years in the hospital. ...

106. The forensic psychiatric expertise ward, repeatedly visited by the CPT in the past, had belonged to Chişinău Psychiatric Hospital (former ward 31). As of 1 April 2017, the ward was formally transferred to the Centre for Forensic Medicine of the Ministry of Health, Labour and Social Protection, without, however, physically changing its location. The main reason for the transfer of responsibility was to separate forensic psychiatric assessment from forensic psychiatric treatment and to avoid a possible conflict of interest.

...

123. The CPT's delegation noted the efforts made on ward 12 to offer a few activities to some patients, such as painting, drawing, origami and other work with paper, in an activity room which also had a table tennis table.

However, as was the case in the past, psychiatric treatment was mainly pharmacological at Chișinău Psychiatric Hospital and for the vast majority of patients, there were no structured psycho-social rehabilitative activities. These patients spent their days in idleness, aimlessly wandering around their closed units and at best socialising with other patients, reading, watching TV in the corridor or sitting on the balcony. Indeed, this is intrinsically linked with the non-existence of staff qualified to provide these activities (see paragraph 128).

No individual treatment plans were prepared for the patients and the information in medical files, which were well-kept, was limited to medication and food diet. Further, there was no multidisciplinary approach to the treatment of patients.

...

125. The CPT considers that treatment of psychiatric patients should involve, in addition to appropriate medication and medical care, a wide range of therapeutic, rehabilitative and recreational activities. It should be based on an individualised approach, which implies the drawing up of a treatment plan for each patient (taking into account the special needs of acute, long-term and forensic patients including, with respect to the last-mentioned, the need to reduce any risk they may pose), indicating the goals of treatment, the therapeutic means used and the staff member responsible. The treatment plan should also contain the outcome of a regular review of the patient's mental health condition and a review of the patient's medication. Patients should be involved in the drafting of their individual treatment plans and their subsequent modifications and informed of their therapeutic progress.

...

133. The use of means of physical restraint is regulated by Section 29 (2) LMH and, as noted in the report on the 2011 visit, further developed in internal guidelines on restraint. However, while the guidelines also lay down the rules for resort to chemical restraint, this issue does not appear to be covered by LMH. The CPT would like to receive clarification from the Moldovan authorities as to the legal basis for the use of chemical restraint.

...

140. Further, at the time of the visit, there were eleven formally voluntary patients who had been deprived of their legal capacity and admitted to hospital with the consent of their guardian. According to the information gathered during the visit, there was no procedure to review the need for their placement in the establishment, nor any

procedure which would allow them to request discharge from the establishment without the consent of their guardian.

...

142. In the light of these findings, the CPT once again calls upon the Moldovan authorities to take the necessary steps to ensure that the civil involuntary placement procedure in a psychiatric establishment, provided for by the Law on Mental Health, is duly complied with in practice.

In particular, steps should be taken to ensure that:

- persons admitted to psychiatric establishments are provided with full, clear and accurate information, both orally and in writing, including on their right to consent or not to consent to hospitalisation, and on the possibility to withdraw their consent subsequently;

- all patients who do not wish to (or who, given their mental state, are not able to) give valid consent to their hospitalisation should be the subject of an assessment of the need to resort to an involuntary placement procedure;

- if the provision of in-patient care to a voluntary patient who wishes to leave the hospital is considered necessary, the civil involuntary placement procedure provided by the law should be fully applied;

- the same procedure should be fully applied to all legally incapacitated patients, whether or not they have a guardian, from whose conduct it is obvious that they are opposed to their placement and/or stay in the hospital.

...

147. Section 11 (4) LMH continues to provide for a general exception that free and informed consent to treatment is not required from involuntary patients, whether forensic or civil. The CPT has already repeatedly stressed that such a general exception is not acceptable.

It is a positive development that in several files of forensic psychiatric patients, the CPT’s delegation came across duly signed consent to treatment forms. Further, the Committee notes positively that, at Chișinău Psychiatric Hospital, a decision to apply involuntary treatment was taken by the hospital’s board of psychiatrists (rather than being left at the discretion of the treating doctor) and thus involved the opinion of medical doctors not directly involved in the treatment of the patient concerned.

However, the CPT reiterates once again that, as a general principle, all categories of psychiatric patient, i.e. voluntary or involuntary, civil or forensic, with legal capacity or legally incapacitated, should be placed in a position to give their free and informed consent to treatment. It is axiomatic that consent to treatment can only be qualified as free and informed if it is based on full, accurate and comprehensible information about the patient’s condition, the treatment which is proposed and its possible side effects, as well as about the possibility to withdraw the consent. Further, it is essential that all patients who have given their consent to treatment are continuously informed about their condition and the treatment applied to them and that they are placed in a position to withdraw their consent at any time.

In addition, every patient capable of discernment should be entitled to refuse a particular treatment or any other medical intervention. Any derogation from this fundamental principle should be based upon law and only relate to clearly and strictly defined exceptional circumstances and should be accompanied by appropriate safeguards.

The relevant legislation should require a second psychiatric opinion (i.e. from a psychiatrist not involved in the treatment of the patient concerned) in any case where a patient does not agree with the treatment proposed by the treating doctor (even if his/her guardian consents to the treatment); further, patients should be able to challenge a compulsory treatment decision before an independent authority external to the hospital and should be informed in writing of this right.

The CPT once again calls upon the Moldovan authorities to take the necessary steps to ensure that the relevant legislation and practice are brought in line with the above-mentioned precepts. In particular, any exception to the principle of free and informed consent to treatment with regard to involuntary patients should apply only in exceptional circumstances clearly defined by law and should be accompanied by appropriate safeguards."

THE LAW

I. THE GOVERNMENT'S REQUEST TO STRIKE THE APPLICATION OUT OF THE LIST OF CASES UNDER ARTICLE 37 § 1 OF THE CONVENTION

76. On 14 December 2022 the Court received a unilateral declaration from the Government requesting it to strike the application out of its list of cases pursuant to Article 37 § 1 of the Convention.

77. The applicant disagreed with the terms of the unilateral declaration.

78. The Court considers that it may be appropriate in certain circumstances to strike out an application, or a part thereof, under Article 37 § 1 of the Convention on the basis of a unilateral declaration by the respondent Government even where the applicant wishes the examination of the case to be continued. Whether this is appropriate in a particular case depends on whether the unilateral declaration offers a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case (Article 37 § 1 *in fine*; see, among other authorities, *Tahsin Acar v. Turkey* (preliminary issue) [GC], no. 26307/95, § 75, ECHR 2003-VI). Relevant factors in this respect include the nature of the complaints made, whether the issues raised are comparable to issues already determined by the Court in previous cases, the nature and scope of any measures taken by the respondent Government in the context of the execution of judgments delivered by the Court in any such previous cases, and the impact of these measures on the case at issue (ibid., § 76).

79. The present application raises serious issues which have not already been determined by the Court in previous cases as regards a minor's involuntary placement in a psychiatric hospital. In the present case, these issues include his placement in the adults' section and involuntary psychiatric treatment, including with neuroleptics and tranquilisers, and the delay of his discharge due to inaction on the part of the legal guardian. The Court, therefore, considers that the unilateral declaration submitted by the

Government does not offer a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case (Article 37 § 1 *in fine*).

The Court therefore rejects the Government's request to strike the application out of its list of cases and will accordingly pursue its examination of the admissibility and merits of the case.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

80. Relying on Articles 3 of the Convention, the applicant complained that he had been subjected to involuntary placement in the psychiatric hospital and to psychiatric treatment, which along with the material conditions and the treatment he experienced from medical staff and other patients, allegedly amounted to ill-treatment and that the authorities had failed to carry out an effective investigation into the circumstances of his placement, treatment and delayed discharge from the psychiatric hospital.

81. Article 3 of the Convention reads as follows:

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

A. Admissibility

82. The Government submitted that the applicant had failed to exhaust the available domestic remedies in respect of his complaints. In particular, the Government contended that the applicant should have lodged a civil claim, under the general provisions of the Civil Code or in direct application of the Convention, against the Codru Psychiatric Hospital and its staff, seeking compensation for the non-pecuniary damage alleged.

83. The applicant disagreed, arguing that none of the remedies indicated by the Government would have been effective in respect of his grievances, as none of those avenues provided an opportunity for the reopening of the investigation into his allegations of neglect and ill-treatment.

84. The Court reiterates its consistent case-law stating that compensation awarded in civil proceedings cannot be considered sufficient for the fulfilment of the State's positive obligations under Article 3 of the Convention, as such civil remedy is aimed at awarding damages rather than identifying and punishing those responsible (see, for instance, *Kosteckas v. Lithuania*, no. 960/13, § 46, 13 June 2017, and the authorities cited therein). There are no elements in the present case which would justify the Court distinguishing it in this connection. Accordingly, the Court dismisses the Government's objection of non-exhaustion of domestic remedies.

85. 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 applicant

86. The applicant argued that he had been subjected to treatment contrary to Article 3 of the Convention on account of being involuntarily placed in a psychiatric hospital without proper safeguards (including informed consent), being subjected to psychiatric treatment without therapeutic necessity and without informed consent, his delayed release from the hospital after the completion of the ordinary treatment on 7 July 2014 and being transferred and placed in the adults' section from 22 September to 7 November 2014, where he had been held in inadequate material conditions and had been unlawfully subjected to chemical restraint. He submitted that his complaints should be examined primarily under Article 3 of the Convention in view of his extreme vulnerability at the material time as a child with an intellectual disability without parental care who had been detained in a violent environment in a psychiatric hospital, particularly in its adults' section.

87. The applicant submitted that he had been subjected to placement in the psychiatric hospital because another placement option had not been sought and identified by his legal guardian and that he had consistently expressed his opposition to that placement. He contended that his transfer to the adults' section had been a punishment for breaking a window and not for his attacking another patient. The applicant disputed that he had adapted well to the adults' section and the allegedly minimal sedative impact of the medication administered while he was in the adults' section, reiterating his submissions that the medication had made him lethargic, drowsy and sleepy throughout the entire day, preventing him from moving and eating, and that this condition had persisted for several weeks. He argued that the administration of such medication to children was generally prohibited.

88. The applicant noted that the child protection authorities had failed in their duty to protect him, as they had never contacted him or the hospital during his stay there, although they had been the first to identify and remove him from that harmful situation. As he had been a child at the material time, it had been impossible for him to complain about his placement in the psychiatric hospital; in addition, complaint boxes had only been made available at the hospital in 2020. It was precisely this fact which showed that the State had failed to establish a functioning system of safeguards against ill-treatment in psychiatric custody.

89. The applicant relied on reports by the CPT to support his description of the material conditions in the Codru Psychiatric Hospital at the time of the events and the lack of improvement subsequently. He also relied on the CPT's reports to support his allegations of systemic deficiencies in the psychiatric internment system in the Republic of Moldova, in particular concerning

deficiencies in obtaining patients' informed consent, the focus on pharmacological treatment, the absence of individual treatment plans and the conflict of interest between the doctors carrying out forensic assessments and those prescribing psychiatric treatment.

90. The applicant disputed the alleged absence of trauma as a result of these events and relied on an independent psychiatric assessment attesting to their sustained harmful impact on him (see paragraph 28 above). He noted the lack of independence of the doctors who had carried out his forensic psychiatric evaluation of 14 November 2016 and that of the medical opinion of 14 June 2023 due to their conflict of interest with the Codru Psychiatric Hospital staff and the implausibility of their conclusions that a 15-year-old child had experienced no trauma from being abandoned in a psychiatric hospital for months, including in the adults' section, heavily sedated, subjected to various forms of violence and with no prospect of an end to the situation. Accordingly, he noted that the investigation into his complaints of ill-treatment due to neglect by his legal guardian and the actions of the medical staff had been ineffective because it had failed to identify and punish the perpetrators.

(b) The Government

91. The Government argued that the applicant had been provided with adequate conditions during his stay in the psychiatric hospital, with five meals per day, weekly warm showers, bed linens, clothing and daily walks outdoors. They contended that the applicant's transfer to the somatic-psychiatric unit for adults had been determined on the basis of the deterioration of his health condition and particularly his aggressive and dangerous behaviour in respect of other patients and medical staff in the children's section. The Government acknowledged that the applicant had been administered neuroleptics, which had minimal sedative effects, according to a national clinical protocol and applicable international standards, which did not prohibit the administration of such medication to children. They argued that the treatment prescribed corresponded to the applicant's clinical manifestations (aggressivity). The applicant's stay in the adults' section had been accompanied by minimal limitations and had not excluded rehabilitation activities.

92. The Government noted that the applicant had previously stayed at the hospital and had never complained, directly or through his representative, of the material conditions there. The Government did not submit any comments or information concerning the procedure for the applicant's placement in and discharge from the psychiatric hospital, but submitted a consent form signed by T.P. for the applicant's admission on 16 June 2014.

93. In respect of the investigation into the applicant's allegations of treatment contrary to Article 3 of the Convention, the Government argued that the prosecutors had carried out an effective investigation into all the circumstances of the case, hearing the applicant and four medical staff from

the psychiatric hospital and obtaining a complex outpatient psychiatric-psychological expert assessment of the applicant. They emphasised that the findings of this assessment indicated an absence of any psychological trauma caused to the applicant.

2. *The Court's assessment*

(a) Scope of the present case

94. The Court observes that cases concerning medical interventions, including administration of medication and admission to a psychiatric hospital carried out without the consent of the patient, will generally lend themselves to be examined under Article 8 of the Convention (see, for instance, *X v. Finland*, no. 34806/04, § 212, ECHR 2012 (extracts), and *B. v. Romania (no. 2)*, no. 1285/03, § 75, 19 February 2013). In a number of cases the Court has nonetheless accepted that under certain conditions, medical interventions can reach the threshold of severity to be regarded as treatment prohibited by Article 3 of the Convention.

95. In particular, the Court has held that a measure which is of therapeutic necessity from the point of view of established principles of medicine cannot in principle be regarded as inhuman and degrading. The Court must nevertheless satisfy itself that a medical necessity has been convincingly shown to exist and that procedural guarantees for the decision exist and are complied with (see *Jalloh v. Germany* [GC], no. 54810/00, § 69, ECHR 2006-IX, *Akopyan v. Ukraine*, no. 12317/06, § 102, 5 June 2014; *Gorobet v. Moldova*, no. 30951/10, §§ 47-53, 11 October 2011; and *V.C. v. Slovakia*, no. 18968/07, §§ 100-20, ECHR 2011 (extracts)).

96. In addition, the Court reaffirms that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, *Bouyid v. Belgium* [*GC*], no. 23380/09, § 86, ECHR 2015). Although the purpose of such treatment is a factor to be taken into account, in particular the question of whether it was intended to humiliate or debase the victim, the absence of any such purpose does not inevitably lead to a finding that there has been no violation of Article 3 (see, for instance, *V.C. v. Slovakia*, cited above, § 101). In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt". Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see, among other authorities, *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII, and *Akopyan*, cited above, § 103).

97. The Court has previously noted that the position of inferiority and powerlessness which is typical of patients confined in psychiatric hospitals

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

98. The legal instruments and reports adopted by the United Nations indicate that forced placement in a psychiatric hospital and psychiatric treatment, especially in respect of persons with existent or perceived intellectual disability, as well as administration of neuroleptics without medical necessity may amount to ill-treatment prohibited under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (see paragraphs 63-66 above).

99. In the present case the issues of placement in a psychiatric hospital, including subsequent placement in the adults' section and the material conditions there, the psychiatric treatment with neuroleptics and the delayed discharge from the hospital concern a child, aged 15 at the material time, who had been diagnosed with an intellectual disability and was in the care of State authorities in the absence of parental care. These undisputed facts, combined with the applicant's vulnerability – resulting from such elements as his age, disability and the absence of parental care or institutionalisation – are sufficiently serious to fall within the scope of application of Article 3 of the Convention.

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

(b) General principles

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

102. The Court has 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).

(c) Assessment of the facts of the present case

103. The Court would first observe that the case concerns a child, aged 15 at the time of the events, who had not reached the age of 16 or 18 – the ages at which persons may express consent for medical treatment, as required by domestic law (see paragraph 58-59 above). His placement in a psychiatric hospital and his psychiatric treatment were therefore subject to the consent of his legal guardian, the mayor of Ciutești. For this reason, in view of the applicant's disagreement with the consent allegedly expressed by his legal guardian for his placement in a psychiatric hospital and his psychiatric treatment, the case concerns involuntary placement in a psychiatric hospital and psychiatric treatment (see also paragraph 72 above). At the same time, the Court notes that the applicant turned 16 one month before his discharge from the hospital and that the authorities had not assessed the validity of the consent for his placement in the psychiatric hospital and his treatment there.

104. The Court is therefore called upon to assess the adequacy of the legal framework governing the involuntary placement in a psychiatric hospital of a child with psychosocial disabilities without parental care, the conditions of his placement, including his placement in the adults' section, the conduct of doctors in carrying out the medical interventions during his stay and the duration of that stay. It is also called upon to examine whether in the criminal proceedings concerning the allegedly involuntary medical interventions and neglect, the competent authorities carried out a thorough, effective and prompt investigation and whether they afforded sufficient protection of the applicant's right to respect for his personal integrity in the light of his vulnerability as a child with an intellectual disability and without parental care.

105. The parties disputed the medical necessity of the applicant's placement in the psychiatric hospital on 16 June 2014 and the need for his continued stay after 7 July 2014. The parties were also in dispute as to the reasons for the applicant's transfer to the adults' section on 22 September 2014 and the intensity and the impact of his treatment after that date. For these reasons, the Court distinguishes between (a) his placement in the psychiatric

hospital and his psychiatric treatment, (b) his stay in the psychiatric hospital and his psychiatric treatment after 7 July 2014 and (c) his placement in the adults' section from 22 September to 7 November 2014 and the medical treatment and material conditions there. The Court will examine the factual aspects of each complaint.

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

(i) The obligation to carry out an effective investigation

107. The Court refers to the general principles summarised in *X and Others v. Bulgaria* (cited above, §§ 184-90).

108. In the domestic proceedings, the applicant's complaints were examined in two separate sets of proceedings. The first set of proceedings were initiated on charges of professional negligence against the legal guardian (the mayor of Ciutești) related to the placement of the applicant in the psychiatric hospital and his psychiatric treatment in the absence of a therapeutic necessity and to the failure to act in order to discharge the applicant shortly after 7 July 2014, which had resulted in the delay of his release from the hospital until 7 November 2014. The second set of proceedings was initiated on elements of torture in respect of the applicant's allegations of ill-treatment at the hands of the hospital staff due to his transfer on 22 September 2014 to the adults' section and the material conditions and the medical treatment during his stay there. Both sets of proceedings concluded that the elements of the investigated criminal offences had not been met because the placement in the psychiatric hospital had been legitimised by a doctor's decision and there were no quantifiable traumatic consequences sustained by the applicant (see paragraphs 38 and 49 above) or any direct intent on behalf of the alleged perpetrators (see paragraph 55 above).

109. The Court observes that the national authorities promptly initiated investigations into the applicant's allegations, interviewing the applicant and certain medical staff at the Codru Psychiatric Hospital, the Ciutești local authority and the Nisporeni child protection authority. The investigation file, however, does not refer to any interview of V.G., the Nisporeni doctor who allegedly referred the applicant for placement in the psychiatric hospital and psychiatric treatment on 3 June 2014. The investigations partly confirmed the applicant's statements concerning his opposition to the placement in the psychiatric hospital, his delayed release from the hospital after 7 July 2014, his transfer to the adults' section and his treatment with neuroleptics. For this

reason, the Court considers that the Moldovan authorities were faced with "arguable" claims, within the meaning of the Court's case-law, of involuntary medical interventions on a child with intellectual disability without parental care, and that they had a duty under Article 3 of the Convention to take the necessary measures without delay to assess the credibility of the claims, to clarify the circumstances of the case and identify those responsible (see *X and Others v. Bulgaria*, cited above, § 201).

110. The Government argued that a thorough investigation had taken place in the course of both sets of proceedings, including the hearing of all relevant witnesses and the preparation of a forensic psychiatric assessment of the applicant's condition (see paragraph 93 above).

111. In respect of the first set of proceedings, as noted by the applicant, the authorities failed to investigate the circumstances in which the applicant's placement in the psychiatric hospital had taken place and, particularly, whether the safeguards related to involuntary placement and psychiatric treatment had been respected upon his admission and subsequent stay and whether there existed any therapeutic necessity for placement and treatment.

112. The Court observes that the prosecutor questioned the lawfulness of the applicant's placement by noting that the referral to the psychiatric hospital of 3 June 2014 had been issued by V.G., a doctor in Nisporeni who had never seen the applicant in a consultation; that the applicant had been urgently admitted without a planned treatment; and that the subsequent assessments and witness statements appeared to indicate that the applicant's stay at the hospital had not been justified (see paragraph 35 above). However, neither the appellate court nor the Supreme Court of Justice provided any analysis of the involuntary aspect of the applicant's placement in the psychiatric hospital and psychiatric treatment and whether legal safeguards had been complied with. There was also no investigation into whether the applicant's health condition had required placement in a psychiatric hospital and psychiatric treatment or whether other forms of treatment would have been more appropriate.

113. Although the hospital administration and the prosecutor apparently agreed that the applicant's stay, at least after 7 July 2014, had not been justified by any therapeutic need, the Supreme Court of Justice was ready to accept that the continued placement for what appears to be an unlimited period of time had been lawful simply because the mayor had referred in his decision of 13 June 2014 to placement "for a duration prescribed by a doctor" (see paragraph 38 above).

114. The Court notes that the investigation revealed how diffuse the officials' responsibility for the applicant's fate had been. The domestic courts discussed at length the division of tasks between the local public authority as the legally appointed guardian and the Nisporeni child protection service. In the end, the Supreme Court of Justice concluded that the responsibility for the applicant fell to the local social assistant who was delegated to perform

the tasks of the mayor as the legal guardian. However, after the mayor's acquittal, no investigation into the acts or omissions of the social assistant on charges of neglect or on other charges such as unlawful admission to a psychiatric institution (see Article 169 of the Criminal Code cited in paragraph 56 above). There was likewise no investigation into the applicant's allegation of discriminatory motives.

115. The second set of proceedings never resulted in the case being remitted for trial. The treatment to which the applicant had been subjected during his stay in the psychiatric hospital, including that administered while he was in the adults' section, was considered lawful in the absence of an intent to harm, humiliate or debase the applicant and in the absence of any alleged trauma following that treatment, as assessed by an expert report (see paragraphs 43 and 49 above).

116. As to the findings of the national authorities that there had been no intention to harm the applicant, the Court notes that the absence of an intention to humiliate or debase a person cannot conclusively rule out a finding of a violation of Article 3 of the Convention (see *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 117, 25 June 2019, and *Bouyid*, cited above, § 86; see also the UN legal documents cited in paragraphs 65 and 66 above). The investigators never sought to clarify the impact on the applicant of the treatment with neuroleptics and anti-psychotics or whether he had indeed been subjected to chemical restraint. Moreover, the investigation focused solely on whether the facts revealed the elements of torture, but never examined whether they revealed elements of medical interventions without therapeutic necessity.

117. The Court further notes that in both sets of proceedings the authorities concluded that there had been no traumatic consequences for the applicant, which resulted in the complete impunity of all those tasked with his care. In the first set of proceedings, the Supreme Court of Justice considered that the applicant's suffering was "unquantifiable" and not severe enough to warrant prosecution (see paragraph 38 above). In the second set of proceedings, psychiatrists from the hospital under investigation concluded that the applicant had merely been preoccupied with his "deprivation of liberty" and had not been traumatised as such by the experience. The expert report appears to put disproportionate weight on the applicant's allegedly "non-traumatic" interpretation of what happened to him but does not address the fact that that interpretation was offered by a child with a mild intellectual disability. Moreover, the Court notes that the psychiatric assessment was carried out by doctors affiliated to the hospital where the impugned treatment had occurred, which lacked the required objectivity on account of a breakdown in the relationship of trust between them and the applicant (see, *mutatis mutandis, Ruiz Rivera v. Switzerland,* no. 8300/06, § 64, 18 February 2014; see also the CPT reference to the independence of such forensic psychiatric experts cited in paragraph 75 above).

118. Furthermore, in respect of the applicant's allegations of violence and sexual abuse at the hands of other patients during his stay in the adults' section, the Court notes that they have never been investigated at domestic level.

119. The foregoing considerations are sufficient to enable the Court to conclude that the authorities failed to carry out an effective investigation into the applicant's allegations of ill-treatment despite the numerous elements before them. The inquiry did not factor in the applicant's vulnerability, his age or the disability aspects of his complaints concerning the institutionalised neglect and medical violence committed against him.

120. Moreover, the Court reiterates that what is in issue in the present proceedings is not individual criminal-law liability, but the State's international-law responsibility. Therefore, it must concentrate on the purpose of the obligation of effective investigation, which is to secure the effective implementation of domestic laws which protect the right not to be ill-treated and, in those cases involving State agents or bodies, to ensure their accountability (see *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, § 63, 20 December 2007; *L.R. v. North Macedonia*, no. 38067/15, § 92, 23 January 2020). Otherwise, a State's duty to carry out an effective investigation would lose much of its meaning, and the rights enshrined in Article 3 of the Convention would be ineffective in practice (see *Enukidze and Girgvliani v. Georgia*, no. 25091/07, § 268, 26 April 2011). While the domestic investigations focussed on the accountability of the legal guardian and on the applicant's allegations of ill-treatment, the Court was not informed about any effective attempt to verify whether the system's failures had resulted from acts by other representatives of the authorities or any other public servant, for which they could be held accountable (see paragraphs 114 and 116 above).

121. The Court's takes the view that all the considerations above suggest that the national authorities, did not take all reasonable investigative measures to shed light on the facts of the present case and did not undertake a full and careful analysis of the evidence before them. The omissions established above are sufficiently serious for the Court to consider that the investigation carried out was not effective for the purposes of Article 3 of the Convention.

122. From the results of the investigation, the Court distinguishes two elements to be analysed further, which correspond to the State's substantive obligations under Article 3 of the Convention. The first element relates to the structural issue concerning the legal framework and its implementation in respect of protecting intellectually disabled children from involuntary placement in a psychiatric hospital for an unlimited period of time and involuntary treatment, including chemical restraint. The second element relates to the personal situation of the applicant and, in particular, the treatment he was subjected to and its consequences and the manner in which the relevant laws were applied in practice.

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

123. The positive obligation under Article 3 of the Convention necessitates in particular establishing a legislative and regulatory framework to shield individuals adequately from breaches of their physical and psychological integrity, particularly, in the most serious cases, through the enactment of criminal-law provisions and their effective application in practice. The positive obligation of protection assumes particular importance in the context of a public service with a duty to protect the health and well-being of children, especially where those children are particularly vulnerable and are under the exclusive control of the authorities. It may, in some circumstances, require the adoption of special measures and safeguards (see, *mutatis mutandis*, *X and Others v. Bulgaria*, cited above, §§ 179-80).

124. In the light of these principles, the Court finds that States have a heightened duty of protection towards children with intellectual disabilities who, like the applicant in the present case, have been placed in the care of the State, which is to act as their legal representative in their best interests.

125. The Court notes that the Moldovan Law on mental health contains clear legal provisions concerning the admission of children to mental health institutions, their placement separately from adults, the consideration of their views (section 5/1), and certain safeguards such as the initial and periodic re-assessment of the need to extend their stay in the psychiatric institution (section 30; see paragraph 59 above). There is also a legal prohibition on administering psychiatric treatment in the absence of a psychiatric illness (see section 42 of the Law on health protection cited in paragraph 58 above). The domestic law contains specific requirements for valid consent to be expressed by children who have reached the age of 16 for medical services in general and the age of 18 for psychiatric assistance (see section 23 of the Law on health protection cited in paragraph 58 above, and section 4 of the Law on Mental Health cited in paragraph 59 above).

126. Furthermore, the Court notes the criminal-law provisions concerning unlawful admission to a psychiatric institution, medical negligence, negligent performance of official duties and ill-treatment, which appear to address various elements of conduct alleged by the applicant in that connection (see paragraph 56 above).

127. At the same time, the Court notes the absence of any legal provisions and safeguards concerning the use of chemical restraint (see the CPT report cited in paragraph 75 above). There are also no independent safeguards in the event of a conflict of interest between the child (or a patient without legal capacity) and his or her legal guardian to allow for an independent monitoring of involuntary admission to psychiatric institutions and of involuntary treatment, particularly when such placement may continue for an unlimited period of time, when such treatment differs from the initial therapeutic plan and/or when the patient's behaviour is diminished by medication in a

meaningful way. There is also no procedure for the reassessment of consent once the patient turns 16 and/or 18. The Court notes that the safeguards provided for under the Moldovan domestic law leave the review of the circumstances to psychiatrists from the same psychiatric institution (see paragraph 59 above), which certainly cannot qualify as independent in the given circumstances (see paragraph 117 above).

128. The Government failed to demonstrate the existence of any legal provisions, safeguards and mechanisms capable of preventing and detecting ill-treatment of children with mental disabilities and/or without parental care in a psychiatric context or which would enable them to have Convention complaints relating to their health and treatment examined before a court or other independent body (see *Centre for Legal Resources on behalf of Valentin Câmpeanu*, cited above, § 161). In this connection, the Court refers to the reports of the Children's Ombudsperson, according to which cases similar to the applicant's were identified in 2019 and 2022 and that the systemic deficiencies persisted some eight years after the facts of the present case (see paragraphs 60-61 above).

129. Having considered the elements above, the Court finds that the existing Moldovan legal framework – which lacks the safeguard of an independent review of involuntary placement in a psychiatric hospital, involuntary psychiatric treatment, the use of chemical restraint, and other mechanisms to prevent such abuse of intellectually disabled persons in general and of children without parental care in particular – falls short of the requirement inherent in the State's positive obligation to establish and apply effectively a system providing protection to such children against serious breaches of their integrity, contrary to Article 3 of the Convention.

(iii) The obligation to protect the applicant's physical and mental integrity

130. As the Court has observed above, the applicant in the present case was in a particularly vulnerable situation and had been placed in the sole charge of the public authorities. On the one hand, the legal guardian had an ongoing duty to ensure the safety, health and well-being of the children in his care, including the applicant. On the other hand, once the applicant had been admitted to the psychiatric hospital, such duties of care were partially transferred to the hospital administration. The different roles of these authorities require that the factual circumstances of the alleged ill-treatment be examined simultaneously from the perspective of the State's negative and positive obligations under Article 3 of the Convention (see *mutatis mutandis*, *G.M. and Others v. the Republic of Moldova*, no. 44394/15, § 130, 22 November 2022).

(α) The applicant's placement in the psychiatric hospital and psychiatric treatment

131. The Government did not make any submissions concerning the procedure for the applicant's placement in the psychiatric hospital, except a copy of the consent form signed by T.P. on 16 June 2014 (see paragraph 92 above).

132. The applicant disputed the lawfulness of his placement in the psychiatric hospital, arguing that there had been an absence of valid consent from his legal guardian (the mayor of Ciutești) and from himself, and the absence of a therapeutic necessity for such placement.

133. The Court notes that, according to the case-file, the applicant's regular placement in the psychiatric hospital roughly coincides with the moment when the mayor of Ciutești started acting as his legal guardian and representative (see paragraphs 5 and 7 above). The applicant's admission to the psychiatric hospital on 16 June 2014 relied on a referral made by a psychiatrist in Nisporeni on 3 June 2014, the recommendation of the Committee for the Protection of Children at Risk of 13 June 2014 and the decision of the applicant's legal guardian of 13 June 2014. In view of the domestic provisions allowing for the delegation of legal guardianship tasks to a child protection specialist employed with the local public administration (see paragraph 57 above) and the presence of T.P.'s signature on the applicant's admission form (see paragraph 13 above), the Court is ready to accept that his placement was carried out with the consent of his legal representative.

134. The Court further notes that the applicant was aged 15 at the time of the events, which under domestic law prevented him from expressing valid consent on his own. The international and national standards refer to a consultation process which should have allowed the applicant to have his views and, in particular, his opposition to the placement, be taken into consideration (see paragraphs 59, 62-64, 69 and 72 above). The Government failed to provide any evidence that a child-friendly procedure involving the applicant in the decision-making process had been available to him and that he had been able to make use of it.

135. The absence of a mechanism for child participation as such does not automatically invalidate the applicant's placement in the psychiatric hospital. However, in view of the applicant's undisputed opposition to his placement in the psychiatric hospital and to the decision of his legal guardian, the absence of such a mechanism certainly prevented the authorities from properly assessing and determining the applicant's best interests (see paragraphs 61-63 above) and from formally identifying his placement as involuntary, which should have triggered safeguards against abuse in the form of an independent review of the medical necessity for his placement (see the domestic law provisions cited in paragraph 59 above and the international standards cited in paragraphs 72-73 above). The Government failed to

provide evidence that such a review had taken place upon the applicant's placement in the psychiatric hospital, either by a group of psychiatrists in the same hospital or by an independent body.

136. As to the existence of a therapeutic necessity for the applicant's placement in the psychiatric hospital and psychiatric treatment, the Court notes that the referral and admission documents referred to his intellectual disability and not to any mental illness. In particular, the diagnosis code "F 70" in the World Health Organization International Classification of Diseases, 10th Revision (ICD-10), stands for mild intellectual disability. The term "psychopathiform syndrome" does not represent an official diagnosis under the ICD-10 and is not specific to any particular mental disorder. The Court notes that the applicant's medical file refers to the same description of the diagnosis, as it cites code F 70.1, which stands for "mild intellectual disability with significant impairment of behaviour requiring attention or treatment" (see paragraph 15 above). At the same time, the school administration referred to the diagnosis of organic personality disorder (see paragraph 10 above) and the domestic authorities' and the Government's submissions referred to the applicant's aggressivity as the reason for his placement in the psychiatric hospital.

137. On the one hand, the Court considers it important to point to the national and international standards which provide that an intellectual disability is in itself insufficient ground for placement in a psychiatric hospital, psychiatric treatment and the deficient practice, in particular in the Republic of Moldova, of placing persons with psychosocial disabilities in metal health institutions in the absence of any therapeutic purpose (see paragraphs 58, 64-65, 67-69, 72 and 73).

138. On the other hand, the Court notes that the domestic authorities limited their investigation to the existence or the absence of a medical referral for placement in a psychiatric hospital and never called into question the objectivity of that medical opinion. The investigation never examined whether the applicant's condition represented a mental disorder which required compulsory placement in a psychiatric hospital, whether it posed a significant risk of serious harm to his health or to other persons or whether less restrictive means of providing appropriate care were available (see also *Gorobet*, cited above, § 42). However, witness statements and specialised reports revealed subsequently that there had been no therapeutic need for the applicant's placement and treatment and that the placement in a psychiatric hospital had been sought as a quick alternative in the absence of any plans for the applicant's further placement (see paragraphs 21 and 35 above). Moreover, the Government have failed to produce the applicant's therapeutic plan, which could have clarified the medical purpose of the placement in a psychiatric hospital and the fully administered psychiatric treatment and its expected outcome.

139. In the absence of more information, the Court notes the difficulty in determining beyond reasonable doubt whether there is any substance to the applicant's allegations of placement in a psychiatric hospital without therapeutic necessity and considers that this difficulty stems from the authorities' failure to investigate his complaints effectively (see *Petru Roşca v. Moldova*, no. 2638/05, § 42, 6 October 2009, and *Popa v. Moldova*, no. 29772/05, § 39, 21 September 2010). The Court reiterates that, in all cases where it is unable to establish the exact circumstances of a case for reasons objectively attributable to the State authorities, it is for the respondent Government to explain, in a satisfactory and convincing manner, the sequence of events and to exhibit solid evidence capable of refuting the applicant's allegations (see *Mansuroğlu v. Turkey*, no. 43443/98, § 80, 26 February 2008, with further references).

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

141. As the Court has noted above, the applicant was in a particularly vulnerable situation and was placed in the sole charge of the public authorities. In view of their control over the applicant, the burden of proof is on the Government to provide a satisfactory and convincing explanation in respect of his allegations. However, the Government have not provided a satisfactory and convincing explanation for the therapeutic purpose of his placement and treatment, leading to the Court being unable to draw any benefit from its results (see *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, §§ 165-67, ECHR 2012).

142. In the light of the foregoing, the Court considers that it can draw inferences in support of the applicant's version of events from the domestic authorities' failure to conduct a meaningful investigation and refute his account or to provide a plausible alternative explanation. Accordingly, it finds the applicant's allegations that his placement in a psychiatric hospital and psychiatric treatment lacked a therapeutic necessity sufficiently convincing and established.

It follows that there has been a violation of Article 3 of the Convention in its substantive limb.

(β) The applicant's placement in the psychiatric hospital after 7 July 2014

143. From the actions of the psychiatric hospital – which sought the applicant's discharge at least on eight occasions – it appears that the applicant was to be discharged after the completion of his treatment on 7 July 2014 (see paragraph 17 above) and that the reason why he did not leave the institution at that point was the absence of any arrangements for his further placement, and not his medical condition. The same view was apparently shared by the prosecutor (see paragraph 32 above). However, the Supreme Court of Justice was ready to accept the phrase "for a period prescribed by a doctor" in the mayor's placement decision of 13 June 2014 as a sufficient legal basis for the applicant's placement in the Codru Psychiatric Hospital, apparently for an unlimited period of time (see paragraph 38 above).

144. In view of the absence of a therapeutic justification for the applicant's placement in a psychiatric hospital on 16 June 2014 and the absence of any new medical information to justify his continued stay, the Court concludes that the applicant's allegations that his placement in a psychiatric hospital and psychiatric treatment after 7 July 2014 also lacked a therapeutic necessity sufficiently convincing and established.

145. The Court is also concerned with the domestic court's inference that such placement could be justified indefinitely simply because of the initial referral which mentioned "a duration prescribed by a doctor". This appears to be at odds with the views of the doctors in the psychiatric hospital and with the need for the strict monitoring of any placement in a psychiatric institution.

146. In view of the foregoing, the Court finds that there has been a violation of Article 3 of the Convention in its substantive limb due to the absence of a therapeutic necessity for the applicant's continued placement and treatment after 7 July 2014 and due to the absence of safeguards concerning the duration of his placement in a psychiatric hospital and his psychiatric treatment in general.

(γ) The applicant's placement in the adults' section from 22 September to 7 November 2014, his medical treatment and the material conditions

147. It is undisputed that the applicant's placement in the adults' section was not provided for in domestic law, which required the placement of children in a safe environment in a separate section (see paragraph 59 above).

148. As to the reasons for such measure, the domestic authorities and the Government argued that the transfer had occurred on account of the deterioration of the applicant's mental health and his aggressive and violent behaviour in respect of other patients and staff members in the children's section. In their view, the transfer had been related to the applicant's posing a threat to the well-being of other children in the section. The applicant disputed the accusations brought against him and submitted that the transfer had been a punishment for his disobedience due to his growing frustration after his discharge had been postponed indefinitely. In particular, according

to the applicant, his transfer occurred after he had broken a window in protest against the delay in his discharge from the hospital.

149. The Court notes that none of the reasons provided by the Government to justify this transfer advance any benefits for the applicant or reveal any assessment of his best interests. Any other reason for such transfer will fall foul of the requirement to provide protection to the applicant's physical integrity and well-being (see the international standards cited in paragraph 72 above).

150. According to the applicant's medical record and the medical opinion of 14 June 2023, both provided by the Government, the applicant exhibited signs of disobedience and frustration only in late August and late September 2014, just before his transfer to the adults' section on 22 September 2014 (see paragraph 29 above), but not before. This corroborates the applicant's description of facts and clearly links his transfer to the adults' section with his growing frustration due to the absence of prospects for his discharge and the neglect by the domestic authorities.

151. In addition to his transfer to the adults' section, his medical treatment was also changed. In particular, once transferred, the applicant was administered antipsychotics, neuroleptics and tranquilisers in increased amounts and combinations (see paragraph 27 above). The parties dispute the impact these drugs had on the applicant. The authorities submitted that the effect had been minimal and proportionate to the need of calming his aggressivity, whereas the applicant submitted that the medication had made him sleepy and qualified it as a form of chemical restraint. At the same time, the Ministry of Health did not dispute the argued side effects, noting that they were "frequent and well-known manifestations of antipsychotics" but insisted that there had been no intention to punish the applicant by the means of those side effects (see paragraph 30 above).

152. The Court notes the incongruent actions and reasons advanced by the domestic authorities. On the one hand, they were seeking solutions by which to discharge the applicant, therefore attesting to the absence of any continued need for placement in a psychiatric hospital and psychiatric treatment. On the other hand, when they were unable to contain the applicant's growing frustration, they transferred him to the adults' section – which already isolated him from other vulnerable patients in the children's section – and administered heavy medication to control his behaviour, arguing that his behaviour had been the reason for his placement in a psychiatric hospital and psychiatric treatment all along.

153. It is noted that the Government never argued that the administration of this treatment was part of the applicant's treatment plan. On the contrary, it transpires from the evidence provided that such treatment was prescribed in response to the applicant's behaviour for the purpose of managing and controlling it. The description of the applicant's condition after the administration of the medication shows that his behaviour was diminished by

this medication in a meaningful way. The use of medication for such purpose is defined as chemical restraint (see paragraphs 72 and 74 above) and international bodies have reported on its use in the Republic of Moldova despite a lack of clear legal provisions in that connection (see paragraphs 67-68 and 75 above).

154. The Court notes, on the basis of the documents produced by the Government, that the domestic authorities limited their investigation to the existence or absence of an intent on the part of the medical staff to debase or humiliate the applicant. The investigators never examined the therapeutic necessity of the treatment and its potentially negative consequences, as consistently argued by the applicant in all his complaints. There was also no investigation into whether the applicant's consent was required once he had turned 16 on 8 October 2014. The domestic authorities failed to conduct a meaningful investigation and refute his account or to provide a plausible alternative explanation. The medical opinion of 14 June 2023 and the letter of the Ministry of Health of 3 July 2023 do not and cannot remedy this omission.

155. In the absence of the Government's failure to provide any material related to a therapeutic plan or safeguards concerning the adjustment of such plan and the use of chemical restraint, the Court considers that it can draw inferences in support of the applicant's version of events. The Court finds the applicant's allegations that his modified psychiatric treatment after 22 September 2014 lacked a therapeutic necessity sufficiently convincing and established.

156. In respect of the material conditions in the adults' section, the Court notes the CPT reports which appear to corroborate the applicant's description. Moreover, the evidence submitted by the Government (see paragraph 29 above) confirmed the applicant's allegations of very limited occasions for walks outdoors.

157. The Court therefore finds that there has been a violation of Article 3 of the Convention in its substantive limb on account of the applicant's transfer to the adults' section and his being subjected to chemical restraint, in the absence of a therapeutic necessity, and the material conditions while there.

158. In respect of the applicant's allegations of violence at the hands of other patients in the adults' section, as noted above, the difficulty in determining whether there was any substance to the applicant's allegations stems from the authorities' failure to investigate his complaints effectively, which has already resulted in a finding of a violation of the procedural limb of Article 3 of the Convention (see paragraphs 118 and 121 above).

159. The applicant did not submit any evidence or details in support of his allegation that he had suffered violence and, in particular, sexual violence during his stay in the psychiatric hospital. Therefore, in the absence of prima facie evidence capable of shifting the burden of proof on to the respondent Government and, given the Court's conclusion above that no effective

investigation was carried out in the present case, the Court cannot draw a conclusion as to whether the applicant was subjected to violence by other patients in the adults' section. It concludes, therefore, that there has not been a violation of the substantive limb of Article 3 of the Convention in that connection.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION READ IN CONJUNCTION WITH ARTICLE 3

160. The applicant complained that societal stigma in respect of persons with intellectual disabilities and a lack of support services had been behind the domestic authorities' decision to place him in a psychiatric institution and to subject him to psychiatric treatment and that discriminatory attitudes had prevented a proper investigation in respect of his complaints. He relied on Articles 3 and 14 of the Convention, of which the latter reads as follows:

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

A. Admissibility

161. The Government submitted that the applicant had failed to exhaust the available domestic remedies in respect of his complaints. In particular, they argued that the lodging of a civil claim under Law no. 121 of 25 May 2012 on ensuring equality, either with the Equality Council or directly with a court, was still open to the applicant in respect of his claims of discrimination.

162. The applicant disagreed, noting that none of the remedies indicated by the Government would be effective in respect of his grievances, as none of those avenues provided an opportunity for the reopening of the investigation into his allegations of discriminatory grounds for the violations of his rights under Article 3 of the Convention. The applicant argued that a complaint lodged before the Equality Council could not even secure an appropriate monetary compensation.

163. In the instant case the applicant contended during the criminal proceedings in respect of his allegations of ill-treatment that his placement in a psychiatric hospital had been decided on the basis of the stereotype held by the authorities in respect of persons with intellectual disabilities (see paragraph 31 above). However, neither the prosecutor nor the courts had given any consideration to those arguments or any ruling to that effect (see paragraphs 38 and 43 above). The Court finds that the applicant thereby raised in substance his complaint of discrimination in respect of his right to the protection of his physical integrity and dignity in those criminal proceedings. He was therefore not required to pursue another remedy under the Equality

Act with a similar objective in order to meet the requirements of Article 35 § 1 of the Convention (see *Guberina v. Croatia*, no. 23682/13, § 50, 22 March 2016).

164. The Court therefore dismisses the Government's objection. It also 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

165. The applicant submitted that his placement in a psychiatric hospital and his psychiatric treatment had been motivated by the authorities' failure to identify a placement for him once his stay in the Rezina boarding school had no longer been possible during the summer months. He argued that it had been on account of social stigma in the Republic of Moldova that he, as a person with a psychosocial disability, had been at a particularly high risk of being subjected to placement in a psychiatric hospital and psychiatric treatment without therapeutic necessity, a risk which had materialised in his case. He relied on international reports about the situation of children with psychosocial disabilities in the Republic of Moldova (see paragraph 67 above). The applicant further argued that the ineffectiveness of the investigation had also been influenced by the discriminatory attitude of the authorities, which had normalised the psychiatric internment of persons with psychosocial disabilities.

166. The Government submitted that the applicant had failed to substantiate his allegation of discriminatory treatment or a biased and stereotyped attitude on the part of the domestic authorities in connection with his intellectual disability.

2. The Court's assessment

167. The Court notes that the applicant's 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 applicant's 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).

168. 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).

169. 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). 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 (ibid., § 178).

170. In addition, 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 *Cînța v. Romania*, no. 3891/19, § 41, 18 February 2020).

171. Having regard to the arguments advanced by the applicant, the Court notes that the alleged difference in treatment of children 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 applicant's being subjected, on grounds of disability or of perceived disability, to placement in a psychiatric hospital and psychiatric treatment without objective and reasonable justification.

172. The Court observes that the United Nations' Special Rapporteurs have consistently reported the existence of systemic discrimination of persons, particularly children, with intellectual disabilities in the Republic of Moldova in the form of psychiatric institutionalisation in the absence of any medical necessity. According to these reports, there is a widespread perception of persons with disabilities as "abnormal", as distinct from "healthy" persons, which, interlinked with the lack of community support

services that cater to their needs, results in a high rate of institutionalisation of children with psychosocial disabilities. The implemented reforms managed to decrease the institutionalisation rate of children by half but many of those remaining in institutions were children with disabilities (see paragraphs 67-70 above).

173. Turning to the circumstances of the present case, the Court observes that various authorities – the school administration, the Nisporeni doctor, the legal guardian, the child protection authority and the hospital doctors – all with statutory duties of care towards the applicant, unanimously agreed to his placement in a psychiatric hospital and psychiatric treatment in the absence of any therapeutic purpose, as already found above by the Court. Administrative and medical admission documents consistently referred to the applicant's intellectual disability as ground for placement in a psychiatric hospital and psychiatric treatment, which attests to the authorities' perception that an intellectual disability was a mental disorder which required treatment. This "defectology" approach is further confirmed by the way the authorities subsequently argued, on the basis of new assessments, that the applicant was "normal" and therefore should not have been subjected to placement in a psychiatric hospital and psychiatric treatment (see paragraph 35 above).

174. The Court also notes that the prosecutor agreed with the applicant that his placement in a psychiatric hospital had been related to the absence of alternative care options. However, the investigators never went further to identify the underlying discriminatory reasons for the applicant's placement in a psychiatric hospital. Moreover, the Court observes that the domestic investigations relied significantly on the absence of quantifiable traumatic consequences for the applicant (see paragraphs 38, 48-49 and 117 above), thus failing to properly factor in his vulnerability due to his intellectual disability when interpreting his perception of what he had experienced. The authorities' failure to attempt to correct such inequality through different treatment was also discriminatory.

175. In the Court's opinion, the combination of the factors above clearly demonstrates that the authorities' actions were not simply an isolated failure to protect the applicant's physical integrity and dignity, but in fact perpetuated a discriminatory practice in respect of the applicant as a person and, particularly, as a child with an actual or perceived intellectual disability. The applicant's social status as a child without parental care only exacerbated his vulnerability.

176. In these circumstances, the Court can accept that a prima facie case of discrimination has been established. The burden then shifts to the respondent State to reject the basis of the prima facie case, or to provide a justification for it. In view of the considerations above, the Court concludes that the respondent State did not bring forward convincing reasons such as to rebut the presumption of discrimination against the applicant on the grounds

of his intellectual disability (see paragraph 166 above; see also *Cînța*, cited above, §§ 79-80).

177. The considerations above, taken as a whole, lead the Court to conclude that in the circumstances of the present case there has been a breach of Article 14 of the Convention read in conjunction with Article 3.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

178. Lastly, the applicant complained that no effective remedy existed in the Moldovan domestic legal system in respect of unlawful placement in a psychiatric hospital and psychiatric treatment of children with intellectual disabilities. The applicant relied on Article 13 read in conjunction with Articles 3 and 14 of the Convention. The relevant part of Article 13 reads as follows:

Article 13

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

179. The Government submitted that this complaint was inadmissible on account of the absence of another arguable claim.

180. The applicant submitted that in addition to the ineffective investigation into his allegations under Article 3 of the Convention, the case revealed the absence of domestic law with sufficient legal safeguards and guarantees to prevent the ill-treatment to which he had been subjected. He referred to the CPT recommendations concerning safeguards for placement in a psychiatric hospital and the required legal and policy reforms (see paragraph 75 above).

181. In view of its findings above, the Court finds 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.

182. Where a right with as fundamental an importance as the right to life or the prohibition against torture, inhuman and degrading treatment is at stake, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible, including effective access for the complainant to the investigation procedure (see *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 109, ECHR 2001-V; see also *Centre for Legal Resources on behalf of Valentin Câmpeanu*, cited above, § 149.

183. The Court has already established that the Moldovan domestic framework was ill-suited to address the specific situation of children with intellectual disabilities and without parental care, like the applicant, notably regarding the practical possibility of his having access to an independent

review of his placement in a psychiatric hospital and the length of the placement (see paragraphs 128, 135 and 145 above). Indeed, the Court has previously found a respondent State to be in breach of Article 3 of the Convention on account of the lack of adequate remedies concerning people with disabilities, including their limited access to any such potential remedies (see, *Centre for Legal Resources on behalf of Valentin Câmpeanu*, cited above, § 151, with further references).

184. On the basis of the evidence adduced in the present case, the Court has already found that the respondent State was responsible under Article 3 for failing to protect the applicant's physical integrity and dignity while he was in the care of the domestic authorities and for failing to conduct an effective investigation into the circumstances of his involuntary placement in a psychiatric hospital and psychiatric treatment. The Government have not referred to any other procedure whereby the liability of the authorities could be established in an independent, public and effective manner.

185. In view of the above-mentioned findings, the Court considers that the respondent State has failed to provide for an appropriate mechanism capable of affording redress to people, and particularly children, with mental disabilities claiming to be victims under Articles 3 and 14 of the Convention.

There has therefore been a violation of Article 13 of the Convention read in conjunction with Articles 3 and 14.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

186. Lastly, the applicant complained under Article 8 of the Convention about his involuntary placement in the psychiatric hospital and his psychiatric treatment. He also alleged a violation of Article 13 and 14 of the Convention read in conjunction with Article 8 of the Convention.

187. Having regard to the facts of the case, the submissions of the parties, and its findings above, the Court considers that it has dealt with the main legal questions raised by the case and that there is no need to examine the remaining complaints.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

188. 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."

189. The applicant claimed 25,000 euros (EUR) in respect of non-pecuniary damage noting the gravity and the lasting effect of the psychological harm suffered as a result of the ill-treatment, discrimination and lack of access to a remedy to obtain the protection of his rights. The

applicant also claimed EUR 7,420 in respect of the costs and expenses borne by him for his representation in the domestic proceedings and before the Court, to be paid directly to the account of the Validity Foundation. He submitted invoices and proof of payment by the Validity Foundation to his lawyers in the domestic proceedings.

190. The Government submitted that the claimed amounts were excessive and inconsistent with amounts previously awarded by the Court.

191. In the light of the circumstances of the case, the Court awards the applicant the sum of EUR 25,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

192. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum (see, for example, *H.F. and Others v. France* [GC], nos. 24384/19 and 44234/20, § 291, 14 September 2022).

In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 7,420 in respect of costs and expenses, plus any tax that may be chargeable to the applicant, to be paid into the bank account indicated by his representative (see *Denizci and Others v. Cyprus*, nos. 25316/94 and 6 others, § 428, ECHR 2001-V, and *Cobzaru v. Romania*, no. 48254/99, § 111, 26 July 2007).

VII. APPLICATION OF ARTICLE 46 OF THE CONVENTION

193. Article 46 of the Convention provides as far as relevant:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

194. Under Article 46 of the Convention the High Contracting Parties undertook to abide by the final judgments of the Court in any case to which they were parties, execution being supervised by the Committee of Ministers. It follows, *inter alia*, that a judgment in which the Court finds a breach of the Convention or the Protocols thereto imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted under its domestic legal order to put an end to the violation found by the Court and to redress as far as possible the effects (see *Guðmundur Andri Ástráðsson v. Iceland* [GC], no. 26374/18, § 311, 1 December 2020, and the references therein).

195. The Court reiterates that its judgments are essentially declaratory in nature and that, in general, it is primarily for the State concerned to choose,

subject to supervision by the Committee of Ministers, the means to be used under its domestic legal order to discharge its obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (see *Magnitskiy and Others v. Russia*, nos. 32631/09 and 53799/12, § 295, 27 August 2019). Only exceptionally, with a view to helping the respondent State to fulfil its obligations under Article 46, will the Court seek to indicate the type of measure that might be taken in order to put an end to a violation that it has found (ibid., § 296).

196. The Court notes that the present case discloses a systemic problem as regards the involuntary placement in a psychiatric hospital and psychiatric treatment of children with intellectual disabilities and without parental care. In particular, the violations found indicate a lack of safeguards and mechanisms capable of preventing and detecting ill-treatment of such children in a psychiatric context and a discriminatory practice in respect of children with an actual or a perceived intellectual disability.

197. The Court considers that the nature of the violations found suggests that for the proper execution of the present judgment the respondent State would have to take a number of general measures aimed at reforming the system of involuntary placement in a psychiatric hospital and of involuntary psychiatric treatment of persons with intellectual disabilities, and in particular children. Without taking a position on the nature and scope of the reform to be undertaken, the Court considers that these measures should include the legal safeguards and mechanisms described in its judgment and should address the discrimination of persons with intellectual disabilities, and in particular children.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Rejects* the Government's request to strike the application out of the Court's list of cases;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 3 of the Convention in its procedural limb;

4. *Holds* that there has been a violation of Article 3 of the Convention in its substantive limb as regards the applicant's involuntary placement in a psychiatric hospital and psychiatric treatment;

5. *Holds* that there has been no violation of Article 3 of the Convention in its substantive limb as regards the allegations of violence and abuse at the hands of other patients;

6. *Holds* that there has been a violation of Article 14 of the Convention read in conjunction with Article 3;

7. *Holds* that there has been a violation of Article 13 of the Convention read in conjunction with Articles 3 and 14;

8. *Holds* that there is no need to examine the admissibility and merits of the complaint under Article 8 of the Convention, separately and in conjunction with Articles 13 and 14 of the Convention;

9. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 25,000 (twenty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 7,420 (seven thousand four hundred and twenty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid into the bank account of his representative;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 26 March 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim Deputy Registrar	Arnfinn Bårdsen President