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La CEDU su molteplici violazioni ai danni di donna moldava con disabilità mentale
(CEDU, sez. V, sent. 27 febbraio 2025, ric. n.36436/22)

La Corte Edu si pronuncia sul caso riguardante lo sfruttamento lavorativo e gli abusi sessuali subiti da una donna mentalmente disabile dopo che, terminata la sua presa in carico da parte dello Stato, a seguito di una procedura di deospedalizzazione, si era trasferita in una azienda agricola.
I Giudici di Strasburgo hanno osservato che il quadro giuridico e amministrativo relativo alla fine dell'assistenza statale per le persone affette da disabilità intellettiva presentava carenze, in particolare dovute alla mancanza di servizi di sostegno e monitoraggio. La conseguenza in questo caso è stata non solo l'omessa adozione da parte delle autorità di misure per proteggere la ricorrente, ma anche l'assenza di adeguate indagini sulle sue accuse di sfruttamento lavorativo e di stupro, di cui la donna affermava di essere vittima ad opera dei proprietari dell'azienda agricola presso cui si era collocata.
La Corte ha riscontrato, altresì, un atteggiamento discriminatorio da parte delle autorità moldave nei confronti della ricorrente, in quanto donna con disabilità intellettiva, concludendo che il sovrapporsi di elementi di vulnerabilità non hanno consentito alla ricorrente di ottenere giustizia, nonostante le sue esplicite e coerenti rimostranze.
Di qui molteplici violazioni riscontrate: violazione degli artt. 3 (divieto di trattamenti inumani o degradanti), 4 (divieto di lavoro forzato), 8 (diritto al rispetto della vita privata e familiare) e 14 (divieto di discriminazione) della Cedu.

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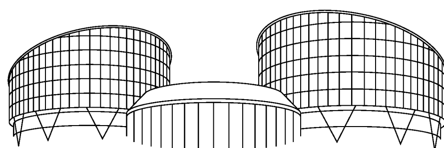

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF XXXXX v. THE REPUBLIC OF MOLDOVA

(Application no. 36436/22)

JUDGMENT

STRASBOURG

27 February 2025

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

In the case of XXXXX v. the Republic of Moldova,

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

Mattias Guyomar, *President*,
Armen Harutyunyan,
Stéphanie Mourou-Vikström,
Gilberto Felici,
Diana Sârcu,
Kateřina Šimáčková,
Mykola Gnatovskyy, *judges*,
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 36436/22) against the Republic of Moldova lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Moldovan national, Ms I.C. ("the applicant"), on 15 July 2022;

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

the decision not to have the applicant's name disclosed;

the observations submitted by the respondent Government and the observations in reply submitted by the applicant;

the comments submitted by the Council of Europe Group of Experts on Action against Trafficking in Human Beings and the AIRE Centre, who were granted leave to intervene by the President of the Section;

Having deliberated in private on 28 January 2025,

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

INTRODUCTION

1. The present case concerns the alleged labour exploitation and sexual abuse of the applicant, an intellectually disabled woman, in a family with which she was placed following her deinstitutionalisation from a State asylum (a residential neuropsychiatric institution). The applicant complains that the State failed to protect her from ill-treatment and human trafficking and to effectively investigate her allegations in that regard. She relies on Articles 3, 4 and 8 of the Convention, taken alone and read in conjunction with Article 14 of the Convention, as well as on Articles 6 and 13 of the Convention.

THE FACTS

2. The applicant was born in 1974 and lives in Soroca. She was represented by Ms S. Florescu and Ms O. Doronceanu, lawyers practising in Budapest and Chișinău respectively.

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

4. The facts of the case, as submitted by the parties and as can be seen from the documents produced before the Court, may be summarised as follows.

I. Background to the case

5. The applicant has a moderate intellectual disability. She was abandoned at birth and has no known relatives. At the material time she had been in State care her entire life.

6. On 5 May 2011 the Soroca District Court deprived the applicant of her legal capacity on the basis of a medical report of 5 January 2011, which assessed her as being incapable of understanding and controlling her actions owing to her severe intellectual disability. The Court was not informed about any subsequent appointment of a legal guardian for her.

7. At the time of the events, she had been living in a neuropsychiatric asylum under the auspices of the Ministry of Labour, Family and Social Affairs ("the Ministry") for twenty-four years.

II. The applicant's deinstitutionalisation

8. According to the applicant, a couple (L.P. and I.P.) approached the administration of the asylum with a request to take a person from the asylum into their care, a person who would be a suitable "bride" (*mireasă*) for G.B., an employee on their farm.

9. On 15 January 2013 L.P. submitted a request to the asylum administration to "take [the applicant] on holiday for a month". The same document contains a handwritten note by the applicant which states "I agree to go on holiday with L.P. for a month."

10. Subsequently, L.P. and I.P. sought the permanent placement of the applicant in their family. On 21 February 2013 the asylum sought the approval of the Ministry for the termination of the applicant's placement with the asylum (*exmatriculare*) to be integrated into the family of I.P. and L.P. The letter sent to the Ministry enclosed the following documents: the request made by I.P. and L.P., a request made by the applicant, the identity documents of I.P and L.P., unnamed certificates and the results of a social services investigation signed by the mayor of the village where the couple's farm was located.

11. On 18 March 2013 the Ministry replied as follows:

"... [A]fter examining the proposal ..., the [Ministry] supports the termination of services in respect of [the applicant] for the purpose of integrating her into the P. family and the community, in accordance with the established procedure.

At the same time, because cases referred for highly specialised social services are usually the most complex, the Ministry requests that you inform the district social services in the area where [the applicant] will reside about the closure of the case and its referral for post-intervention monitoring in the community, for the purpose of securing [the applicant's] social inclusion and participation in community life along with other persons."

12. On 28 March 2013 the director of the asylum issued Order no. 2 to terminate the applicant's placement with the asylum "for the purpose of integrating her into the family of L.P. and I.P.". The order referred to the Ministry's letter dated 18 March 2013.

13. On 12 February 2014 the asylum administration handed L.P. the applicant's identity documents (her identity card, birth certificate, insurance card, disability certificate and medical card) and L.P. signed a receipt confirming this.

14. The applicant lived at the farm belonging to the P. family from 15 January 2013 to 23 October 2018. According to the applicant, during her time there, she worked at the farm from 4 a.m. until dark every day, feeding the livestock, cleaning the stalls and other premises at the farm, carrying the milk and disposing of the rubbish for the entire farm. On a few occasions she was paid around 5 to 15 euros (EUR) (100 to 300 Moldovan lei (MDL)). At an unspecified point in time I.P. started raping and sexually abusing her. According to the applicant, she was subjected to rape for years despite her protests. She was told to keep silent otherwise her dogs would be killed, and that the

police would not intervene because the son of L.P. and I.P. was in the police. The applicant escaped from the farm on several occasions and stayed in abandoned trains as she had nowhere to go. I.P. would find her and return her to the farm.

15. On 23 October 2018 the applicant ran away and called a hotline for people with disabilities operated by a non-governmental organisation, the Alliance of Organisations for Persons with Disabilities, and complained of the treatment she had been subjected to at the farm: working for free, the sexual abuse at the hands of I.P., and the physical and psychological abuse and threats by L.P. The NGO contacted the police the following day, relaying the complaints made by the applicant over the phone.

16. On 25 October 2018 the applicant lodged a formal criminal complaint alleging that I.P. had sexually abused her. Her complaint, handwritten by a police officer, was made in the presence of a local social worker, V.N., and read as follows:

"I [have] asked the police to question and bring to justice I.P., who, while I was working at his farm, had [sexual relations] with me, exploiting the fact that I have nowhere to go and am intellectually disabled. I was unable to refuse because he convinced me and tricked me [into believing] that no one would find out. I am sick of such a life, I want to leave the farm, I am afraid that I.P.'s wife will find out. He is not holding me by force, I can leave whenever I want."

17. The applicant was interviewed as a victim on the same day, in the presence of the social worker V.N. Her statement, handwritten by a police officer, read as follows:

"In response to the questions which have been asked, I am able to reply that ... while [I was] in the asylum ... an employee offered me work at a farm, where I could also meet a boy. She took me home and on the same day I.P. took me from her [and took me] to the farm, where I was supposed to work and live. He told me that he would feed me [and] buy me clothes and everything I needed. There was no agreement about payment, but I agreed to stay because I had nowhere to go and I knew the asylum would be closed. At the farm I met G.B., he was from another [orphanage]. I became friends with G.B. and [we] lived together [and] had sexual relations. We both took care of the cows, pigs and goats. It was winter when I.P. told me to come to his house to clean. He closed the door and told me to undress and lie down on the bed to have sex. I told him I was afraid that L.P. would find out, but he reassured me that she was away."

The statement then included a description of the sexual intercourse which had taken place, before continuing as follows:

"It was pleasurable, it was all voluntary, then we had sex at the farm. I.P. would send G.B. to do chores [while we had sexual relations]. I told him every time that I did not want to have sex with him, but he told me that he loved me and I agreed."

The statement then included another description of the sexual intercourses which had taken place.

"He often came and sought sex from me and I could not refuse, he told me that he loved me and I agreed. He never beat me or threatened to beat me. When I told him that I would not have sex with him, he would say that I was his mistress. I was afraid his wife would find out. I enjoyed having sex with him.

My complaints against I.P. are that I no longer wish to have sex with him, I am sick of it. ... Last time we had sex I told him that I did not want to, but he said it would be fast and I agreed. During oral sex I noticed that he had a scar in his [genital area] like one from an operation. I told G.B. about all

this and ... he told his friend, who got a phone number from the Ministry and promised to call it. G.B. said that I should talk to the mayor, but I was afraid that L.P. would find out and [I] called the hotline instead and told them about my situation with I.P."

18. On 25 October 2018 the local authority called an extraordinary multidisciplinary meeting to discuss the applicant's case, following the complaint lodged by the NGO on her behalf. The meeting was attended by the social worker V.N., a police officer, the mayor and an educator. The applicant reiterated her statements about the sexual abuse by I.P. and stated that she was afraid of I.P. and L.P. The social worker and the educator stated that the applicant could not remain in the care of I.P. and L.P. As a result, the applicant's situation was assessed as being high risk and it was decided that she would be temporarily placed in an asylum in the district until the circumstances of the case were established.

III. The criminal investigation

19. On 29 October 2018 a criminal investigation was initiated into the allegations of rape and sexual violence (under Article 171 § 3 (a) and Article 172 § 3 (a1) of the Criminal Code). The decision referred to the applicant being forced to engage in sexual relations against her will by I.P., who had allegedly used psychological control and abused her inability to defend herself. The applicant was granted victim status.

20. On 31 October 2018 the applicant was heard by the police in the presence of the social worker V.N. and made statements almost identical to those recorded on 25 October 2018 (see paragraph 17 above). In addition, she noted that once when she had refused to have sex with I.P., he had threatened to kill her dog. She further clarified that she had been ashamed to report anything to the mayor and in any event no one would have believed her. The applicant had not wanted L.P. to find out because L.P. had been "like a mother" to her. The applicant also stated that I.P. had never physically forced himself on her, but had convinced her every time with "nice words".

21. On 18 February 2019 the applicant was heard again. She answered various questions in the presence of her lawyer and a psychologist, and stated as follows:

"... I was abandoned by my mother at the hospital. I don't know my mother or my father, or if they are still alive. As a child I was placed in an orphanage, [and] later in a boarding school and then in the asylum, [where] I stayed for many years. I could leave the asylum only if I asked for permission, I would work for people in the village ... and they would pay me MDL 30 or 40 [per day]. ...

A few years ago a woman working at the asylum told me that I could leave the asylum to live on a farm, where the masters (*stăpâni*) would take care of me. So I left with her and she called someone who came and picked me up, [I.P.]

I.P. took me to the cattle farm, where I met his wife, [L.P.] It was autumn and he took me to the farmhouse ..., where a man [G.B.] had lived for some time. I.P. told me that I would be G.B.'s bride and told G.B. that he had brought him a bride and that we would live together on the farm. From that day on I stayed and lived with G.B. at the farmhouse.

At first, I.P. and L.P. rarely came to the farm, I thought they would be like parents to me. They told me that I would continue living there and that they would bring me clothes, shoes and food, while I had to work with G.B. at the farm. I worked each day at the farm, I woke up at 3 or 4 a.m. because I had to take care of the cows ...

After I had been at the farm for some time, I asked I.P. and L.P. to pay me at least MDL 700, and L.P. said that both G.B. and I would get paid. But later neither I.P. nor L.P wanted to pay us, [and] L.P. would get upset when I asked for money and say that we did not need money because she brought us clothes and food. During the years at the farm I was paid about four times, when I asked for pay, around MDL 300, 200 or 100. L.P. would bring us food at midday, [and] in the evening we usually did not eat or I cooked something from the vegetables they left us. I would buy things for myself from the [disability] pension I received (MDL 700). L.P. would never buy new things for me, she bought second-hand clothes or gave me clothes that she had worn ...

L.P. was not always nice to me. Often she would be upset and would shout at me when there was no milk or when she did not like something, I do not even know why she was upset. Once she beat me because I had taken a carpet outside to clean [it] but it had got wet because it had rained. She slapped my face, pulled me by the hair and shook me a few times. Another time she beat me when a cow got sick, [and] G.B. witnessed her beating me. When she was upset, L.P. would call me names [and] threaten to kill me or to chase me from the farm. She chased me from the farm several times, especially when I said that I did not want to work without payment. Once she chased me away and I stayed with my puppies [in a train wagon] for four days without any food. Although they forced me [to go] away, I returned because I cared for G.B. and had nowhere else to go. Sometimes L.P. would send G.B. or I.P. to bring me back.

They would also mistreat G.B. [and] would shout at him [and] hit him (L.P. hit him once with a bucket because a cow had died), and I remember that [once] G.B. left the farm but L.P. later found him because there was no one else to work at the farm and told him to come back, promising to never beat him again, and he returned.

I.P., the owner of the farm, has often humiliated me. The first time he told me to come to his house in the village [was so I could] fetch a needle and thread. L.P. was not at home. I.P. locked the door and [forced me to have oral and vaginal sex]. When I returned to the farm I told G.B. what had happened, but G.B. was afraid of I.P. and did nothing. I could not become pregnant because when I was pregnant at 20 the doctor from the asylum took me to the hospital for an abortion ... when I woke up [from the anaesthesia] I was told that I had had [fallopian] tubal ligation and would not be able to have children. I wanted to have children, but I was not allowed."

The applicant described nine occasions when oral sex had taken place and two occasions when vaginal sex had taken place, referring to the fact that she had cried, refused to have sex and complained of intercourse being painful. She said that I.P. had attempted anal sex, threatened to kill her kittens and forced her to keep their sexual relations a secret. Her statement then continued as follows:

"I called the hotline because I no longer want such a life. I want I.P. to leave me in peace, no longer chase after me [and] no longer seek sex from me. I am not lying, I am telling you how things are."

22. A medical examination report dated 6 November 2018 revealed that the applicant had a sexually transmitted disease, but no signs of violence on her body.

23. In reply to a request by the prosecutor for an inquiry into the employment status of workers at the farm, on 19 November 2018 the State Labour Inspectorate replied that on the basis of documents and explanations provided by the owners of the farm (I.P. and L.P.), it had been impossible to establish any labour relations between the applicant and the farm owners. The Labour Inspectorate

stated that it was in fact for a court to determine if such relations had existed, on the basis of evidence to be provided by the applicant. A subsequent official check carried out by the Labour Inspectorate on 10 June 2019 focused on reviewing official employment documents and concluded that there was no labour agreement in respect of the applicant.

24. A medical examination report dated 22 November 2018 revealed that I.P. had a ten-centimetre scar in the inguinal area and no sexually transmitted disease.

25. A psychiatrist and a psychologist examined the applicant on 11 February 2019. The experts were asked by the prosecutor to clarify if the applicant was able to correctly determine the circumstances of the case and distinguish reality from fantasy, if there were signs of trauma after the alleged rape, sexual abuse and exploitation, and if the applicant showed any signs of dependency on the perpetrator. The report issued concluded as follows:

"[The applicant] has a moderate intellectual disability, ... underdeveloped reasoning [and] affective instability ... She had the same condition at the time of the events. She has limited capacity to understand her own actions and to make statements. She needs the support of a legal representative. ... She is capable of carrying out unskilled work and taking basic care of herself. ... [She] is not prone to exaggerating perceived reality [and] there are no signs of pathological fantasy. ... [She] has an IQ of 50. ... [She] has a minimal degree of personal and social autonomy [and] is able to handle simple social situations, but would be disoriented in subjectively complex circumstances. ... Her affective autonomy is not fully developed [and] she has a high [level of] suggestibility.

To conclude, [the applicant] has a mild intellectual disability [and] limited capacity to correctly understand the nature and content of actions carried out in respect of her, but she is able to explain, in simple language, facts which are important for the case. There are no signs of increased imagination [or] exaggeration of perceived reality, [and] no inclination towards fantasy. There are no signs of psychological trauma. She has limited capacity to understand her own actions [and] what is happening to her, and to put up resistance; [she] is prone to developing various forms of dependency on third parties, including the perpetrator."

26. On 21 February 2019 the prosecutor formally charged I.P. with rape and sexual abuse (under Articles 171 and 172 of the Criminal Code). He noted that I.P. had known about the applicant's limited capacity to understand, her intellectual disability and her previous institutionalisation at the asylum and that I.P., together with his wife, had taken the applicant from the asylum and psychologically forced her to have sexual relations on a regular basis by inducing her to do so or threatening to kill her dogs, to which she was particularly attached. The prosecutor relied on the results of the medical report dated 11 February 2019, noting the applicant's diagnosis and the fact that she had no inclination to exaggerate perceived reality or fantasise, as well as the absence of any signs of psychological trauma.

27. On 18 March 2019 the applicant, represented by a lawyer, asked the Soroca prosecutor to additionally investigate I.P. for human trafficking and sexual harassment (under Articles 165 and 173 of the Criminal Code). The request referred to the applicant's statements made to the police, the medical report of 11 February 2019 and the psychological assessment of 6 November 2018 (see paragraphs 20, 25 and 43), pointing out that the facts clearly included elements of harassment, labour exploitation and sexual exploitation. It noted that the applicant had been taken to the farm, where L.P. and I.P. had exploited her, taking advantage of her vulnerability (her intellectual disability,

extreme poverty and lack of family). The applicant had repeatedly stated that she had been humiliated, insulted, beaten, threatened and forced to leave the farm, a place to which she had returned because she had had nowhere else to go. She had worked hard at the farm, without any payment or social security.

28. During the criminal investigation, the prosecutor also heard the defendants and six witnesses. Both defendants denied having taken the applicant to their farm for labour exploitation.

29. The witness V.N., the local social worker, stated that she had known that I.P. and L.P. had taken the applicant, who had a mental disorder (*bolnavă mintal*), from the asylum. The applicant had done various chores at the farm. The applicant's official residence had been with L.P. and I.P., but their guardianship had not been formalised. The witness did not know how long the applicant had been at the farm, but she knew that the applicant was registered as a person with disabilities and was entitled to a disability pension, which she cashed in person. The witness would often meet the applicant at the local shop, where the applicant would buy things for herself. Each time the witness would ask the applicant how she was, and each time the applicant would reply that everything was going well. The applicant would be surrounded by her dogs. The witness described the applicant as calm and obedient, but she had heard from L.P. that the applicant would drink alcohol and behave aggressively. On 24 October 2018 the association in charge of the hotline had told her about the applicant's complaint of rape and sexual assault. When the witness had interviewed the applicant, she had confirmed the statements made to the hotline. The witness had been present at the applicant's initial interview with the police, where she had stated that on the one hand, I.P. had sexually abused her, but on the other hand, she had taken pleasure in those sexual relations. The witness was unable to assess the applicant's credibility, but did not exclude the possibility that the applicant was untruthful "because, as a person with disabilities, she enjoyed drawing attention to herself".

30. The witness G.B. stated that he had been working at the farm for the past seven years and until recently he had received payment for this, but since then he had been paid in cigarettes, food, clothes and free housing. As he had nowhere else to go, he preferred to stay at the farm and work for free. He had never been beaten or threatened by L.P. and I.P. Three to four years previously, the masters had brought the applicant from the asylum to work with him at the farm. She would mostly clean the farmhouse and the farm, cook food and take out the cow manure. The previous winter the applicant had told him that I.P. had been humiliating her by forcing her to have vaginal and oral sexual intercourse. When he had asked her why she had not told I.P. that she did not want to have sexual intercourse, she had told him that I.P. had threatened to kill her dog, to which she was particularly attached. Once he himself had witnessed the applicant having sex with I.P. in the warehouse. She had been trying to get out from underneath I.P., but had not succeeded and had not shouted out either. He had known that the applicant had been warned not to shout out so that L.P. would not find out. He had then taken his mobile phone and filmed a few moments, but later he had dropped his phone in water and lost all the recorded material. The applicant had often complained of being fed up with her life because I.P. would harass her and insist on having sexual intercourse with her every time he saw her. She had also told him that she wanted to leave the farm, but I.P. had threatened to find her with the assistance of the police and beat her. Recently, the applicant had told him that she could not endure oral sex any longer because I.P. would stick his

penis all the way down her throat. On 24 October 2018 the applicant had told him that an acquaintance from the asylum had given her a phone number from the Ministry and that she had called the number and talked to a woman about everything. The witness also personally resented I.P. because he had humiliated the applicant, who had been like a wife to him. However, he could not change anything or say anything to I.P. because he feared for his work. Although the applicant had come from an asylum they had got on well. She could think clearly and he did not think she was untruthful. Moreover, he himself had witnessed how I.P. had had sex with the applicant. She had also talked about this to M.V. (another witness, see paragraph 31). G.B. confirmed that the applicant had not been paid for her work.

Subsequently, G.B. was interviewed again and he changed his initial statements, stating that he had never witnessed the applicant being raped by I.P. or filmed this, and that it was the applicant who had asked him to lie to the police just to blackmail L.P. and I.P. into buying her a house in the village. He stated that he had no complaints about I.P. and L.P. because they had behaved well and had paid him for all his work. He also said that the applicant had been paid for her work, "although she had been brought to the farm to be [his] wife". She had not worked at the farm other than to cook for him and clean the farmhouse. He confirmed that the applicant had told him that she was having sexual relations with I.P., but he disputed the truthfulness of her statements.

On 18 March 2013 the prosecutor cross-examined the applicant and G.B. The applicant maintained her previous statements and stated that G.B. had changed his original statements under pressure from I.P. and L.P.

31. The witness M.V. confirmed that in September 2018 the applicant had complained to him that she was having sexual intercourse with I.P. against her will and that he had threatened to kill her dog. He also confirmed that the applicant had cleaned at the farm, but he was unaware of the legal arrangements relating to the work.

32. The witness C.T. confirmed that she had been working at the farm when the applicant had been brought there. They had had a number of arguments and had even fought "because of some lies". The witness had left the farm three months after the applicant's arrival there. She had not witnessed any violence in respect of the applicant. The applicant would clean and cook for G.B. and would sometimes have some sort of crisis, shouting and hitting her head, but she would be calmed by L.P. The witness was unaware of any sexual relations between the applicant and I.P., but doubted that I.P. "would have taken her seriously" (*și-ar fi pus mintea cu aceasta*) because she was "a sick person and [could] invent a few [stories]". The applicant would occasionally leave the farm and, with difficulty, the masters would find her in the woods or in bars. They would buy her everything she wanted – a phone, a television.

33. The witness M.M. confirmed that he had seen the applicant cleaning the farm and the farmhouse with G.B. He stated that the applicant and G.B. had been paid for their work at the farm, but he was unaware how much. He knew that the applicant was intellectually disabled.

34. The witness G.I., the director of the asylum, stated that before being deinstitutionalised, the applicant had been invited to the home of L.P. and I.P. on several occasions so that she could get used to them. Later, L.P. and I.P. had made a formal request to take the applicant into their family because she did not suffer from a severe disability like the other residents. He was unaware of how the applicant had become acquainted with L.P. and I.P. When the file for her deinstitutionalisation

had been complete, the applicant had been "expelled" from the asylum and integrated into the family of L.P. and I.P.

35. On 20 August 2019 the prosecutor initiated another criminal case in relation to charges of human trafficking involving rape (Article 165 § 2 (g) of the Criminal Code). The same day the case was joined to the one initiated in 2018 (see paragraph 19 above). On 17 May 2019 another criminal case was initiated in relation to charges of human trafficking involving two or more perpetrators (Article 165 § 2 (d) of the Criminal Code), to be joined to the initial criminal case on 16 December 2019.

36. On 17 September 2019 the prosecutor formally charged I.P. and L.P. with human trafficking involving two or more perpetrators (Article 165 § 2 (d)). In particular, it was alleged that together they had taken the applicant to the farm and forced her, by threats and physical violence, to care for the livestock without pay. The prosecutor acknowledged that the applicant was highly vulnerable owing to her intellectual disability. On 20 December 2019 the prosecutor formally charged I.P. with human trafficking (Article 165 § 2 (d)), adding to the report allegations of sexual relations which were classified as non-commercial sexual exploitation and thereby essentially dropping the rape and sexual abuse charges. On the same day, the prosecutor formally charged L.P. with the same charges of human trafficking as before. In December 2019 the case file was ready to be sent for trial.

IV. Complaint concerning the legal classification of facts

37. On 24 December 2019 the applicant and her lawyer were informed about the content of the criminal file before it was sent for trial. The applicant's lawyer agreed with the charges on human trafficking. However, she found that the dropping, in essence, of the charges of rape and sexual abuse was unjustified in the light of the applicant's clear statements, and sought the continuation of the investigation into these charges.

38. On 26 December 2019 the prosecutor examined that request and rejected it, noting that the charges brought against L.P. and I.P. under Article 165 § 2 (d) of the Criminal Code referred to the factual elements of sexual relations, and there had been no need to examine those relations under separate provisions of the Criminal Code.

39. The applicant appealed against the prosecutor's decision, arguing that there had been a failure to provide any reasons for essentially dropping the charges of rape and sexual abuse. She noted that the initial complaint had focused mainly on these factual elements, and that the prosecutor had incorrectly reclassified the complaints of rape and sexual abuse as "non-commercial sexual exploitation". The reclassification failed to take into account the rape and sexual abuse perpetrated against her by means of physical and/or psychological control exerted owing to her vulnerability and inability to defend herself. A reclassification would have been acceptable under Article 165 § 2 (g) of the Criminal Code, which referred to the use of rape in the context of human trafficking. There had also been no investigation into the complaints of sexual harassment.

40. On 29 January 2020 a hierarchically superior prosecutor rejected the applicant's appeal, finding that the classification under Article 165 § 2 (d) of the Criminal Code had been correct and that there was no need for separate charges of rape, sexual abuse and harassment.

41. On 4 February 2020 the applicant appealed against that decision to the investigating judge, relying on the same reasons which she had relied on previously (see paragraph 39 above).

42. In the meantime the case was sent for trial, and on 18 May 2020 the Soroca investigating judge declined jurisdiction in favour of the court dealing with the merits of the criminal case. The court

relied on procedural rules providing that all complaints and requests made after the sending of a case for trial were within the competence of the court dealing with the merits of the case. The judge's decision to decline jurisdiction could be appealed against only if the merits of the case were also appealed against.

V. Psychological reports

43. On 6 November 2018 a psychologist examined the applicant to assess her level of autonomy, in order to develop a plan for her social inclusion. The report concluded as follows:

"Functional independence: limited to very limited, equivalent to that of a ten-year-old. This assessment is based on the following four-factor assessment:

Motor skills correspond to her age, equivalent to [those of] a person aged thirty-six. She has the balance, coordination, force and resistance of a person her age.

Communication skills and social interaction: very limited to negligible, equivalent to [those of] a five-year-old.

Personal autonomy: very limited, comparable to [that of] a twelve-year old. She has difficulty preparing food, using the bathroom [and] taking care of herself.

Skills in relation to living in the community: very limited, at the level of an eight-year-old. She has very limited or no skills in relation to managing time and money. Her inclusion in a vocational program will be difficult.

She has minimum difficulties in managing her behaviour. In view of the findings above, [the applicant] needs occasional support in certain areas."

This report was submitted to the criminal case file by the applicant's lawyer on 18 February 2019.

44. The applicant's lawyer sought an independent psychological assessment of the applicant. A forensic psychologist interviewed the applicant using methods adapted for her intellectual disability. The report dated 4 January 2020 read as follows:

"High score for intense negative emotions [when referring to the traumatising events]: fear, helplessness or dread, a feeling of being in danger again, fits of irritation or anger;

Medium score for reliving and reflecting on the traumatic events;

High score for avoidance and dissociation: shows [signs of] increased alertness [and] is extremely sensitive to the environment. Shows [signs of] increased sadness. Attempts to avoid anything related to the traumatic events; has a tendency to isolate and detach herself from others, feelings of numbness and emotional dullness, [and] a confused and limited view of the future;

High score for hypervigilance. Has developed the conviction that the world is a dangerous place and that she always needs to be on [her] guard. ... Nightmares related to the traumatic events, in which she feels that or acts as if the traumatic events have reoccurred. Difficulty in managing emotions, [and] memories of the traumatic events cause sudden anger, anxiety or sadness;

Low score for functional disorder, if symptoms are unrelated to medication, substance abuse or illness.

On the basis of the replies obtained, ... [the applicant] lacks the ability to objectively analyse types of relationships, what is good or bad and what may cause discomfort. ... [She] refers to the past neutrally with certain unpleasant memories ... [she has] a sense of guilt and regret about leaving the asylum to go to the farm. ... [She] has a positive affective tone, [is] naïve with increased vulnerability, [and her] happiest memories are [those] related to the boarding school ... no pleasant moments have

been referred to relating to her time at the farm, except her attachment to the dogs ... Her attachment to [L.P. and I.P.] is perceived to be a parent-daughter relationship, [and she] often says 'I am your daughter", 'she is like a mother to me', '... and I told him, you are my father ...' Considering that [the applicant] grew up and spent most of her life in an institutional setup and did not have a family, [she] perceived [L.P. and I.P.] as her mother and father, as [her] family; this [perception] was referred to on several occasions during the assessment and in different contexts. [I.P.]'s attitude, labour exploitation and sexual abuse have had the biggest impact on [the applicant's] emotional condition. [The applicant] suffered psychological and emotional trauma as a result of the exploitation, abuse [and] rape[s] which took place during her stay at the farm ... She scored high on the scale for authority and respect of hierarchy. She demonstrates naivety and gullibility in relation to persons who take care of her. I quote, 'If older people tell me to do something, I do it; that is what I was taught at the [asylum]'. This behaviour is typical of people who grew up in an institutional setup, with functional rules for respecting hierarchy and complying with strict rules. ... [The applicant] is unable to identify and analyse the positive intentions behind a [particular type of] behaviour, real dangers to life and security, or circumstances which may [lead to] stress, control, blackmail or threats to life and safety ... Sexual abuse represents one of the most traumatising experiences for the victim, and the extent of the trauma is even greater when the perpetrator is the very person who was meant to protect the victim and has an affectionate bond with her. This situation leads to a loss of trust, disappointment, confusion and a feeling of insecurity in the victim. ...

Recommendations:

[The applicant] needs to be placed in a specialised shelter to prevent repeated abuse, neglect and exploitation, and long-term psychological support to address the consequences of post-traumatic stress disorder. ..."

VI. Court proceedings

45. The first-instance court heard eight witnesses, two defendants and the applicant.

46. L.P. did not admit her guilt and stated that she had met the applicant after approaching an employee at the asylum about "finding a woman (*fată*)" from the asylum for their employee G.B. because he had wanted a family. The applicant had been offered to them. The employee at the asylum had introduced the applicant to I.P. and L.P. after supposedly taking the applicant home for fifteen days. After that, L.P. herself had asked the asylum to allow the applicant to come to the farm for thirty days. During that time, the applicant had met G.B. After the initial thirty days, the applicant had not wanted to go back to the asylum. They had asked what needed to be done to get the applicant out of the asylum. They had followed the procedure, collected the necessary documents and made a formal request, which had been accepted, and that was how they had taken the applicant out of the asylum and into their family. For a month the applicant had lived in their house. Every day they had gone to the farm where G.B. worked and lived. The applicant had grown fond of G.B. and had stayed at the farm to live with him. Everything had gone well during the first half of the year; the applicant had behaved well and helped her around the house, but then problems had appeared. The applicant had become acquainted with D., who lived in the forest and took care of goats. Every evening she would go to see D. This had gone on for two years. The applicant had brought fifteen dogs and twenty cats to the farm, and had slept with the dogs. She had never forced the applicant to work. The applicant had helped G.B. of her own free will. The applicant had told

her about anything and everything. The applicant had not had sexual relations with her husband. Later, she had seen the applicant with another man who, she had learned, was staying at the asylum. Once the applicant had left on Friday and come back on Sunday. L.P. had shouted at the applicant then and the applicant had been upset for this reason. She said that she had never hit the applicant, but admitted that she had shouted at her. The applicant had not been an official employee; she had cashed in her disability pension in person and she alone had decided how to use the money. L.P. stated that she had heard rumours about the applicant spending money on alcohol. The applicant had had everything she needed – shelter, food. She had never threatened the applicant with the police. She was not aware that the applicant was unable to take decisions independently. The applicant had helped G.B. clear out the manure. The applicant had not liked G.B. because he did not bathe, and had preferred D. instead. L.P. had never chased the applicant away. She admitted that she had gone to the asylum and had been told that the asylum was unable to take the applicant back because she had been placed with their family permanently.

47. I.P. did not admit his guilt and stated that he had never had any sexual relations with the applicant. He had never physically assaulted her and had never forced her to work. He corroborated his wife's statements concerning the applicant's placement in their family. He had brought the applicant back home from the forest, from the sheepfold. He admitted that he did have a scar in the inguinal area. He said that the applicant might have seen it when he had got undressed to swim in the pond with all the other farmworkers. He had convinced the applicant to return to the farm because he had considered that he was responsible for her. He had always gone to the farm with his wife. There were no permanent employees at the farm. The applicant would run away from home because she had "got a taste" for men.

48. The applicant's statements before the court were similar to those made previously at the criminal investigation stage (see paragraph 21 above). In addition, she mentioned that I.P. had used a condom and that she was unable to imagine what would have happened had she refused to have sexual relations with him.

49. The witness M.M., a former worker at the farm, made statements similar to those which he had made before (see paragraph 33 above), but also specified that he had known that the applicant had been brought to the farm to live with G.B., and that although she had not been forced to work, she had been told to clean the house where G.B. lived. The applicant had done chores around the farm, but of her own free will. He assumed that the applicant had been paid for her help around the farm.

50. The witness C.T., a former worker at the farm, stated that I.P. had brought the applicant to the farm, and her understanding was that the applicant had been brought to the farm to live with G.B. There had been around twenty-four cows at the farm. The applicant would clean, cook and wash the clothes. She had never witnessed the applicant working at the farm. She had once seen the applicant clean a cow's stable, of her own free will. She stated that she had seen the applicant drunk on several occasions, but had never witnessed L.P. shouting at the applicant.

51. The witness G.I., the director of the asylum, confirmed that I.P. and L.P. had repeatedly asked for the applicant and had subsequently followed the procedure to have her placed in their family. The applicant herself had told him she wanted to live with the family and no longer wished to stay at the asylum. After she had left in 2013, he had never seen her again. He did not know I.P. and L.P., and the law did not require any verification of their living conditions. It required only a social

services investigation and a list of documents. Between 2013 and 2018 he had not received any news of the applicant. She had been able to live independently. He was unaware of her previous pregnancy and abortion, and she had never been integrated into another family. He was unaware of any complaints concerning her integration into the family of L.P. and I.P.

52. The witness V.N., the social worker, said that she had known the applicant since 2013 as a person who had a significant disability and had been registered as such with the local social services at L.P.'s request, in connection with her deinstitutionalisation from the asylum. The applicant had received a disability pension and had cashed it in at the post office. The applicant had lived at the farm, where the living conditions were good. She had talked with the applicant and had been told that the applicant helped I.P. and L.P. at the farm, caring for the livestock. She was unaware of the exact nature of chores that the applicant had done, and whether the applicant had been officially employed there. The applicant had not had any arguments with people in the village. Once L.P. had complained that the applicant would drink alcohol and behave aggressively. She had been notified by an NGO about allegations that I.P. had raped the applicant and had been informed that the applicant needed to be removed from that family. The police had come because they had received a similar complaint. A meeting had been held at the town hall to discuss the applicant's situation, following which it had been decided to remove her from the family of I.P. and L.P. The applicant had never reported any abuse by I.P. and L.P. The applicant had never argued that she had been kept in the family by force. She had not carried out the social services investigation. She had visited the applicant at the farm only once to see her living conditions. She had never invited the applicant to a meeting, but she had often met her around the town hall. She had no personal file on the applicant. She had never seen the applicant intoxicated. She did not know whether the applicant had had a general practitioner. The applicant had lived with G.B. at the farm. I.P. and L.P. were a good family who behaved well.

53. The witness M.V., a former employee at the farm, stated that he knew the applicant from his time at the farm. She had already been there when he had started working there. The applicant would cook for G.B. and would help with the cleaning. He had once seen how the applicant was paid. Once the applicant had come and told him and G.B., while crying, that I.P. had beaten and raped her. He had not advised her to do anything and had not given her any phone number to call. L.P. and I.P. had treated the applicant like their child. He could not say if G.B. had been aware of what was happening to the applicant. He was unaware of the relations between G.B. and the applicant. He did not know whether the applicant had ever left the farm and then returned. He had never seen bruises on the applicant's body. He believed that the applicant had been untruthful when she had told her story about I.P. She had said that I.P. would rape her whenever he got hold of her. He understood that I.P. had humiliated the applicant.

54. G.B. stated that he had worked with the applicant at the farm for five years. He had been working at the farm and had asked I.P. and L.P. for a housewife (*gospodină*). They had agreed to bring him a woman and had brought the applicant to him. They had lived together at the farmhouse. She would wash their clothes and bed linen, and he had always been clean and cared for. She would clear out the manure and sweep the farm. He had not received a monthly salary, but would get some money every time he asked. The applicant had told him that she had not received any payment. L.P. and I.P. had been nice to both him and the applicant, while the applicant would occasionally get

drunk and be rude to them, and would threaten to hang herself. The applicant had wanted a house from them, and L.P. and I.P. had told her to be patient. They had asked her to wake up at 6 a.m., but she would wake up at 4 a.m. to clear out the manure. Nobody had made her work, she had done everything of her own free will. Nobody had forced her to stay at the farm, but she had kept saying that she wanted a house of her own. He was unaware of the relations between I.P. and the applicant, but she had told him about consensual sexual relations with I.P. He had never witnessed anything and had not had a phone to film anything. He thought the applicant was lying about I.P. He had told the police what the applicant had asked him to say, but in fact he had never seen or said anything. The applicant had told him that I.P. would not leave her in peace. At the time he had suggested that she disclose everything to L.P. He had not seen the applicant after she had left the farm. Before leaving, she had asked him to support her and lie to the police by telling them that he had seen and filmed one act of sexual intercourse between her and I.P. He himself had left the farm a long time ago. He and the applicant had lived together as husband and wife, and they had had sexual relations. At one point the applicant had left the farm and lived in a train wagon, but she had left on her own and returned on her own. She had come back to the farm when she had been cold. At the farm, they had been free to come and go. When L.P. and I.P. had brought the applicant there, they had told her to cook and take care of him. They had never put her to work. Whatever she had done, she had done of her own free will. He had known about the applicant's disability pension, but said that she had used the money to buy alcohol. Food had either been brought by L.P. or bought with money provided by L.P.

55. A psychologist, N.P., who was heard at the request of the victim, stated that on the basis of the assessment dated 6 November 2018, the applicant had the comprehension and development of a six-year-old child. According to her, the effects of institutionalisation explained why the applicant had not left the farm: a person who had lived in an institution from birth did what she or he was told to do. Emotional, physical and sexual abuse had been common at the asylum, and the applicant had considered that to be normal and acceptable. The psychologist had personally interviewed people at the asylum while she had been in charge of a project for people with disabilities from 2017 to 2019, and had heard various accounts of abuse. She had given them the hotline number to report abuse. One of the asylum residents had shared the hotline number with the applicant when she had revealed her abusive situation to him. The applicant had then called the hotline on 23 October 2018. N.P. stated that the applicant had suffered a lot and was traumatised. She referred to the times when the applicant had fled the farm and gone to the abandoned train wagon but had later returned because it had been too cold. The applicant had wanted to have a place of her own and had been afraid of starving. Her occasional escape from the farm had been a form of protest. She had not noticed any exaggeration in the applicant's account. The applicant had been able to call the hotline on her own, which she had done. The psychologist thought that the applicant might have returned to the farm because of her attachment to G.B., as she had been seeking a family which she had never had. From her discussions with the applicant, the psychologist had discerned that there had been sexual abuse, and she personally thought that the applicant's statements were truthful.

56. A defence witness, C.G., who was a resident of the village, stated that she had seen the applicant in the village some five to six years earlier when the applicant had intended to marry a man with whom she organised drinking parties. The applicant had subsequently disappeared from the village

and then reappeared two to three years later, surrounded by dogs. One day the applicant had been drunk and had shouted about losing her pension. As she had known that the applicant lived at the farm, the witness had told I.P. and L.P. about the incident. The last time she had seen the applicant, about two years earlier, the applicant had been drunk and had lost her luggage in a bus. The applicant's behaviour had been inappropriate, and she had wandered around the village with her dogs once or twice a week.

57. The court examined the medical reports which confirmed the absence of signs of violence on the applicant's body but the presence of a sexually transmitted disease, and the absence of any such infection in I.P. (see paragraph 22 above).

58. On 28 January 2021 the Soroca District Court acquitted I.P. and L.P. of all charges. The court concluded that there was no evidence that the applicant had been threatened or forced to work with or without her consent, or that she had been sexually abused by I.P. The court did not find that the defendants had had any material interest in exploiting the applicant, or any intention of doing so. The applicant herself had acknowledged that she had voluntarily gone to stay at the farm to live with G.B. She had been able to leave whenever she had wanted because the farm was not fenced, and she would occasionally leave. She had voluntarily returned because G.B. had lived at the farm and because she had slept and eaten there, and had sometimes even shared meals with L.P. and I.P. She had been provided with clothes and food, without any restrictions, but she had not been paid like the other workers.

59. The court relied on the statements of witnesses who had reported that the applicant had repeatedly told them about rape and sexual abuse at the hands of I.P., but had also said that they personally doubted the veracity of her stories. The court dismissed the statements of the psychologist N.P., who had attested to the applicant's credibility, because her views were contradicted by "all witnesses" and were "nothing more than [her] personal conclusions".

60. The court concluded that the applicant had not been recruited, transported and harboured with her consent for the purposes of labour exploitation and non-commercial sexual exploitation, an offence committed by means of deceit and abuse of her vulnerability. The court dismissed the applicant's statements about rape and sexual abuse by I.P. because the medical reports indicated that she had a sexually transmitted disease which I.P. did not have. The applicant had been removed from the asylum officially and legally to integrate into a family. She had lived there by choice and there was no evidence of labour exploitation, sexual exploitation or mistreatment. She had been free to leave whenever she had wanted and she had not done so, and the failure to pay her a salary was a civil matter relating to legal relations.

61. The prosecutor appealed against that judgment, arguing that I.P. and L.P. had been aware of the applicant's disability but had had her work at the farm without payment, with her consent and through the use of physical and psychological violence. I.P. had also exploited the applicant sexually, abusing her vulnerability due to her disability, in particular her limited ability to understand actions carried out in respect of her. They had had a material interest in obtaining free labour.

62. The applicant also appealed against the judgment. She emphasised that the first-instance court had failed to factor in her vulnerability due to her lifelong institutionalisation, intellectual disability, extreme poverty and lack of any support services after her deinstitutionalisation. She noted that her

deinstitutionalisation had in fact been her transfer into domestic servitude, for the "intimate comfort" of G.B. and for the purposes of labour exploitation at the farm. The applicant had believed that her work at the farm was an arrangement against which she could not argue because she was fed, clothed and sheltered. The witnesses and the defendants had not denied that the applicant had worked at the farm, but had argued that she had voluntarily worked for no pay. The prosecutor and the court had failed to properly investigate her complaint of rape and sexual abuse, as the voluntary nature of non-commercial sexual exploitation which had been covered by the charges could not have accounted for her lack of consent to sexual relations with I.P. The court had failed to examine the merits of her complaint that the classification of I.P.'s actions had been incorrect. The court had also failed to consider the evidence of her traumatic response to the sexual violence (as detailed in the report of 4 January 2020, see paragraph 44 above) and the evidence attesting to her capacity to give an accurate account of perceived reality and the fact that she had no tendency to exaggerate or fantasise (the reports dated 6 November 2018 and 11 February 2019, see paragraphs 25 and 43 above). Instead, the court had relied on statements by witnesses who had little or no knowledge of the applicant's life and situation, and had failed to interpret her behaviour in the light of her intersectional vulnerability.

63. No new evidence was taken in the appellate proceedings, and the parties sought the verification and assessment of existing evidence. The Bălți Court of Appeal heard the applicant, four witnesses (V.N., M.V., G.B. and I.G.) and the two defendants. They made statements similar to those which they had given before the first-instance court.

64. On 17 June 2021 the Bălți Court of Appeal upheld the first-instance court's judgment and reasons. The court noted that the prosecutor had not submitted any new evidence and the assessment of the evidence made by the first-instance court had been correct. In particular, the applicant had never been illegally recruited, but had been placed in the family of I.P. and L.P. for the purpose of her social reintegration, on the basis of a decision made by a competent authority. The court reiterated that the applicant's statements about having sexual relations with I.P. were untruthful because he had not had any sexually transmitted disease, whereas she had. The court also disagreed that the applicant's assistance with the daily chores at the farm had constituted labour exploitation. The court disputed the psychologist's conclusions about the applicant's truthfulness and trauma because they had not been corroborated by the witness statements and the conclusions of the report dated 11 February 2019 (see paragraph 25 above), which, in the court's view, confirmed that the applicant was not credible and did not present any signs of psychological trauma. The applicant had stayed at the farm legally and she had been able to leave whenever she had wanted, but had not done so. The failure to pay her a salary was a civil matter relating to legal relations.

65. The Bălți Court of Appeal emphasised that in any event, one could not expect that the applicant would have complete freedom, because she had a mental disability and needed a legal guardian, in line with the judgment of the Soroca District Court of 5 May 2011 (see paragraph 6 above). In addition, the appellate court concluded that the first-instance court had not been authorised to examine the applicant's complaint that the legal classification of the complaints of rape and sexual abuse had been incorrect, because the first-instance court had had jurisdiction to examine the case only in relation to the charges brought, and any additional reclassification would have to have been requested separately.

66. The prosecutor and the applicant appealed against the appellate judgment. The prosecutor submitted that the appellate judgment lacked sufficient and relevant reasons to reject the evidence in the case file.

67. In her appeal on points of law, the applicant submitted that the courts had failed to examine the merits of her complaint that the classification of I.P.'s actions had been incorrect. The suggestion that a request for reclassification should have been made separately was confusing and lacked any legal basis. The appeal outlined the courts' failure to factor in the applicant's vulnerability. The courts had treated her as a statistically average woman, failing to assess her behaviour and traumatic response in the context of her personal background – her lifelong institutionalisation – and the impact of her intellectual disability. The applicant's alleged consent to labour exploitation was irrelevant, in circumstances in which the perpetrators had abused her vulnerability. She had never gone to the farm voluntarily, but had been taken there, and her inability to foresee possible dangers was determined by her intellectual disability. She had the intellectual development of a ten-year-old and had spent her entire life in various institutions. Owing to these circumstances, she was unable to identify signs of abuse and what action to take in order to break a cycle of abuse. The applicant had lived at the asylum for twenty-four years, and anywhere else had seemed like a better option to her. Although technically she had been free to leave the farm and had left on several occasions, spending days without food, she had returned every time because she had had nowhere else to go; the asylum administration had confirmed that she could not return to the asylum, and there had been no support network on which she could rely, as indicated by the witness statements. Nobody had checked up on her between 2013 and 2018. After deinstitutionalisation, the applicant had ended up at a farm where the owner had harassed her and repeatedly forced her to have sexual relations with him. From her statements, it was evident that those events had been traumatic for her, and she had experienced humiliation, pain, and an insecure and hostile environment. On the one hand, there had been an expectation that she would be grateful to I.P. and L.P. for taking her into their family and for feeding and clothing her; on the other hand, she had had to work for free and tolerate the abuse and rape perpetrated by I.P., who had been well aware that her complaints would not be taken seriously owing to her disability. The applicant had never said that those sexual relations had been consensual. Their classification as sexual exploitation had been inadequate. The appellate court had failed to provide relevant reasons for rejecting the psychological reports attesting to the applicant's capacity to accurately describe her perceived reality, her gullibility and her traumatic perception of the time she had spent at the farm, but had instead relied on the statements of witnesses who had had either little knowledge of the applicant's life at the farm because they had worked at the farm for two hours a day (M.M. and C.T.), or no knowledge of her during the relevant period of time (I.G. and V.N.). The Ministry had authorised the applicant's "expulsion" from the asylum, but not her placement with L.P. and I.P. The State's failure to monitor and protect persons with disabilities had been a direct cause of the abuse to which the applicant had been subjected. The applicant relied on Articles 4, 8, 13 and 14 of the Convention.

68. On 1 December 2021 the Supreme Court of Justice upheld the previous court judgments, rejecting the appeals on points of law as inadmissible. The court acknowledged the applicant's vulnerability, but argued that her placement with L.P. and I.P. had not been akin to trafficking, but a legal means of social reintegration. In respect of the allegations of sexual abuse, the court noted

that the first-instance court and the appellate court had not found any evidence in support of those allegations, and the Supreme Court of Justice, as a court with exclusive jurisdiction on matters of law, was not competent to reassess evidence.

VII. The applicant's subsequent situation

69. On 24 August 2021 the National Agency for Social Assistance issued a decision placing the applicant in the same asylum as before for six months. Her stay was extended for another year and a half.

70. In August 2022 the applicant sought to leave the asylum for three months to live with T.S. Her request was granted. In January 2023 the applicant made a similar request, which was also granted. T.S. signed a form by which he guaranteed that the applicant would not be subjected to exploitation, violence or abuse. Social services were suspended while the applicant was away from the asylum, but she was monitored twice a week by the relevant head of social services and visited the asylum every week.

RELEVANT DOMESTIC AND INTERNATIONAL LAW

I. RELEVANT DOMESTIC LAW

71. At the time of the events the relevant parts of the Criminal Code of the Republic of Moldova, enacted by Law no. 895 of 18 April 2002, read as follows:

Article 165. Human trafficking

"(1) The recruitment, transportation, transfer, harbouring or receipt of an adult person, with or without [his or her] consent, for the purpose of commercial or non-commercial sexual exploitation, forced labour or services, ... slavery or practices similar to slavery ..., [where such acts are] performed by means of

...

(g) abuse of vulnerability or abuse of power, [or] the giving or receiving of payments or benefits in order to obtain the consent of a person who has control over another person;

...

shall be punishable by 6 to 12 years' imprisonment. ...

(2) The same acts, when committed by

...

(d) two or more persons;

...

(g) ... or [through] the use of rape, physical dependence or ...

shall be punishable by 7 to 15 years' imprisonment ..."

Article 167. Slavery and conditions similar to slavery

"Placing or keeping a person in conditions where he or she is owned by another person, or forcing a person to enter into or remain in an extramarital or marital relationship through deceit, coercion, violence or the threat of violence,

shall be punishable by 3 to 10 years' imprisonment ..."

Article 168. Forced labour

"(1) Obtaining labour from a person against his or her will, by coercion or deceit, if such an act does not satisfy the elements of trafficking in human beings or children,

shall be punishable by 2 to 6 years' imprisonment ..."

Article 171. Rape

"(1) Rape, meaning sexual intercourse committed by physically or psychologically coercing a person or taking advantage of the person's inability to defend herself or himself or express her or his will,

shall be punishable by 3 to 5 years' imprisonment.

...

(3) The rape

(a) of a person who is cared for, protected, educated or treated by the perpetrator;

...

shall be punishable by 10 to 20 years' imprisonment or life imprisonment."

Article 172. Acts of sexual violence

"(1) ... satisfying [one's] sexual needs in perverted forms, by physically or mentally coercing a person or taking advantage of the person's inability to defend herself or himself or express her or his will,

shall be punishable by 3 to 5 years' imprisonment.

...

(3) The acts provided for under paragraph (1) and (2),

(a1) [where they have been] committed in respect of a person who is cared for, protected, educated or treated by the perpetrator;

...

shall be punishable by 10 to 20 years' imprisonment or life imprisonment."

Article 173. Sexual harassment

"Sexual harassment, meaning any physical, verbal or non-verbal behaviour that damages a person's dignity or creates an unpleasant, hostile, degrading, humiliating, discriminatory or insulting atmosphere by the use of threats, coercion or blackmail with the aim of engaging [a person] in [unwanted] sexual relations or other unwanted sexual acts,

shall be punishable by a fine of 650 to 850 units, 140 to 240 hours' community service, or 3 years' imprisonment."

72. At the time of the events, Law no. 241 on the prevention of and fight against human trafficking, enacted on 9 December 2005, read as follows:

Article 2. Definitions

"...

(1) human trafficking – the recruitment, transportation, transfer, harbouring or receipt of a person, by the threat or use of force or other forms of coercion, by abduction, fraud, deceit, abuse of power or abuse of vulnerability, or by giving or receiving payments or benefits in order to obtain the consent of a person who has control over another person, for the purpose of her of his exploitation;

...

(3) exploitation of a person – the abuse of a person for the purpose of obtaining profit, namely by means of

(a) forcing her or him to carry out work or provide services by using force, threat[s] or other forms of coercion, contrary to legal provisions on labour conditions, work remuneration, and health and safety;

(b) slavery, the use of practices similar to slavery, or resorting to other ways of depriving [a person] of [her or his] liberty;
(c) commercial or non-commercial sexual exploitation;
...
(32) non-commercial sexual exploitation – using a person by coercion, in the context of marriage (including polygamy) or cohabitation (*concubinaj*), in the absence of material gain;
...
(7) debt bondage – depriving a person of [her of his] liberty until she or he or a third party pays a legally or illegally established debt;
(8) slavery – the state or condition [whereby] a person exercises one or more rights derived from ownership over [another person];
(9) practices similar to slavery – the state of a person held or put in a situation in which another person owns her or him, or forces her or him, by fraud, deceit, threat of force, violence or other forms of coercion, to provide certain services, including entering into or staying in a marital or extramarital relationship;
(10) vulnerability – a special condition whereby a person is susceptible to abuse or exploitation, particularly as a result of
(a) a precarious social situation;
(b) a situation determined by her or his age, pregnancy, illness, disability, physical or mental deficiency;
..."

Article 20. Protection and assistance of victims and presumed victims of human trafficking

"...
(7) Victims and presumed victims of human trafficking shall be provided with protection and assistance by multidisciplinary territorial teams, territorial committees for combating human trafficking and public administration authorities, within the limits of their competence and in line with the present law and other normative acts."

73. Explanatory decision no. 37 of the Supreme Court of Justice of 22 November 2004 on the implementation of legal provisions in cases of human trafficking and child trafficking provided the following clarification:

"4.1 Sexual exploitation means forcing a person to engage in prostitution or other sexual acts. Commercial sexual exploitation means any transactional activity resulting in a perpetrator's assets or those of other persons being increased through the coerced use of the victim for prostitution or pornography. Non-commercial sexual exploitation refers to activity which results in no [financial] profit for a perpetrator or other persons [and] takes the form of a marital (including polygamous) or extramarital relationship, and so on. ...
5.12 The 'use of rape' in the context of trafficking means a trafficker's attack on ... a person's freedom and sexual inviolability, irrespective of his or her gender, for the purpose of exploitation, and such acts do not require additional legal classification under Article 171 of the Criminal Code.
'Sexual abuse of a child' [in the context of child trafficking under Article 206 of the Criminal Code] means acts of sexual violence, coercion to engage in sexual acts, [and] perverse acts, and such acts do not require additional legal classification under Articles 172, 173, 175 of the Criminal Code".

74. Law no. 60 on the social inclusion of persons with disabilities, enacted on 27 July 2012, provided that persons with disabilities were entitled to primary, specialised and highly specialised social services, with a view to their rehabilitation and social inclusion (Article 52). The type of social service to be provided was determined by the recommendations contained in the individual rehabilitation and social inclusion programme of the person concerned, and was based on an initial and/or detailed assessment of the person or family in question carried out by the local social worker and the multidisciplinary team. It was also adapted to the needs of the person concerned. The local public administration and the local social services were to keep records of persons with disabilities who were provided with social services in this context. Such services could take the form of home or personal assistance when the persons concerned lacked support from their children, extended family or other persons and needed the support of another person, on the basis of recommendations contained in the individual rehabilitation and social inclusion programme (Article 53). It was the responsibility of the local public administration to hire the necessary staff, while the Ministry was responsible for developing training curricula for the social services personnel. It was also the responsibility of the local public administration to analyse and assess the social needs of persons with disabilities in their area and, on the basis of the information collected, develop and monitor the implementation of local social assistance programmes for such persons (Article 56).

II. RELEVANT INTERNATIONAL LAW

A. The United Nations

75. The Convention on the Rights of Persons with Disabilities (CRPD), adopted by the United Nations General Assembly on 13 December 2006 (UN Doc. A/RES/61/106), was signed and ratified by the Republic of Moldova on 30 March 2007 and 21 September 2010 respectively. The relevant provisions of that Convention read as follows:

Article 16 - Freedom from exploitation, violence and abuse

"1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities ... from all forms of exploitation, violence and abuse, including their gender-based aspects.

2. States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, *inter alia*, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive.

3. ... States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.

...

5. States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted."

Article 19 – Living independently and being included in the community

"States Parties to the present Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate

measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:
(a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;
(b) Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;
(c) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs."
76. The relevant parts of the Thematic study on the right of persons with disabilities to live independently and be included in the community, by the United Nations High Commissioner for Human Rights, UN Doc. A/HRC/28/37, 12 December 2014, read as follows :
"4. In article 19 of the Convention on the Rights of Persons with Disabilities, the States parties to the Convention recognized the equal right of all persons with disabilities to live independently and be included in the community, with choices equal to others. ...
13. Living independently does not mean living alone or in isolation. Rather, it means exercising freedom of choice and control over decisions affecting one's life with the same level of independence and interdependence within society on an equal basis with others. Consequently, article 19 refers to 'living independently and being included in the community' as one right, where autonomy and inclusion are mutually reinforcing and jointly avoid segregation. ...
21. While institutionalization can differ from one context to another, certain common elements define it: isolation and segregation from community life; lack of control over day-to-day decisions; rigidity of routine, irrespective of personal preferences or needs; identical activities in the same place for a group of persons under a central authority; a paternalistic approach in the provision of services; supervision of living arrangements without consent; and disproportion in the number of persons with disabilities living in the same environment. Institutionalization is therefore not just about living in a particular setting; it is, above all, about losing control as a result of the imposition of a certain living arrangement. In that sense, small environments, including group homes, are not necessarily better than large institutions if overall control remains with supervisors.
22. .... Lack of thorough understanding of what constitutes institutionalization for persons with disabilities may result in the promotion of newer forms of institutions concealed by superficial changes. ...
3. Deinstitutionalization
25. ... Effective deinstitutionalization requires a systemic approach, in which the transformation of residential institutional services is only one element of a wider change in areas such as health care, rehabilitation, support services, education and employment, as well as in the societal perception of disability. Evidence shows that deinstitutionalization and adequate support enhances the quality of life and improves the personal functioning abilities of persons with disabilities. ...
26. ... Support is particularly important in the transition from institutional to community living and should include individualized assessment, information, counselling, housing and income assistance.

Such support should be based on effective coordination among health-care and social-service providers, and the housing sector. ...

34. Personal assistance should be available to all persons with disabilities. However, in many countries it is available only to persons with certain impairments. ... The provision of access to personal assistants for persons with intellectual and psychosocial disabilities is essential to moving from a medical to a social approach concerning mental health issues with respect to personal autonomy.

...

56. Submissions for the study contained descriptions of the variety of mechanisms in place to monitor the implementation of deinstitutionalization policies and the incidence of abuse in current segregated settings, and to ensure access to justice. Such mechanisms include general judicial remedies, national human rights institutions, ombudsmen, specific bodies established by disability laws, insurance bodies and independent monitoring mechanisms established in line with article 33, paragraph 2, of the Convention on the Rights of Persons with Disabilities, which requires that States parties take into account the principles relating to the status and functioning of national institutions for the protection and promotion of human rights. ...

61. Deinstitutionalization requires a systemic transformation that goes beyond the closure of institutional settings. In order to enable social participation, it should provide for (a) individualized support services and (b) inclusive mainstream services in full respect for the will and preference of persons with disabilities. Newer forms of institutionalization tend to be concealed by superficial changes that do not transfer actual control from service providers to the service users as required by the human rights-based approach to disability."

77. The relevant parts of General comment No. 3 (2016) on women and girls with disabilities, adopted by the UN Committee on the Rights of Persons with Disabilities (CRPD Committee), UN Doc. CRPD/C/GC/3, 25 November 2016, read as follows:

"29. Women with disabilities are at a heightened risk of violence, exploitation and abuse compared to other women. ...

33. Sexual violence against women with disabilities includes rape. Sexual abuse occurs in all scenarios, within State and non-State institutions and within the family or the community. Some women with disabilities, in particular ... women with intellectual disabilities, may be at an even greater risk of violence and abuse because of their isolation, dependency or oppression.

34. Women with disabilities may be targeted for economic exploitation because of their impairment, which can in turn expose them to further violence. ...

51. Women with disabilities, more often than men with disabilities and more often than women without disabilities, are denied the right to legal capacity. Their rights to maintain control over their reproductive health, including on the basis of free and informed consent, to found a family, to choose where and with whom to live, to physical and mental integrity, to own and inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit are often violated through patriarchal systems of substituted decision-making.

52. Women with disabilities face barriers to accessing justice, including with regard to exploitation, violence and abuse, owing to harmful stereotypes, discrimination and lack of procedural and reasonable accommodations, which can lead to their credibility being doubted and their accusations

being dismissed. Negative attitudes in the implementation of procedures may intimidate victims or discourage them from pursuing justice. Complicated or degrading reporting procedures, the referral of victims to social services rather than the provision of legal remedies, dismissive attitudes by the police or other law enforcement agencies are examples of such attitudes. This could lead to impunity and to the invisibility of the issue, which in turn could result in violence lasting for extended periods of time. Women with disabilities may also fear reporting violence, exploitation or abuse because they are concerned that they may lose the support required from caregivers."

78. The relevant parts of General comment No. 5 (2017) on living independently and being included in the community, adopted by CRPD Committee, UN Doc. CRPD/C/GC/5, 27 October 2017, read as follows:

"3. Article 19 [of the CRPD] emphasizes that persons with disabilities are subjects of rights and are rights holders. The general principles of the Convention (art. 3), particularly respect for the individual's inherent dignity, autonomy and independence (art. 3 (a)) and the full and effective participation and inclusion in society (art. 3 (c)), are the foundation of the right to live independently and be included in the community. ...

16. In the present general comment the following definitions apply:

(a) Independent living. Independent living/living independently means that individuals with disabilities are provided with all necessary means to enable them to exercise choice and control over their lives and make all decisions concerning their lives. Personal autonomy and self-determination are fundamental to independent living, ...

(b) Being included in the community. The right to be included in the community relates to the principle of full and effective inclusion and participation in society as enshrined in, among others, article 3 (c) of the Convention. ...

(c) Independent living arrangements. Both independent living and being included in the community refer to life settings outside residential institutions of all kinds. It is not "just" about living in a particular building or setting; it is, first and foremost, about not losing personal choice and autonomy as a result of the imposition of certain life and living arrangements. Neither ..., nor even individual homes can be called independent living arrangements if they have other defining elements of institutions or institutionalization. ... [T]here are certain defining elements, such as obligatory sharing of assistants with others and no or limited influence over whom one has to accept assistance from; isolation and segregation from independent life within the community; lack of control over day-to-day decisions; lack of choice over whom to live with; rigidity of routine irrespective of personal will and preferences; identical activities in the same place for a group of persons under a certain authority; a paternalistic approach in service provision; supervision of living arrangements; and usually also a disproportion in the number of persons with disabilities living in the same environment. ... Policies of deinstitutionalization therefore require implementation of structural reforms which go beyond the closure of institutional settings. ...;

(d) Personal assistance. Personal assistance refers to person-directed/'user'-led human support available to a person with disability and is a tool for independent living. ...

24. To choose and decide how, where and with whom to live is the central idea of the right to live independently and be included in the community. ...

25. Often, persons with disabilities cannot exercise choice because there is a lack of options to choose from. This is the case, for instance, where informal support by the family is the only option, where support is unavailable outside of institutions, where housing is inaccessible or support is not provided in the community, and where support is provided only within specified forms of residence such as group homes or institutions. ...
72. Often, women and girls with disabilities (art. 6) are more excluded and isolated, and face more restrictions regarding their place of residence as well as their living arrangements owing to paternalistic stereotyping and patriarchal social patterns that discriminate against women in society. Women and girls with disabilities also experience gender-based, multiple and intersectional discrimination, greater risk of institutionalization and violence, including sexual violence, abuse and harassment. States parties must provide affordable, or free, legal remedy and support services for victims of violence and abuse. Women with disabilities who face domestic violence are frequently more economically, physically or emotionally dependent on their abusers, who often act as caregivers, a situation that prevents women with disabilities from leaving abusive relationships and leads to further social isolation. Therefore, when implementing the right to live independently and be included in the community, particular attention should be paid to gender equality, the elimination of gender-based discrimination and patriarchal social patterns.
73. Cultural norms and values may adversely restrict the choices and control of women and girls with disabilities over their living arrangements, limit their autonomy, oblige them to live in particular living arrangements, require them to suppress their own requirements and instead serve those of others and take certain roles within the family. ...
83. It is of paramount significance to ensure that support services leave no space for potential abuse or exploitation of persons with disabilities or any violence against them (art. 16). Disability-, gender- and age-sensitive monitoring, legal remedies and relief must be available for all persons with disabilities who use services prescribed in article 19 and who may face abuse, violence and exploitation. Since institutions tend to isolate those who reside within them from the rest of the community, institutionalized women and girls with disabilities are further susceptible to gender-based violence, including forced sterilization, sexual and physical abuse, emotional abuse and further isolation. They also face increased barriers to reporting such violence. It is imperative that States include these issues in their monitoring of institutions and ensure access to redress for women with disabilities who are exposed to gender-based violence in institutions."
79. The relevant parts of General comment No. 6 (2018) on equality and non-discrimination, adopted by the CRPD Committee, UN Doc. CRPD/C/GC/6, 26 April 2018, read as follows:
"51. The rights and obligations with respect to equality and non-discrimination outlined in article 5 ... call for the provision of procedural and age-appropriate accommodations. These accommodations are distinguishable from reasonable accommodation in that procedural accommodations are not limited by disproportionality. An illustration of a procedural accommodation is the recognition of diverse communication methods of persons with disabilities standing in courts and tribunals. Age-appropriate accommodations may consist of disseminating information about available mechanisms to bring complaints forward and access to justice using age-appropriate and plain language. ..."
80. The International Labour Organization's Special Action Programme to Combat Forced Labour has devised eleven indicators of forced labour. They are: (i) abuse of vulnerability, (ii) deception,

(iii) restriction of movement, (iv) isolation, (v) physical and sexual violence, (vi) intimidation and threats, (vii) retention of identity documents, (viii) withholding of wages, (ix) debt bondage, (x) abusive working and living conditions, and (xi) excessive overtime. It has been suggested that the presence of a single indicator in a given situation may in some cases imply the existence of forced labour, but in others it may be several indicators which, taken together, point to a forced labour practice.

B. The Council of Europe

81. The Council of Europe Convention on Action against Trafficking in Human Beings ("the Anti-Trafficking Convention") was ratified by the Republic of Moldova on 19 May 2006 and entered into force on 1 February 2008. It defines trafficking in human beings as the recruitment, transportation, transfer, harbouring, or receipt of persons by means of the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power, vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation. Exploitation includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the removal of organs. Under Article 5 of that Convention, which deals with the prevention of human trafficking, member States have undertaken to establish and/or strengthen effective policies and programmes to prevent human trafficking, by such means as: research, information, awareness raising and education campaigns, social and economic initiatives and training programmes, in particular for persons vulnerable to trafficking and for professionals concerned with human trafficking.

82. The relevant parts of the Issue paper of the Council of Europe Commissioner for Human Rights "The right of people with disabilities to live independently and be included in the community", June 2012, read as follows:

"High levels of institutionalisation go hand-in-hand with lack of community based options: lack of community-based alternatives denies choice, as people with disabilities in need of support in their everyday lives have no viable choice other than living in an institution. The corollary is that life in an institution degrades a person's ability to make decisions. Deinstitutionalisation must therefore be accompanied by measures to augment a person's decision-making capacity. This highlights again the need for policy makers to deal with legal capacity law reform at the same time as implementing the right to live in the community.

The possibility for self-determination within institutions is severely inhibited, as lives are managed in a group setting and subject in every aspect to the system's rules. ... choice is denied in every aspect of life, from decisions about where and with whom to live, to life's smallest details: when and what to eat, when to sleep and wake up, what to do, when to leave and enter the premises. Consequently, institutionalisation severely limits autonomy, which in turn contributes to the chronicity of one's condition.

The propensity towards violence is inherent to institutions, because life there is conducted as a closed system typically far from the public eye. Abuse and neglect is aggravated by non- or under-reporting due to the disempowered state of individuals living within the system, their own fear of retribution borne out of their dependency on the system for basic support, the lack of access to

justice, including to mechanisms such as ombudsperson offices and courts, and disability-related communicational barriers. ...

Segregation from society occurs even where institutions ... have been dismantled. ... In those countries with no or very few institutions, but where prejudice and lack of support prevail, individuals with disabilities may live segregated within their communities in a manner relegating them to the farthest margins of society. People with disabilities may be confined to their own homes with no meaningful ties to the surrounding community. They may lack an opportunity to attend school or be employed. In extreme situations, they may be kept out of sight – at times forcefully detained – by family members acting out of prejudice or helplessness in the absence of support.

... The way all services revolving around the right to live in the community are provided – not only residential services – also affects the degree to which one is included and participates in the community."

III. RELEVANT COUNTRY INFORMATION

83. 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:

"13. The institutional framework of the Republic of Moldova has been shaped by an outdated social protection system, and shares its traditional disability-welfare approach, which is rooted in the medical model of disability. The framework is therefore strongly biased against institutionalization and offers limited oversight of institutions and a lack of community-based services. Some positive steps have been taken to move away from institutionalization and to invest in community-based services ...

19. The pervasive influence of this stigma and the prejudiced perception of persons with disabilities even permeate legal and policy development mechanisms, resulting in State policies often framed within the outdated medical model. Although the Special Rapporteur received reports of a slight change in public perceptions and a certain shift policy away from the current medical model of disability, persons with disabilities are still mostly perceived as being devoid of agency, unable to make a positive contribution to society and best accommodated in social-care systems segregated from society at large. The persistence of this outdated view in policymaking and social protection provisions has imposed limits on the autonomy of persons with disability, including the freedom to exercise choice and to participate in public decision-making processes in a way that respects their right to equality with other members of society.

...

38. The Special Rapporteur is concerned at the intersecting forms of discrimination faced by women with disabilities in the Republic of Moldova. Gender is an additional source of vulnerability and discrimination among persons with disabilities. ...

42. The Special Rapporteur is aware of efforts to reform the system of guardianship and legal capacity initially led by an interministerial working group, which in 2014 adopted a draft proposal for reform abolishing plenary guardianship and introducing provisions for supported decision-making. If adopted as proposed by the working group, it would put the State on track with regard to reforms based on article 12 of the Convention on the Rights of Persons with Disabilities. ...

46. The Government of the Republic of Moldova has initiated a process of deinstitutionalization and has piloted some commendable initiatives for providing personal assistance and protected housing arrangements ... Despite these efforts, the Special Rapporteur remains concerned at the limited scope of such provisions; for example, 17,000 requests for personal assistance or community support services have been submitted but only 8 per cent of them have been accepted. Most applications are rejected, reportedly for lack of public funding. The Government does, however, spend a significant amount of funds on institutionally based services that could be re-directed towards community-based social protection. ...
55. All of the above-mentioned barriers deter persons with disabilities and their families from reporting human rights abuses, while those who are brave enough to speak out have little or no recourse to justice and remedy. In criminal cases such as those relating to abuse in institutions, the complaints lodged by persons with disabilities are often not adequately or independently investigated because of prejudice against them, the vested interests of the Government supplying such services, and their lack of legal standing and physical isolation. The Special Rapporteur also received reports of persons with disabilities being pressured to withdraw complaints of abuse in institutions. In such cases, the perpetrators of these crimes avoid prosecution and act with a high degree of impunity, which not only contributes to a cycle of ongoing violence and abuse but also prevents persons with disabilities who have been victims of human rights abuse from gaining any access to remedy or redress."
84. The relevant parts of the CRPD Committee Concluding observations on the initial report of the Republic of Moldova, UN Doc. CRPD/C/MDA/CO/1, 18 May 2017, read as follows:
"Women with disabilities (art. 6)
12. The Committee is concerned that women and girls with disabilities face multiple discrimination and exclusion in all areas of life. ... In particular, it is concerned that: (a) Non-consensual termination of a pregnancy on the grounds of impairment is still practised; (b) Legislation to prevent and combat domestic violence fails to protect persons with disabilities, particularly women and girls; (c) Mainstream services for women affected by violence are inaccessible to women and girls with disabilities and, instead of providing reasonable accommodation, redirect women with psychosocial and/or intellectual disabilities to psychiatric hospitals.
...
14. The Committee is particularly concerned that women with disabilities, especially women with psychosocial and/or intellectual disabilities, are still living in institutions where cases of neglect, violence, forced contraceptive measures, forced abortion, forced medication, restraint and sexual abuse, including by medical staff, remain common.
...
Access to justice (art. 13)
26. The Committee is concerned about the lack of information on specific measures and protocols to provide procedural, gender and age-appropriate accommodation in judicial proceedings for persons with disabilities, including the provision of ... accessible formats for communication for ... persons with psychosocial and/or intellectual disabilities. It notes with concern: (a) The prejudices against persons with disabilities, particularly those with psychosocial and/or intellectual disabilities; (b) The lack of access to free legal aid for persons with disabilities, particularly for those still living

in institutions; (c) The lack of access to justice of women with disabilities in criminal proceedings related to gender-based violence.

...

Living independently and being included in the community (art. 19)

36. The Committee is concerned about the slow pace of the deinstitutionalization process. It is concerned that, despite the executive moratorium on new admissions, persons with disabilities continue to be institutionalized. It is also concerned that the State party lacks the legal measures to ensure that persons with disabilities who have been deinstitutionalized can live independently, and that there is a lack of clarity as to the responsibilities of central and local authorities regarding the provision of community-based services.

37. The Committee recommends that the State party expedite the process of deinstitutionalization and ensure the application of the moratorium. It recommends that the State party: (a) Execute, without delay, the action plan for the implementation of reforms relating to deinstitutionalization, which should include a deadline and timelines for closing all remaining institutions; (b) Adopt legal measures providing for independent living, including personal assistance, and clarify the responsibilities and resource allocations of central and local authorities; (c) Involve persons with disabilities, through their representative organizations, in all stages of the deinstitutionalization process (planning, implementation, evaluation and monitoring)."

85. The relevant parts of the Report of the Council of Europe Commissioner for Human Rights, Dunja Mijatović, following her visit to the Republic of Moldova from 9 to 13 March 2020, CommDH(2020)10, 25 June 2020, read as follows:

"44. The Republic of Moldova ratified the UN Convention on the Rights of Persons with Disabilities (UNCRPD) in 2010 and signed the Optional Protocol, which provides for an individual complaints mechanism, in 2018. Following the ratification, the authorities began to progressively change the legal and institutional framework in order to bring it closer to the Convention's standards. Notably, a Law on the social inclusion of persons with disabilities was adopted in 2012. It introduced new concepts such as 'reasonable accommodation', 'universal design' and 'accessibility', as well as vocational education and professional training, integration in the workplace, health and rehabilitation and social protection.. ...

46. In September 2018, the government adopted the National Programme for de-institutionalisation of persons with intellectual and psychosocial disabilities. The government has also initiated the deinstitutionalisation process and piloted projects for providing personal assistance and protected housing arrangements, albeit so far on a limited scope. The Commissioner was informed that, as a first step, the Ministry of Health, Labour and Social Protection has carried out the assessment of four psychoneurological institutions and two boarding schools for children to identify what kind of community services should be made available to the residents to ensure their reintegration in the community. According to the authorities, only a few children and adults can be reintegrated in their biological families. The authorities have also stressed that, from their perspective, the most pressing issue is the non-availability of protected homes and the lack of adequate funding for the construction of such facilities. They further informed the Commissioner that there were 12 protected houses and community homes, with a few more under construction or renovation. ...

48. Crucial barriers to the successful de-institutionalisation and inclusion of persons with disabilities in community life continue to include a lack of adequate community services and severe lack of accessibility. ...
56. The Commissioner welcomes the beginning of the de-institutionalisation process for persons with intellectual and psychosocial disabilities. However, for this reform to be a success, the authorities should further expand and diversify community-based services and assisted living facilities, while remaining vigilant that the latter do not become another form of institutionalisation and segregation, albeit in a smaller setting. ... The Commissioner stresses that the isolation of persons with disabilities in institutions or at home because of lack of accessibility and support services undermines their full and effective participation and inclusion in society. ...
58. The Commissioner welcomes the [2018] legal changes aimed at introducing assisted decision-making and calls on the authorities to ensure that the implementation of these provisions takes place with the close involvement of persons with disabilities and their associations, who should be consulted and informed on a regular basis. It is vital to ensure that persons providing support for decision-making in this initial period are well informed of what their role entails, and that there are robust safeguards to ensure that any support provided truly respects the will and preferences of the person receiving such support. The Commissioner considers that the long-term goal should be to reduce and eventually phase out recourse to guardianship and other forms of substituted decision-making by increasing the use of supported decision-making. It is also important to ensure that legal professionals, including judges, prosecutors and defence lawyers are continuously trained on the application of the relevant legislation in line with the corresponding international standards."

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

A. Alleged inapplicability of Article 4

86. The Government argued that Article 4 of the Convention was not applicable to the circumstances of the case. Having regard to the content of their argument in that respect (see paragraphs 107-109 below), the Court finds that its assessment is closely linked to the assessment of the substance of the applicant's complaint. The Court therefore joins this objection to the merits.

B. Non-exhaustion of domestic remedies

87. The Government submitted that the applicant had never complained at domestic level that the domestic authorities had failed to comply with their positive obligations to protect her against ill-treatment and forced labour during her stay at the farm. The applicant had never lodged a civil complaint under the Administrative Code against the asylum or the local or central authorities, so as to allow them to react promptly and take all necessary measures in order to afford her effective protection. In addition, the applicant had never complained that no sufficient protection mechanisms had been implemented to counter the possible risks to her physical and psychological integrity after her placement in the family. Moreover, she had never initiated civil proceedings under the Labour Code, as suggested by the domestic courts, in order to establish the existence of labour relations and seek payment for her work at the farm. The Government invited the Court to declare the complaints concerning the domestic authorities' alleged inaction in protecting the applicant from abuse and ill-treatment by the P. family inadmissible, owing to non-exhaustion of domestic remedies.

88. The applicant observed that where several remedies were potentially available, she was required to exhaust only one of them. In view of the complaints under Article 4 of the Convention, the only remedy to be exhausted would be a criminal remedy against the perpetrators. As for the complaints under Article 3 of the Convention, an effective remedy would be both preventative and compensatory, where a preventative remedy would be capable of leading to the identification and punishment of those responsible. The applicant submitted that a civil compensatory remedy alone would not have been capable of fulfilling the requirements described above, and invited the Court to reject the Government's preliminary objection.

89. The Court notes that the Government have not clarified to what extent it had been open to the applicant to initiate civil proceedings considering that she herself had been deprived of legal capacity. Even assuming that she could initiate such proceedings, the Court observes that since the procedural obligation under Article 4 of the Convention relates to the domestic authorities' duty to apply in practice the relevant criminal-law mechanisms put in place to prohibit and punish conduct contrary to that provision (see *S.M. v. Croatia* [GC], no. 60561/14, § 308, 25 June 2020), in principle a civil remedy in the circumstances described above cannot be considered sufficient for the fulfilment of the State's positive obligations. Moreover, the Court notes that the criminal courts refused to accept that the acts of the perpetrators were criminal and did so on the basis of findings of fact which appear incompatible with any claim that the applicant was the victim of unlawful acts. The Court has found in the past that in the legal system in the Republic of Moldova a civil claim relying on the same facts and allegations, in respect of which a criminal remedy had not been effective, would not have any prospect of success (see *Scripnic v. the Republic of Moldova*, no. 63789/13, § 37, 13 April 2021, and the authorities cited therein). In these circumstances, the Court dismisses the Government's objection of non-exhaustion of domestic remedies.

C. Overall conclusion on admissibility

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

II. SCOPE AND LEGAL CLASSIFICATION OF THE COMPLAINTS

91. The Court reiterates that allegations of forced labour or servitude and human trafficking normally fall within the scope of Article 4 of the Convention. This, however, does not exclude the possibility that, in the particular circumstances of a case, a form of conduct related to human trafficking may raise an issue under another provision of the Convention (see *S.M. v. Croatia* [GC], no. 60561/14, §§ 300 and 303, 25 June 2020).

92. Having regard to its current case-law and the nature of the applicant's complaints, the Court is of the view that the issues raised in the present case cannot be addressed solely from the perspective of Article 4 of the Convention. This is so because the present case also concerns sexual violence which is alleged to have occurred partly in the context of trafficking, but may not necessarily have been inflicted for the purpose of trafficking and exploitation (see, in general, *Rantsev v. Cyprus and Russia*, no. 25965/04, § 252, ECHR 2010 (extracts), and *C.N. and V. v. France*, no. 67724/09, § 55, 11 October 2012 and contrast with *F.M. and others v. Russia*, no. 71671/16, § 229, 10 December 2024 (not final)). Moreover, at domestic level, one of the applicant's main grievances concerned the prosecutor's decision to reclassify her complaints of sexual violence from standalone charges to elements of the trafficking charges. In her view, this approach had prevented the prosecutor from properly

addressing her complaints of sexual violence (see paragraphs 37-42 above). Indeed, the Court notes the distinct nature of these two offences and the need to assess the applicant's allegations of sexual abuse by I.P. from the perspective that exploitation may have not been the purpose of the alleged abuse. The Court finds therefore that in the present case a separate examination of the authorities' approach to the applicant's complaints about rape and sexual abuse is warranted (see paragraphs 191-192 below). For this reason, the Court will examine the applicant's allegations of sexual violence under Articles 3 and 8 of the Convention separately from her allegations concerning potential human trafficking, forced labour or servitude in the context of deinstitutionalisation under Article 4 of the Convention.

93. Further, the Court notes that the applicant also complains under Article 14 of the Convention, read in conjunction with Articles 3, 4 and 8. While the core element of each complaint is the alleged failure of the authorities to take sufficient measures to protect the applicant's physical integrity and dignity from sexual violence and from exploitation, the complaint under Article 14 is based on the broader allegation that this failure was due to the general stereotypes held by the Moldovan authorities against women with intellectual disabilities and a failure to attempt to correct such inequality (see paragraphs 205-209). It cannot therefore be absorbed into the complaints under Articles 3, 4 and 8 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).

III. ALLEGED VIOLATION OF ARTICLE 4 OF THE CONVENTION

94. The applicant complained that her deinstitutionalisation from a State asylum and placement in a family, where she had been forced to work without payment, had amounted to treatment contrary to Article 4 of the Convention, and that the authorities had failed to prevent such treatment and carry out an effective investigation into the circumstances of her placement and exploitation.

95. Article 4 of the Convention reads as follows:

"1. No one shall be held in slavery or servitude.

2. No one shall be required to perform forced or compulsory labour.

..."

A. The parties' submissions

1. The applicant

96. The applicant submitted that the conditions in which she had found herself had corresponded to the material elements of the aggravated form of trafficking: she had been placed at the farm following the agreement between the asylum director and two private individuals who had received her identity documents (the action); to be G.B.'s housewife and for the purposes of the ensuing sexual abuse and forced labour (the exploitative purpose); by means of threats, abuse of power and abuse of her extreme vulnerability due to her intellectual disability, and in the absence of any interest or visit from a State official throughout her entire stay at the farm, which had resulted in her being completely dependent on I.P. and L.P. for her survival (the means). The applicant considered that these elements amounted to slavery, servitude or forced or compulsory labour. She also submitted that her situation had presented eight out of the eleven indicators of forced labour of the International Labour Organization: abuse of vulnerability, deception, restrictions of movement, isolation, physical and sexual violence, intimidation and threats, retention of identity documents,

and abusive working and living conditions (see paragraph 80 above for those indicators of forced labour).

97. The applicant further argued that owing to her lifelong institutionalisation, she had had limited opportunity to consent to or resist the arrangements made for her living at the farm, the chores and the sexual relations with the master of the farm. She had become accustomed to obeying orders without resisting and to perceiving abuse as normal. Moreover, consent was irrelevant in the context of intellectual disability, a lack of subsistence and isolation, in the absence of a proper assessment of the role played by psychological coercion, which the authorities had disregarded in her case. She invoked the Court's case-law concerning the lack of choice and the concept of consent in the context of trafficking (see *S.M. v. Croatia*, cited above, § 283, and *Chowdury and Others v. Greece*, no. 21884/15, § 96, 30 March 2017).

98. According to the applicant, the threshold pertaining to slavery had been reached because the conduct had taken place under the cover of a legal procedure. While she agreed that deinstitutionalisation and life in the community were essential for persons with disabilities, they should never serve as justification for placing such persons in situations similar to slavery. By relying on the purpose of deinstitutionalisation, the Government had indirectly acknowledged that the applicant had been unable to escape her situation. The courts had used the apparent legitimacy of her placement with I.P. and L.P. to disregard her allegations of trafficking and sexual exploitation, arguing that the lawful placement could not amount to trafficking. This logic was flawed, because it deprived her of any right to complain about how the deinstitutionalisation had been carried out. During her stay at the farm she had been under the complete control of I.P. and L.P., without any State supervision or safeguards.

99. The applicant referred to the United Nations Convention on the Rights of Persons with Disabilities and General Comment No. 5 of the CRPD, in relation to the definition of "deinstitutionalisation" and "living in the community" (see paragraph 78 above), and in relation to how important a person's freedom of choice, control and self-determination were in that context.

100. The applicant further argued that the evidence collected at domestic level pointed to the factual elements of forced labour: she had worked from early morning until late on a daily basis and had had no days off, on a farm where she and G.B. had been the only permanent workers. She had believed that she was trapped in that situation with nowhere to go, as returning to the asylum had not been an option. The amount of work she had done had far exceeded daily chores, to the extent that I.P. and L.P. would have had to hire professional help had it not been for her. Alternatively, she submitted that her situation had amounted to servitude, as she had felt that her condition was permanent and unlikely to change. She stated that I.P. had told her about his links to the police. Although she had been free to go to the village, her freedom of movement should be seen in the wider context. She had attempted to escape from the farm on several occasions, but had been brought back each time. In any event, there had been nobody to whom she could complain or from whom she could seek help.

101. The applicant submitted that the fact that an anti-trafficking legal framework existed was insufficient. Despite the existence of Law no. 241/2005, the applicant had never been referred to any specialised services mentioned by the Law, assuming that such services had been available in practice.

102. As regards the legal framework governing the social inclusion of persons with disabilities, the applicant considered that it lacked safeguards for persons such as her which were capable of preventing trafficking. If anything, that legal framework legalised trafficking and enabled abuse.
103. The applicant contended that the State should have known about her situation because of her status as a person with disabilities who had been deinstitutionalised and placed with a family by a public authority in a State-sanctioned arrangement. The arrangement should have given rise to a positive obligation to monitor her situation and provide safeguards. In the present case, it was undisputed that neither the social worker nor any other official had visited the applicant at the farm between 2014 and 2018. The expectation that the applicant would know about the role of the social worker in the village and would approach her was insufficient to discharge the State's positive obligation, in the light of the elements which attested to the applicant's extreme vulnerability. The first and only help offered to the applicant had been the hotline number run by a non-governmental organisation, and the applicant had availed herself of that opportunity immediately.
104. Therefore, the applicant did not claim the State had known about her situation, but that it ought to have known. It was precisely the State's lack of knowledge about her situation that reflected on its failure to establish an effective system of protection against the trafficking of persons in vulnerable situations such as herself. Delegating public services to private providers did not absolve the State of its legal obligations under the Convention (see *O'Keeffe v. Ireland* [GC], no. 35810/09, ECHR 2014 (extracts)). In the applicant's situation, the State had "delegated" its duty of care to the P. family under a care arrangement.
105. The applicant further submitted that the investigation into her allegations had not been effective. In particular, she noted that her statements had remained consistent throughout the domestic proceedings, and that in any event it was undisputed that she had worked all day long, but this had been assessed as a normal daily chore. It was also undisputed that she had left the farm on several occasions but had returned because she had had nowhere else to go. Despite these uncontested facts, the courts had chosen to accept the evidence against the applicant and reject the evidence in support of her case without giving relevant reasons. The courts had failed to carry out any assessment of her vulnerability and how it might have affected her situation. They had acquitted the defendants on two main grounds: the absence of evidence of coercion, and the fact that the applicant had been placed in their care in line with a legally prescribed procedure. The applicant submitted that the authorities had failed to follow some obvious lines of inquiry in order to establish the true nature of the relationship between her and the owners of the farm. No proper examination of aggravated human trafficking had been carried out, despite the precise arguments concerning sexual violence which had been raised in this regard in her appeals (see paragraphs 62 and 67 above).
106. The applicant concluded by submitting that the perpetrators' impunity, the lack of an effective criminal justice system and the lack of assistance provided to her as a victim during the domestic proceedings had all amounted to a violation of the State's obligations under Article 4 of the Convention.

2. *The Government*

107. The Government contested that Article 4 of the Convention was applicable to the circumstances of the case. In this regard, the Government relied on the findings of fact made by the domestic courts, which, in the Government's view, were relevant for determining the applicability of Article 4. They

noted that the domestic courts had acquitted I.P. and L.P. of human trafficking charges after carefully considering all the evidence collected in the course of the criminal investigation. The domestic courts had concluded that the applicant had been placed in the family of L.P. and I.P. with her consent, for the purpose of her social reintegration. The Government argued that the material in the case file indicated that the applicant had been deinstitutionalised and removed from the asylum in accordance with a procedure provided for by law, with the approval of all relevant authorities. Furthermore, the work she had performed at the farm had not been found to exceed the daily chores of people living in rural areas, and in any event, there was no evidence that the applicant had been forced to carry out those chores by I.P. and L.P., who had provided her with all amenities.

108. The Government argued that the applicant had conflated the legal procedure whereby persons with disabilities were deinstitutionalised for their social reintegration – a procedure requiring their adaptation and involvement in daily chores typical of life in rural areas – with human trafficking. They believed that such an approach would deter all efforts made by the domestic authorities to ensure the proper and effective involvement of disabled persons in society. The references to I.P. and L.P. being "masters" (*stăpâni*) concerned their ownership of the farm, and not their ownership of the applicant.

109. The Government also disagreed that the fact that I.P. and L.P. had failed to pay the applicant a salary had automatically amounted to "slavery" and human trafficking. While the domestic courts had found no criminal elements, the settlement of any issues concerning payment would be determined by a civil court if the applicant chose to pursue such a legal avenue. The domestic courts had not found that the couple had attempted to hire the applicant to work at their farm, but rather that they had sought a possible partner for their employee G.B., and in this way to integrate the applicant into society as far as possible.

110. The Government submitted that the Moldovan authorities had complied with their obligations under Article 4 of the Convention, including positive and procedural obligations.

111. In particular, the domestic legislature had provided for a corresponding legislative and administrative framework aimed at effectively preventing and punishing human trafficking. They referred to Law no. 241/2005 on the prevention of and fight against human trafficking, which was meant to implement Moldova's international undertakings in the fight against human trafficking, and to various provisions of the Criminal Code which criminalised human trafficking and related offences, provided for heavy penalties and prohibited the release on probation of people convicted of trafficking offences. They also noted the six national action plans related to the prevention of and fight against human trafficking which had been approved and in operation since 2001, the national referral strategy for the protection and assistance of victims and potential victims of human trafficking (2009-2016), and the latest strategy for 2018-2023 to further strengthen the efforts of relevant authorities and provide sustainable development of the national system for the prevention of and fight against human trafficking. The Government also cited Law no. 137/2017 on the rehabilitation of victims of criminal offences, which provided for such rehabilitation and further protected the rights and legitimate interests of victims.

112. The Government also referred to the legal framework concerning the social inclusion of persons with disabilities (Law no. 60/2012), in accordance with which social assistance for persons with disabilities fell within the remit of the local public authority. They relied on the internal rules of the

asylum, which provided for the forms of social protection for its residents and the rules on their placement and the termination of placements. Namely, the termination of any placement required the consent of the Ministry, as the central authority responsible for coordinating the system for the social inclusion of persons with disabilities. The applicant's deinstitutionalisation had therefore not resulted from a private agreement between the P. family and the asylum administration, but had been subject to the Ministry's approval. The Government also cited Government Decree no. 1263/2016, which had established the National Agency for Social Assistance to manage social services and rehabilitation institutions, including neuropsychiatric asylums.

113. The Government further argued that the authorities had fulfilled their positive obligations in taking operational protective measures after the applicant's deinstitutionalisation. In particular, they submitted that the applicant had left the asylum to integrate into the family of L.P. and I.P. at her own request and at the request of the family, following a positive social services investigation, with the consent of the Ministry and on the basis of an order issued by the asylum administration. The authorities had assessed that the applicant would integrate better into society while living in a family. Local social services had been responsible for following up on her social integration. While acknowledging the applicant's vulnerability due to her intellectual disability, the Government submitted that the domestic criminal file contained no information indicating that any of the authorities had known or ought to have known about the possible risk of ill-treatment or forced labour at the farm.

114. Before the applicant's placement with the P. family, the authorities had enquired about their reputation and future living conditions, and nothing had been found to point to a risk that the applicant might be abused. During the five and a half years which she had spent at the farm, the applicant had never complained to any authority of abuse or ill-treatment. The social worker had often seen the applicant in the village and had asked about her well-being, and had never received any complaint. The social worker had never detected any signs of violence, abuse or exploitation. At domestic level, the applicant had never complained about the authorities' lack of involvement, from which the Government inferred that the applicant accepted that the authorities could not have known about the alleged abuse. Once the authorities had been notified, they had reacted promptly by removing the applicant from the family and initiating a criminal investigation. The Government argued that the present situation was similar to that in the case of *X and others v. Bulgaria* (cited above), where the Court had found that the authorities had been unaware of the risk of sexual violence and had concluded that there had been no violation.

115. The Government argued that the applicant's claim that she had had no alternative place to stay and had therefore been forced stay at the farm was unsubstantiated, because she had been able to return to the asylum in 2021 and during her stay at the farm she had never sought the assistance of people from the asylum or the local authority to find somewhere else to stay.

116. The Government concluded by submitting that the authorities could not reasonably have known about the risks which had existed in relation to the applicant's deinstitutionalisation, and therefore they had not failed to take adequate measures to prevent those risks.

117. In respect of their procedural obligation to institute and conduct an investigation, the Government noted that a formal criminal investigation had been initiated four days after the applicant had lodged her complaint of rape and sexual assault, despite the fact that there had been

no allegations of forced sexual relations in her initial statements. Submitting that the applicant's statements had been contradictory, the Government outlined the investigative measures taken by the police: an on-site report prepared at the farm, the seizure of the applicant's personal file from the asylum, the forensic medical examination of the applicant and I.P. with a view to establishing signs of forced sexual relations, the examination of the applicant by a psychiatrist and a psychologist, the request for a formal inquiry made to the Labour Inspectorate, interviews with witnesses (former farm employees, the social worker, the director and the nurse from the asylum) and the defendants, and cross-examination of witnesses. The Government concluded by stating that an effective investigation had been conducted into both aspects of the applicant's complaints – trafficking and sexual violence – irrespective of the final legal classification of the charges against I.P. The authorities had taken all possible and necessary measures to establish the truth and elucidate the circumstances of the case.

118. The Government contended that the applicant had had full legal capacity and had been assisted by a social worker during her interview with the police, who had seen no need to support her with any other procedural arrangements at the time because at all times she had seemed to understand both the nature of her complaint and the questions asked of her. The Government submitted that there had been no need to adjust the language used or the procedure itself, as the applicant had never sought additional clarification and had never claimed to have any comprehension difficulties. Although the applicant had not had legal assistance at that time, she had never asked for such assistance, and in any event, her rights and interests had been defended by the police, who had been acting on her behalf because she had been a potential victim. Since the psychological report had confirmed the applicant's ability to accurately perceive reality and share information, the Government submitted that there had been no need for any adapted investigative measures, and no reason for the courts to disregard her statements made in those circumstances.

119. The Government argued that the authorities had been confronted with two conflicting versions of events: one advanced by the applicant (that she had been a victim of trafficking as a result of her deinstitutionalisation, had never been paid for her work at the farm, and had been sexually abused by I.P.), and the other supported by witness statements and evidence collected in the course of the investigation (that the applicant had consented to work at the farm without remuneration, and that I.P. had never used sexual violence against her or abused her in any way). The Government emphasised that the applicant's complaints before the Court differed from the statements she had made in her complaint to the police, which in turn also differed from the statements she had made in the course of the criminal investigation and the domestic court proceedings. Confronted with the two irreconcilable versions of events, the authorities had interviewed various witnesses in an attempt to elucidate essential discrepancies which had been determinative for the appellate court when it had upheld the acquittal.

120. The applicant's allegation that the investigation had been ineffective was ill-founded. The domestic case file contained evidence in respect of all the allegations, and the assessment of the domestic courts had been that the evidence related to human trafficking charges did not point directly to any offence committed by I.P. and L.P., and that there was no evidence that they had threatened the applicant or forced her to work at the farm, with or without her consent. The courts had not found any evidence inadmissible, and the applicant had not submitted any additional

evidence. The acquittal of the defendants had not rendered the investigation ineffective, since the obligation to carry out an effective investigation was one of means, not of result.

121. The applicant and her lawyer had been involved in the investigation at all times, and had been able to submit new evidence, suggest experts to carry out forensic examinations, and object to several investigative measures.

122. In conclusion, the Government argued that the authorities had successfully discharged their obligation to conduct a meaningful and effective investigation into the acts complained of by the applicant, but had found those allegations unsubstantiated because they had been based on her contradictory statements and the evidence had pointed to the defendants' innocence.

3. *The third parties' submissions*

(a) The Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA)

123. GRETA made submissions concerning the prevention of human trafficking, the interpretation of the concept of "abuse of a position of vulnerability" as part of the criminal offence of human trafficking, and the effective investigation and prosecution of human trafficking offences.

124. GRETA's evaluation reports demonstrated that persons with disabilities were in a situation of particular vulnerability and at an increased risk of human trafficking. In several country reports, GRETA had noted an increasing trend in the number of persons with disabilities who were being targeted for recruitment for exploitation.

125. GRETA's evaluation reports showed that the legislation of many States Parties, including the Republic of Moldova, included persons with disabilities in the category of vulnerable persons and provided for specific measures to protect them from exploitation and abuse or guarantee their rights.

126. GRETA's evaluation reports had paid particular attention to measures taken by States Parties to address children's vulnerability to human trafficking, especially children placed in institutions. Children in institutional care were particularly vulnerable to human trafficking during and after their placements. This vulnerability also persisted when young people left such institutions after coming of age. According to GRETA's reports, the States' positive obligation to reduce the vulnerability to human trafficking of children in institutional care required, among other things, sensitising child protection professionals and staff in childcare institutions to the issue of human trafficking and training them in this regard, raising children's awareness of their rights and the risks of human trafficking, strengthening the role and capacity of social work centres to prevent child trafficking and play a proactive role in alerting other relevant authorities to possible cases of trafficking and exploitation, and improving the coordination between child protection agencies and the police. Moreover, the authorities should perform a proper risk assessment before children were returned to their families and foster care placements were expanded.

127. In some country reports, GRETA had called on the authorities to take preventive measures specifically targeting persons with intellectual disabilities. States Parties had an obligation to ensure that persons with disabilities had the benefit of effective care arrangements and safe accommodation so that they were not exposed to the risks of trafficking.

128. In several of its country reports, GRETA had recommended that States Parties align their interpretation of the notion of "abuse of a position of vulnerability" with that of the Anti-Trafficking Convention, and explicitly state in national law that in the case of adults, trafficked persons' consent

to what was ultimately exploitation was irrelevant when any abusive means had been used. Persons subjected to human trafficking might willingly accept the exploitation because they had no alternative, in order to make a living or because they did not perceive it as exploitation. States Parties should ensure that the principle in accordance with which a victim's consent was irrelevant applied at all stages when victims of trafficking were identified, protected and assisted, as well as in the context of criminal proceedings. This included steps to make investigators, prosecutors and judges aware of the importance of this principle in connection with trafficking cases.

129. As described in GRETA's second report on the Republic of Moldova, the provisions criminalising human trafficking (Article 165 of the Criminal Code) contained all the elements required by the Anti-Trafficking Convention. GRETA also noted that the concept of "abuse of a position of vulnerability" had been interpreted by Moldovan courts in line with the Anti-Trafficking Convention. Statistics relating to cases in which decisions had been appealed against to the Supreme Court of the Republic of Moldova showed that the number of trafficking cases involving abuse of a position of vulnerability accounted for three-quarters of all trafficking cases.

130. Delineating the aspects of "coercion", which was one of the elements of the legal definition of human trafficking, was crucial for understanding the factors underpinning human trafficking. Rather than using direct threats or force, traffickers often compelled victims to comply with abusive working conditions through subtle means of coercion, such as the threat of or actual withholding of wages, and by taking advantage of a person's vulnerabilities, such as his or her irregular immigration status, lack of means of subsistence or disabilities. Physical coercion such as restriction of a person's freedom of movement was not a condition for establishing that a situation constituted human trafficking, because a trafficking situation could exist in spite of a victim's freedom of movement.

131. The low number of convictions for trafficking was a recurrent challenge described in GRETA's reports. Among other reasons, this was due to the failure of judges, prosecutors and police investigators to recognise trafficking cases involving psychological coercion as human trafficking. For example, in its third report on Spain, GRETA had been informed that the law was interpreted by the courts in a way that excluded cases where the victim had consented to the work performed from the scope of trafficking offences, regardless of the conditions in which the work had been carried out. GRETA had urged the authorities to step up their efforts to ensure that trafficking offences were prosecuted and classified as such every time the circumstances of a case allowed this, whether or not the victim had consented to the exploitation.

132. GRETA stressed that one of the core objectives of the Anti-Trafficking Convention was to ensure the effective investigation and prosecution of trafficking offences. GRETA had constantly recommended that States Parties make use of special investigation techniques in order to gather evidence, rather than relying solely on victim testimony.

133. Investigators, prosecutors, judges and lawyers who were not trained to deal with trafficking cases could be prejudiced *vis-à-vis* victims of trafficking and insensitive to the problems experienced by them. GRETA had repeatedly stressed the need to improve the training and specialisation of judges, prosecutors, police investigators and lawyers as regards trafficking and the rights of victims of trafficking. Evidence of abuse of a position of vulnerability might be less tangible than evidence of other means used to commit a human trafficking offence, such as the use of force. It was therefore

important to involve specialists, such as psychologists, social workers or NGO representatives working with victims of trafficking, at the investigation stage to ensure that evidence was effectively and appropriately collected and presented at trial.

134. Prosecutors whom GRETA had met during the third evaluation visit to the Republic of Moldova in 2019 had noted that the lack of specialised judges to deal with trafficking cases was a problem. GRETA had been informed that a pilot project had been initiated pursuant to an order of the Chișinău Court of 18 June 2019, in accordance with which a specialised panel of judges had been set up to deal with human trafficking cases and related crimes. In its third report, GRETA had welcomed this development and considered that the Moldovan authorities should ensure that there was a sufficient number of specialised and trained investigators, prosecutors and judges to deal with trafficking cases throughout the country.

(b) The AIRE Centre

135. The Centre for Advice on Individual Rights in Europe (the AIRE Centre) made submissions concerning the Court's case-law under Article 4 of the Convention, additional obligations emanating from international law and the scope of Article 53 of the Convention.

136. In respect of Article 4 of the Convention, the AIRE Centre focused on the State's obligation to protect people by putting in place an appropriate legislative and administrative framework to effectively prohibit and punish trafficking, including in the form of domestic servitude, to protect victims in cases where they knew or ought to know that an individual was at risk of being trafficked, and to take appropriate measures to remove individuals from such situations of risk. It emphasised the importance of the early identification of potential trafficking victims by trained and qualified personnel who, with regard to persons with disabilities, should pay particular attention to a victim's capacity to consent to forms of exploitation. Victims of trafficking should not be expected to present themselves to the authorities and provide all evidence of prohibited treatment. It also emphasised that the State had a procedural obligation to conduct an effective investigation into potential or actual situations of trafficking where there was a credible suspicion that an individual's rights under Article 4 of the Convention had been violated. Where a potential victim of trafficking had made themselves known to the authorities, this presented a clear opportunity for the authorities to investigate the specific circumstances further.

137. The AIRE Centre further referred to the Anti-Trafficking Convention as a source for the interpretation of the State's obligations under Article 4 of the Convention. It also submitted that under Article 53 of the Convention, the Court could also consider the provisions of European and international legal instruments to which the Contracting State was party. In the light of Moldova's ratification of the CRPD and the CEDAW, it highlighted the particular vulnerability of women with disabilities to exploitation and trafficking.

B. The Court's assessment

1. General principles

138. Impugned conduct may give rise to an issue of human trafficking under Article 4 of the Convention only if all the constituent elements (action, means, purpose) of the international definition of human trafficking are present. In other words, in keeping with the principle of harmonious interpretation of the Convention and other instruments of international law, and in view of the fact that the Convention itself does not define the concept of human trafficking, it is not

possible to characterise conduct or a situation as an issue of human trafficking unless it fulfils the criteria established for that phenomenon in international law. From the perspective of Article 4 of the Convention, the concept of human trafficking covers trafficking in human beings, whether national or transnational, whether or not connected with organised crime, in so far as the constituent elements of the international definition of trafficking in human beings, under the Council of Europe Convention on Action against Trafficking in Human Beings and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children supplementing the United Nations Convention against Transnational Organised Crime, are present. Such conduct or such a situation of human trafficking then falls within the scope of Article 4 of the Convention (see *S.M. v. Croatia*, cited above, §§ 289-90, 296-97 and 303).

139. Servitude is a "particularly serious form of denial of liberty". What servitude involves is "an obligation to provide one's services that is imposed by the use of coercion" As such, it is to be linked with the concept of "slavery" within the meaning of Article 4 § 1 of the Convention (see *C.N. and V. v. France*, no. 67724/09, § 89, 11 October 2012 and the references therein).

140. It includes, in addition to the obligation to perform certain services for others, the obligation for the "serf" to live on another person's property and the impossibility of altering his or her condition (see *Siliadin v. France*, no. 73316/01, § 123, ECHR 2005-VII, and *S.M. v. Croatia*, cited above, § 280).

141. In the light of these criteria, the Court observes that servitude corresponds to a special type of forced or compulsory labour or, in other words, "aggravated" forced or compulsory labour. As a matter of fact, the fundamental distinguishing feature between servitude and forced or compulsory labour within the meaning of Article 4 of the Convention lies in the victim's feeling that their condition is permanent and that the situation is unlikely to change. It is sufficient that this feeling be based on the above-mentioned objective criteria or brought about or kept alive by those responsible for the situation (see *C.N. and V. v. France*, cited above, § 91).

142. It is now well established that both national and transnational trafficking in human beings, irrespective of whether or not it is connected with organised crime, falls within the scope of Article 4 of the Convention. As such, it is not necessary to identify whether the treatment of which the applicant complains constitutes "slavery", "servitude" or "forced [or] compulsory labour (see *V.C.L. and A.N. v. the United Kingdom*, nos. 77587/12 and 74603/12, § 148, 16 February 2021, and the references therein).

143. A conduct or a situation may give rise to an issue of human trafficking under Article 4, only if all the three constituent elements of the international definition of human trafficking, under the Anti-Trafficking Convention and the Palermo Protocol, are present: (1) an action (the recruitment, transportation, transfer, harbouring or receipt of persons); (2) the means (threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability, or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person); (3) an exploitative purpose (including, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs) (see *S.M. v. Croatia*, cited above §§ 290 and 303; and in respect of the "means" element *Krachunova v. Bulgaria*, no. 18269/18, §§ 148-154, 28 November 2023). Whether a particular situation involved all the constituent elements of "human

trafficking" and/or gives rise to an issue of servitude and/or forced or compulsory labour is a factual question which must be examined in the light of all the relevant circumstances of the case (see *Chowdury and Others*, cited above, §§ 99-101 and T.V. v. Spain, no. 22512/21, § 90, 10 October 2024).

144. The Court reiterates that under Article 4 of the Convention, the State may be held responsible not only for its direct actions, but also for its failure to effectively protect the victims of slavery, servitude, or forced or compulsory labour by virtue of its positive obligations (see *C.N. and V. v. France*, cited above, § 69, with further references).

145. The general framework of positive obligations under Article 4 includes: (1) the duty to put in place a legislative and administrative framework to prohibit and punish trafficking; (2) the duty, in certain circumstances, to take operational measures to protect victims, or potential victims, of trafficking; and (3) a procedural obligation to investigate situations of potential trafficking. In general, the first two aspects of the positive obligations can be denoted as substantive, whereas the third aspect designates the States' (positive) procedural obligation (see *S.M. v. Croatia*, cited above, § 306).

2. *Application of the above-mentioned principles to the present case*

(a) Whether the circumstances of the present case gave rise to an issue under Article 4 of the Convention

146. As regards the applicability of the protection under Article 4 in relation to human trafficking or other prohibited treatment under that provision, the Court must examine whether, in the circumstances of a particular case, an applicant made an arguable claim or whether there was prima facie evidence of him or her having been subjected to such prohibited treatment (see, to that effect, *S.M. v. Croatia*, cited above, § 324, with further references; see also *Rantsev*, cited above, § 288, where reference was made to situations of "potential trafficking"). Such an assessment has to be based on the circumstances prevailing at the time when the relevant allegations were made or when the prima facie evidence of treatment contrary to Article 4 was brought to the authorities' attention, and not on a subsequent conclusion reached upon the completion of the investigation or the relevant proceedings. This is particularly true when there are allegations that such conclusions and the relevant domestic proceedings were marred by significant procedural flaws. Indeed, relying on such domestic findings and conclusions would entail a risk of creating a circular reasoning resulting in a case concerning an arguable claim or prima facie evidence of treatment contrary to Article 4 remaining outside the Court's scrutiny under the Convention (see *S.M. v. Croatia*, cited above, § 325).

147. In the present case, the applicant complained to the domestic authorities that she had been secluded at the farm, where she had been sexually abused and had worked without pay, despite her requests to be paid (see paragraphs 16, 17 and 21 above for her statements made during the criminal investigation). Although her very first statements focused mostly on sexual violence, the elements of her situation of potential trafficking and/or domestic servitude were present. In particular, she spoke about the arrangement whereby she had been taken to the farm to work and/or to be another worker's housewife, her intellectual disability, her unpaid work at the farm, her lack of alternative accommodation, combined with the threats that she would be chased off the farm if she claimed payment, and the separate elements of sexual violence. Initially, she was assured that she would leave the asylum and work and live at the farm, although she did not negotiate payment beforehand.

I.P. and L.P. made all the necessary arrangements to take the applicant out of the asylum by complying with the mandatory legal procedure.

148. During the criminal investigation, witnesses confirmed that they had seen the applicant working at the farm (cleaning out the stalls, cooking and cleaning the farmhouse) and the Labour Inspectorate confirmed that she had not been legally employed at the farm (see paragraphs 23 and 29-33 above). Although the initial investigation concerned the allegations of rape and sexual abuse, a proper criminal investigation into human trafficking was initiated after the applicant's lawyer lodged a formal request for the police to look into human trafficking, and on the basis of the witness statements (see paragraphs 27 and 35).

149. In the Court's view, the above circumstances clearly indicate that the applicant made an arguable claim and that there was prima facie evidence that she had been the victim of treatment contrary to Article 4 of the Convention, as defined by the Court (see paragraphs 138-142 above). In particular, the applicant's personal situation – her intellectual disability and gender, set against the background of her lifelong institutionalisation – undoubtedly suggested that she belonged to a vulnerable group, while I.P. and L.P.'s role as her carers suggested that they were capable of assuming a dominant position over her and abusing her vulnerability for the purpose of exploitation. Furthermore, the means used by I.P. and L.P. to recruit workers for their farm from among people at the asylum and/or to select the applicant as a housewife for another employee (as indicated by various statements, see paragraphs 30, 46, 49 and 50) and to comply with all the legal requirements necessary for her placement in their family could be indicative of a form of recruitment and harbouring for the purpose of exploitation – constituent "actions" of trafficking (see paragraphs 77 and 124 above for information about the particular risks of exploitation for women with intellectual disabilities, and the increasing trend in the number of persons with disabilities being targeted by traffickers for recruitment). This is equally true of the alleged promise of employment, accompanied by the applicant's inability to see any reason for concern. It should also be noted that the applicant's disability and lifelong institutionalisation, combined with the apparent lack of a support network after her deinstitutionalisation and the various more subtle forms of coercion used, provided the context for the "means" element of trafficking (abuse of vulnerability). The same can be said of the applicant's situation whereby she apparently had no real alternative accommodation. This, seen together with the subtle forms of coercion used to make her do various chores in exchange for food and shelter, raised an issue of domestic servitude as the "exploitative purpose" of trafficking, which is in itself a prohibited form of conduct under Article 4 of the Convention.

150. In sum, the Court finds that the applicant made an arguable claim that she had been subjected to treatment contrary to Article 4 of the Convention – human trafficking and/or servitude – and that there was prima facie evidence of this, which in turn triggered the domestic authorities' positive obligations under that provision (compare *C.N. v. the United Kingdom*, cited above, § 72). The Court therefore dismisses the Government's preliminary objection concerning the applicability of Article 4 of the Convention which it joined to the merits (see paragraph 86 above).

151. The Court will therefore now assess how the respondent State has complied with its positive obligations under Article 4 of the Convention (see paragraph 145 above).

(b) Positive obligation to put in place an appropriate legislative and administrative framework

152. In assessing whether there has been a violation of Article 4, the relevant legal or regulatory framework in place must be taken into account. The spectrum of safeguards set out in national legislation must be adequate to ensure the practical and effective protection of the rights of victims or potential victims of trafficking (see *Rantsev*, § 284, and *S.M. v. Croatia*, § 305, both cited above). In *Siliadin* (cited above, §§ 89 and 112), the Court confirmed that Article 4 entailed a specific positive obligation on member States to penalise and prosecute effectively any act aimed at maintaining a person in a situation of slavery, servitude or forced or compulsory labour. In order to comply with this obligation, member States are required to put in place a legislative and administrative framework to prohibit and punish trafficking. The Court observes that the Palermo Protocol and the Council of Europe Anti-Trafficking Convention refer to the need for a comprehensive approach to combat trafficking which includes measures to prevent trafficking and to protect victims, in addition to measures to punish traffickers. It is clear from the provisions of these two instruments that the Contracting States, including almost all of the member States of the Council of Europe, have formed the view that only a combination of measures addressing all three aspects can be effective in the fight against trafficking. Accordingly, the duty to penalise and prosecute trafficking is only one aspect of member States' general undertaking to combat trafficking. The extent of the positive obligations arising under Article 4 must be considered within this broader context (see *Rantsev*, § 285, and *S.M. v. Croatia*, § 305, both cited above).
153. The Court observes that the legislation prohibiting trafficking, slavery and forced labour was in force in the Republic of Moldova at the time of the events (see paragraphs 71-72 above). The law reflects the provisions of the Anti-Trafficking Convention and prohibits trafficking, slavery, slavery-like practices (servitude, debt bondage, forced marriage) and forced labour, and consent provides no defence to the offences. Severe penalties are set out in the legislation. The law also provides for the State having a duty to protect victims and presumed victims. GRETA found that the Moldovan legal framework comprised all elements required under the Anti-Trafficking Convention (see paragraph 129 above). Accordingly, the Court does not consider that the circumstances of the present case give rise to any concern with regard to the adequacy of the criminal legal framework in respect of those forms of treatment.
154. The Court also notes that the Criminal Code of the Republic of Moldova does not refer to any form of services or relationship other than forced marital or extramarital relationships in relation to "slavery-like conditions", that is, servitude (see Article 167 of the Criminal Code in paragraph 71 above). This contrasts with the definition of slavery-like practices provided by Law no. 241/2005 on the prevention of and fight against human trafficking, which refers to "the provision of certain services", including forced marital or extramarital relationships (see paragraph 72 above). While the Court is ready to accept that the two laws may be simultaneously applicable and that this would not result in a situation preventing the law enforcement authorities from legally prosecuting acts of servitude (contrast with *C.N. v. the United Kingdom*, cited above, §§ 80-82), such discrepancies may result in practical difficulties. Even so, the Court does not consider that the circumstances of the present case give rise to any concern with regard to the adequacy of the criminal legal framework.
155. However, a number of weaknesses can be identified as regards the legal and administrative framework and the adequacy of the Moldovan deinstitutionalisation policy in relation to persons who have an intellectual disability and have been deprived of their legal capacity. The legal

provisions on the social inclusion of persons with disabilities and related support services were adopted in 2012. However, the UN Special Rapporteur on the rights of persons with disabilities, after her visit to Moldova in 2015, noted that there were no such community-based services and no legal framework for supported decision-making for persons with disabilities who had been deprived of their legal capacity (see paragraph 83 above). The CRPD Committee, in its concluding observations of 2017 in respect of the Republic of Moldova, also noted its concern about the lack of legal measures to ensure that persons with disabilities who had been deinstitutionalised could live independently and the lack of clarity as to the responsibilities of central and local authorities regarding the provision of community-based services (see paragraph 84 above). The Council of Europe Commissioner for Human Rights, in her 2020 report, noted that a national programme of deinstitutionalisation had been launched by the Government in September 2018 and that the first step had been to carry out a needs assessment in relation to community services, without which deinstitutionalisation would not have been practically possible (see paragraph 85 above).

156. The Court acknowledges the positive developments in the field of deinstitutionalisation in the Republic of Moldova as reported by various international bodies. However, the Court observes that these developments relate to a time period long after the applicant's placement with the P. family in 2013. While State Parties are obliged to ensure that persons with disabilities in State care have effective care and safe accommodation measures in place so that they are not at risk of trafficking, the Government have not provided the Court with any information about the availability at the time of a supported decision-making process, a national needs assessment, community services or any risk assessment and monitoring mechanisms capable of preventing abuse in such a setting. As noted by international bodies, deinstitutionalisation requires a systemic transformation that goes beyond the closure of institutional settings and provides for individualised support services and inclusive mainstream services, as well as monitoring mechanisms. In the absence of a framework for such systemic transformation, the end result may be a newer form of institutionalisation concealed by superficial changes which preserve the same – if not a higher – risk of abuse and exploitation (see references to international texts concerning deinstitutionalisation and monitoring in paragraphs 76, 78 and 82 above, and to the mandatory risk assessment before a foster care placement, in paragraphs 126-127 above).

157. In these circumstances, the Court concludes that the legal framework in the Republic of Moldova at the material time whereby persons with intellectual disabilities who had been deprived of their legal capacity were deinstitutionalised did not afford the applicant practical and effective protection against trafficking and/or other forms of treatment contrary to Article 4 of the Convention.

(c) Positive obligation to take protective measures

158. As with Articles 2 and 3 of the Convention, Article 4 may, in certain circumstances, require a State to take operational measures to protect victims, or potential victims, of trafficking. In order for a positive obligation to take operational measures to arise in the circumstances of a particular case, it must be demonstrated that the State authorities were aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that an identified individual had been, or was at real and immediate risk of being trafficked or exploited within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Council of Europe Anti-Trafficking Convention. In the case

of an answer in the affirmative, there will be a violation of Article 4 of the Convention where the authorities fail to take appropriate measures within the scope of their powers to remove the individual from that situation or risk. (see *S.M. v. Croatia*, cited above, § 305).

159. In assessing whether a positive obligation to take operational measures to protect the applicant arose in the present case, the Court considers the following to be significant. As noted above, there was a serious deficiency in the preparation and implementation of the deinstitutionalisation policy, particularly owing to the lack in practice of support services and monitoring mechanisms.

160. In particular, no risk assessment was carried out when I.P. and L.P. approached the asylum asking to take the applicant to their farm, even though they were explicitly looking for a woman from the asylum to work at the farm and/or be another employee's housewife or bride, as witness statements later indicated. Such a request should have been a red flag for the authorities. However, the applicant's placement was authorised with reference to her own consent and wishes, despite her intellectual disability, which may have prevented her from fully assessing the implications of such a decision, especially in the absence of any supported decision-making and in circumstances where she had effectively been deprived of her legal capacity (see paragraph 5 above). The Court notes that the Government did not provide any information about the appointment of a legal guardian or the restoration of the applicant's legal capacity in the meantime, although in their submissions, they seemed to rely on the applicant having full legal capacity (see paragraph 118 above).

161. Despite the explicit request formulated by the Ministry for "post-intervention monitoring" (see paragraph 11 above), the Government did not provide any evidence indicating that the applicant had subsequently been supported and monitored by social services, other than the statements of the social worker referring to a one-off visit to the farm to inspect the living conditions and her occasional encounters with the applicant (see paragraphs 29 and 52 above). This contrasts with the current arrangements put in place by the authorities (see paragraph 70 above). The lack of support and monitoring at the time was a decisive factor in her further isolation in a place where she had no acquaintances, friends or persons she could trust, thus exacerbating her pre-existing vulnerability.

162. In the Court's opinion, there were sufficient indicators available to the authorities for them to have been aware of the circumstances giving rise to a credible suspicion that the applicant was at real and immediate risk of being a victim of trafficking or exploitation. Accordingly, a positive obligation arose to take any necessary operational measures to protect the applicant.

163. The Court reiterates that the Moldovan authorities, in the context of the Anti-Trafficking Convention, undertook the obligation to ensure that persons with disabilities were provided with care arrangements which did not expose them to trafficking or exploitation, to carry out a risk assessment prior to any placement decision, and to provide all those working in relevant fields with adequate training to enable them to identify potential trafficking victims (see paragraphs 124, 126, 132 and 133 above). Insufficiently trained professionals may be prejudiced *vis-à-vis* potential victims of trafficking and insensitive to the problems experienced by them.

164. The Court notes that while no preventive measure was taken, the authorities were reactive to the applicant's complaint made via the hotline. She was removed from the farm and placed in alternative accommodation and criminal proceedings were promptly initiated.

165. The possible deficiencies of the investigation will be discussed below. However, the Court concludes that the deficiencies in the placement process and in the support provided by the

authorities before and after the applicant's placement with the P. family, in circumstances which gave rise to a credible suspicion that she might be trafficked or exploited, resulted in a failure by the Moldovan authorities to take measures to protect the applicant.

166. In the light of its findings above (see paragraph 157 and 165), the Court finds that there has been a violation of Article 4 of the Convention in its substantive limb.

(d) Procedural obligation to investigate potential trafficking and/or servitude

167. Having regard to the scope of the respondent State's positive obligations, the Court will deal with the applicant's complaint of a deficient response by the domestic authorities to her allegations of human trafficking and/or other treatment contrary to Article 4 of the Convention. In making this assessment, the Court will examine whether there were significant flaws or shortcomings in the relevant domestic proceedings and decision-making processes within the meaning of the Court's case-law, namely if those flaws were capable of undermining the investigation's capability to establish the relevant circumstances of the case (see *S.M. v. Croatia*, cited above, §§ 317-320).

168. In the present case, although the prosecuting authorities reacted promptly to the applicant's allegations, in their investigation they failed to follow up on some obvious lines of inquiry capable of elucidating the circumstances of the case and establishing the circumstances of the applicant's placement in the family of I.P. and L.P. As already stressed, such a requirement stems from the domestic authorities' procedural obligation, and does not depend on a victim taking the initiative and taking responsibility for the conduct of any investigative procedures. As the prosecuting authorities are better placed than a victim to conduct the investigation, any action or lack of action on the part of the victim cannot justify a lack of action on the part of the prosecuting authorities (ibid., §§ 314 and 336). This is particularly relevant where the potential victim is a person with intellectual disabilities who may lack legal capacity.

169. In this connection, for instance, it should be noted that there is no indication that the prosecuting authorities made any effort to inquire into the asylum administration's diligence and attention to the applicant's rights in the process of facilitating I.P. and L.P.'s request to have the applicant placed in their care. However, as noted above, her vulnerability, combined with their stated motive to find a worker for the farm and/or a housewife for another worker, had represented a red flag. There was no assessment of the role which the asylum staff or administration had played in "selecting" the applicant as a good fit for L.P. and I.P. The investigation also never addressed the willing or negligent failure of social services to carry out the follow-up monitoring required by the Ministry.

170. Furthermore, at no point during the investigation or after the relevant information had surfaced during the trial did the authorities consider assessing all the elements relating to the applicant's vulnerability. There was no inquiry into whether the applicant had been appointed a legal guardian before or after her placement in the care of I.P. and L.P., considering that she had been deprived of her legal capacity in 2011 and the social worker was aware that the couple's guardianship had not been formalised (see paragraph 29 above). There was no assessment of the support network and community services available to the applicant before and during her stay at the farm. These elements were essential for determining if the applicant needed "procedural accommodation" (see paragraph 79 above) and for properly interpreting her statements and possible contradictions. The same aspects

were important to assess if there could have been an abuse of vulnerability, as a means to commit the offence of trafficking or servitude.

171. Moreover, the Court notes that the domestic courts relied on the fact that the applicant had consented to being placed in care and performing chores at the farm. However, the fact that the applicant may have, at least initially, consented to move to the farm of I.P. and L.P. is immaterial (see, *Krachunova,* cited above, § 153). There was no clear determination of whether the applicant had had the capacity to express valid consent, given her lack of legal capacity, the potentially coercive environment, her lifelong institutionalisation, the lack of supported decision-making and her intellectual disability. In any event, under the Anti-Trafficking Convention's definitions, such consent is irrelevant if any of the "means" of trafficking have been used (see GRETA's submissions, paragraphs 128 and 131 above and *Krachunova*, ibid. and *T.V. v. Spain*, cited above, § 90).

172. These elements were equally determinative for the assessment of the allegedly coercive environment at the farm. In particular, the courts concluded that the applicant had been free to leave the farm because it was not fenced and because she had previously left and then returned. As to the reason why the applicant had returned, the courts acknowledged that the farm had been the place where she had had food and shelter (see paragraphs 58 and 64 above). In doing so, they failed to assess whether another place had existed where she could receive food and shelter, especially in the light of witness statements which indicated that she had returned because she had been in the cold and without food for days and had feared starvation (see paragraphs 54-55 above). At the same time, the appellate court acknowledged the restrictions on the applicant's freedom of movement, but concluded that those had been justified because she had been deprived of her legal capacity (see paragraph 64 above). While it cannot be excluded that, as submitted by the Government (see paragraph 115 above), the applicant could have requested the authorities to secure her return to the asylum, the domestic courts failed to take into account the situation of dependence in which the applicant found herself and her intellectual disability which diminished her capacity to assess the choices she had.

173. Furthermore, the prosecuting authorities and the courts failed to determine exactly what kind of work the applicant had done at the farm. Several witnesses, including G.B., submitted that the applicant had been brought from the asylum "to work with him at the farm" and that she mostly cleaned the farmhouse and the farm, cooked food and took out the cow manure (see paragraphs 30, 31, 33, 49, 50 and 54 above). The prosecutor referred to her caring for the livestock, while the courts referred only to her assistance with daily chores and that any dispute concerning salary was a civil matter (see paragraphs 36, 60 and 64 above). While the prosecuting authorities outlined the economic benefit gained by the defendants by having free labour, the courts chose the position of the defendants, which denied the economic value of domestic chores (cleaning and cooking for G.B.) and other chores associated with rural life (cleaning out the stalls, caring for the animals). The defendants had taken the applicant from the asylum explicitly to clean and cook for G.B., while considering that it was normal for the applicant to do such work voluntarily and without remuneration, although such work benefitted their farm and their only permanent employee, G.B., who worked for little to no pay. The courts relied on the conclusion of the Labour Inspectorate that labour relations had not existed because no documents had been found to confirm this, and that it was for a civil court to determine any such relations on the basis of evidence to be provided by the

applicant. It goes without saying that in an investigation into labour exploitation, the presence of legal documents is highly unlikely, and it is precisely the absence of such legal arrangements that is at the heart of the investigated offence.

174. The focus of the investigation was on the offence of trafficking, and it does not appear that the investigation ever looked into the alternative offences of servitude or forced labour, which are provided for under domestic law (Articles 167 and 168 of the Criminal Code, see paragraph 71 above). Domestic servitude is a specific offence, distinct from trafficking and exploitation, which involves a complex set of dynamics, involving both overt and more subtle forms of coercion, to force compliance. A thorough investigation into complaints of such conduct therefore requires an understanding of the many subtle ways an individual can fall under the control of another (see *C.N. v. the United Kingdom*, cited above, § 80).

175. All these elements, in the Court's view, suggest that the authorities did not effectively investigate all the relevant circumstances of the case or follow some of the obvious lines of inquiry in order to gather the available evidence, in accordance with their procedural obligation under Article 4 of the Convention. The Court is of the opinion that the above-mentioned multiple shortcomings of the prosecuting authorities in the conduct of the case fundamentally undermined the ability of the domestic authorities, including the relevant courts, to determine the true nature of the applicant's placement in the care of I.P. and L.P. and whether she had been exploited by them for labour, as she alleged.

176. This is therefore sufficient for the Court to conclude, without expressing an opinion on the guilt of I.P. and L.P., that there were significant flaws in the domestic authorities' procedural response to the arguable claim and prima facie evidence that the applicant had been subjected to treatment contrary to Article 4 of the Convention. Accordingly, the Court finds that the manner in which the criminal-law mechanisms were implemented in the instant case was defective to the point of constituting a violation of the respondent State's procedural obligation under Article 4 of the Convention.

177. There has therefore been a violation of Article 4 of the Convention in its procedural limb.

IV. ALLEGED VIOLATION OF ARTICLES 3 and 8 OF THE CONVENTION

178. The applicant complained under Articles 3 and 8 of the Convention that that the Moldovan authorities had not investigated her allegations of rape and sexual abuse effectively and had breached their positive obligation to protect her from inhuman and degrading treatment. She relied on Articles 3 and 8 of the Convention, which read as follows:

Article 3

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

Article 8

"1. Everyone has the right to respect for his private and family life, ..."

A. The parties' submissions

1. The applicant

179. The applicant submitted that her statements had remained unchanged throughout the domestic proceedings: she had been forced to have sexual relations with I.P. in a situation where she had been highly vulnerable owing to her intellectual disability, lifelong institutionalisation and the dire position in which she had found herself at the farm, where she had had no freedom of choice.

180. The applicant submitted that the courts had failed to conduct a meaningful examination of all the evidence before them concerning her lack of consent. They had failed to carry out any assessment of her vulnerability and how this might have affected her situation. The courts had relied on the absence of physical abuse, but had ignored ample evidence of psychological coercion such as the threats to kill her dogs, the threats to her reputation and the perpetrator's position of authority. There had never been any consideration of the witness statements attesting to her crying and complaining of sexual abuse. While the investigation had confirmed that I.P. had a scar in his inguinal area, which the applicant had reported seeing when she had had sexual relations with him, no weight had been attached to this fact or how it had been possible for her to have known about this.

181. No proper examination of the charges of rape or aggravated human trafficking had been carried out, despite the precise arguments raised in this regard in the applicant's appeals (see paragraphs 37-42, 62 and 67 above). No procedural accommodation had been offered to her so as to enable her to follow the legal process, despite the finding of the initial psychiatric report that she needed the support of a legal representative (see paragraph 25 above). Before being represented by a lawyer, she had not been heard in a manner suitable for her disability. The statements which might potentially have been viewed as contradictory had in fact likely been caused by the lack of proper support in the proceedings, as the applicant had tended to agree with the questions that had been asked to please the interviewing police offers, her answers clearly reflecting her acceptance of a subordinate position.

2. *The Government*

182. The Government submitted that the Moldovan authorities had complied with their obligations under Article 3 of the Convention, including positive and procedural obligations.

183. In particular, the domestic legislature had provided for a corresponding legislative and administrative framework aimed at effectively preventing and punishing rape and other forms of sexual abuse. The Government referred to the provisions of the Criminal Code which criminalised rape and sexual abuse (Articles 171 and 172) and provided for heavy penalties of imprisonment. They also submitted that the criminal offence of trafficking under Article 165 of the Criminal Code had subsumed commercial or non-commercial sexual exploitation, which had been used in the classification of the charges against I.P.

184. During her stay there, the applicant had never complained to any authority of sexual abuse, although the social worker had often asked her about her well-being. Once the authorities had been notified of her complaint, they had reacted promptly by removing the applicant from the family and placing her in an institution, and by initiating a criminal investigation.

185. As to the obligation to conduct an effective investigation, the Government argued that the authorities had interviewed various witnesses in an attempt to elucidate essential discrepancies, and had been confronted with two irreconcilable versions of events. However, the medical reports had revealed no signs of forced sexual relations or abuse and no psychological trauma as a result of the acts complained of, which had been determinative for the appellate court when it had upheld the acquittal.

186. In respect of the subsequent reclassification of the charges brought against I.P. concerning the allegations of sexual abuse, the Government noted that the prosecutor's decision had been upheld

by a hierarchically superior prosecutor and the courts. They submitted that the legal solution of subsuming allegations of sexual abuse under charges of non-commercial sexual exploitation had also been validated in an explanatory judgment of the Supreme Court of Justice (see paragraph 73 above). A different legal classification would have amounted to a breach of the *non bis in idem* principle.

187. The Government submitted that the applicant had never taken issue with that legal classification in her appeals, and they implied that she herself had therefore admitted that the allegations of sexual abuse had been subsumed by the human trafficking offence.

188. For this reason, the applicant's allegation that the investigation had been ineffective was ill-founded. The domestic case file had contained evidence in respect of all the allegations, but the domestic courts had concluded that the evidence relating to non-consensual sexual relations did not point directly to any sexual offence committed by I.P. The courts had not found any evidence inadmissible, and the applicant had not submitted any additional evidence. The acquittal of the defendants had not rendered the investigation ineffective, since the requirement of an effective investigation was one of means, not of result.

189. The applicant and her lawyer had been involved in the investigation at all times, and had been able to submit new evidence, suggest experts to carry out forensic examinations, and object to several investigative measures.

190. In conclusion, the Government argued that the authorities had successfully discharged their obligation to conduct a meaningful and effective investigation into the acts complained of by the applicant, but had found those allegations unsubstantiated because they had been based on her contradictory statements and the evidence had pointed to the defendants' innocence.

B. The Court's assessment

191. The Court notes the applicant's submissions that she had been "trafficked" not only for labour but also for sexual exploitation because one of the reasons why I.P. and L.P. had sought her placement with them had been to find a "bride" or "partner" for G.B., an employee at the farm (see paragraphs 46 and 54, and the Government's submissions in paragraph 109 above). At the same time, the Court notes that the applicant never complained about her intimate relationship with G.B.. Her complaints about sexual violence concern solely the acts of I.P.

192. The Court has already examined above under Article 4 of the Convention the deficiencies in the placement process and in the support provided by the authorities before and after the applicant's placement with the P. family, in circumstances which gave rise to a credible suspicion that she might be trafficked or exploited (see paragraph 165 above). That being so, the Court considers that the issue which remains to be examined under Articles 3 and 8 of the Convention concerns the approach of the domestic authorities in the examination of the applicant's complaints regarding I.P. in the light of the State's obligation to effectively investigate and punish sexual violence.

1. General principles

193. The Court reiterates that the obligation of the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to ill-treatment, including ill-treatment administered by private individuals (see *I.G. v. Moldova*, no. 53519/07, § 40, 15 May 2012). 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*, cited above, § 150). In the case of people in a vulnerable position, including people with disabilities, the Court has held that the authorities must show particular vigilance and afford increased protection in view of the fact that such individuals' capacity or willingness to pursue a complaint will often be impaired (see *B. v. Romania*, no. 42390/07, § 50, 10 January 2012, and *I.C. v. Romania*, no. 36934/08, §§ 51-52, 24 May 2016).

194. On that basis, the Court considers that States have a positive obligation inherent in Articles 3 and 8 of the Convention to enact criminal-law provisions that effectively punish rape and to apply them in practice through effective investigation and prosecution (see *M.C. v. Bulgaria*, no. 39272/98, § 153, 4 December 2003). In addition, in accordance with contemporary standards and trends in this area, member States' positive obligations under Articles 3 and 8 of the Convention must be seen as requiring the penalisation and effective prosecution of any non-consensual sexual act, including in the absence of physical resistance by the victim (ibid., § 166).

2. *Application of the above-mentioned principles to the present case*

(a) Positive obligation to put in place an appropriate legislative and administrative framework

195. The Court notes that the parties did not dispute the adequacy of the Moldovan legal framework criminalising sexual violence, either separately or in the context of human trafficking. The Court notes that the applicant's submissions focused on the non-consensual nature of the alleged sexual acts, and also on the coercive environment in which they had allegedly occurred, but that she did not take issue with the text of the law. The Court also notes that the domestic courts concluded that the alleged sexual acts had not taken place and, therefore, never proceeded with an analysis of the "consent" element. In these circumstances, the Court is not called upon to examine the domestic legal framework.

(b) Positive obligation to investigate potential rape, sexual violence and abuse

196. The Court notes the dispute concerning the interpretation of domestic criminal law concerning the legal classification of the allegations of sexual violence. Even if the authorities' failure to clarify this matter could have undermined the efficiency of the investigation, the Court finds, for the reasons stated below, that in the present case this element has not been decisive.

197. In particular, as already noted above, the domestic courts concluded that the alleged sexual acts had not occurred at all. Therefore, the main issue in the present case concerns the manner in which the courts arrived at that conclusion. In this regard, the Court observes that the domestic courts based their conclusion exclusively on the fact that I.P. did not have a sexually transmitted disease. However, there was never an assessment of the possibility that sexual relations not resulting in infection might have occurred. No attention was devoted to the possibility that a person having unprotected sex, including oral sex, with another who carries the particular type of sexually transmitted disease concerned might remain nevertheless uninfected or, moreover, to the possibility that condoms might have been used, although the applicant referred to the use of a condom in court proceedings (see paragraph 48 above). There was also no assessment of the circumstances in which the applicant could have learned about the inguinal scar on I.P.'s body. Although I.P. referred to a scenario in which she had seen the scar when he and other farm employees had undressed to swim in the pond (see paragraph 47 above), the domestic courts never assessed the credibility of that

statement or sought additional evidence which supported or contradicted it, for example by questioning the other witnesses about this.

198. The Court further notes the deficiencies in the assessment of the applicant's credibility and the lack of elementary sensitivity on the part of the domestic authorities to the particular context and the applicant's vulnerability. The Government claimed, among other things, that the applicant had given conflicting statements to the authorities. However, the Court notes that in her statements about sexual violence and abuse which she gave during the investigation and the trial, the applicant merely clarified her initial statement, which remained mostly unchanged. Each time she was interviewed, she provided a detailed and mostly coherent description of various acts of sexual intercourse with I.P., and her account always made explicit reference to her unwillingness to have such relations with him and her yielding to his "nice words" or "reasoning" (see paragraphs 16, 17, 20, 21, 48 and 63 above).

199. The Court observes that in her initial statement to the police the applicant said that those relations had been pleasurable, but she explicitly stated that they had been non-consensual. It is noteworthy that none of her subsequent statements referred to any "pleasure", and the applicant herself argued that her initial statement had been made in the absence of any procedural accommodation, in circumstances in which the police officers had asked her directly if she had enjoyed having sexual relations with I.P. (see paragraph 181 above). Such a line of questioning was clearly inappropriate, insensitive and harmful. It was also legally irrelevant in that context, when the investigation should have focused on the absence of consent. Such behaviour by the police can only stem from and contribute to the stereotype of a female victim being somehow responsible for an assault. The Court finds that the said questions were not only aimed at attacking the applicant's credibility, but were also meant to denigrate her character. In this context, the Court reiterates that in criminal proceedings on sexual violence, it is essential that authorities avoid reproducing sexist stereotypes in court decisions, playing down gender-based violence and exposing women to secondary victimisation by making guilt-inducing and judgmental comments that were capable of undermining victims' trust in the justice system (see *mutatis mutandis, J.L. v. Italy*, no. 5671/16, §§ 139-141, 27 May 2021; *C. v. Romania*, no. 47358/20, §§ 83-85, 30 August 2022).

200. While the social worker was present at that interview, there is no indication that she played any role in providing the applicant with support or facilitating that process for her. On the contrary, it appears that she herself had a prejudiced view of the applicant's credibility because she thought that "as a person with disabilities, [the applicant] enjoyed drawing attention to herself" (see paragraph 29 above). In these circumstances, in the Court's opinion, the applicant's intellectual disability and the intimate nature of the subject matter were points of particular sensitivity which called for a correspondingly sensitive approach on the part of the authorities to the conduct of the criminal proceedings (see *Y. v. Slovenia*, no. 41107/10, § 114, ECHR 2015 (extracts)). It cannot be said that the applicant did not need any procedural accommodation.

201. The domestic courts relied on the opinions of other witnesses about the applicant's credibility (see paragraphs 58 and 64 above), but never questioned their credibility. It is noted that most witnesses were former workers from the farm or people in the village with little or no knowledge of the applicant. However, a crucial witness, G.B., changed his statements in the course of the investigation and the courts never analysed the possible reasons for this change, despite the

applicant arguing that he had been under pressure from the defendants, on whom he depended for shelter and food. At the same time, the courts dismissed the statements and conclusions of professionals who attested to the applicant's ability and tendency to reflect reality as it was, without exaggeration or elements of fantasy (see paragraphs 25, 43, 44 and 55 above). It is particularly striking that the courts dismissed those professionals' views as their "personal conclusions" which were not corroborated by witness statements.

202. In view of the above, without expressing an opinion on I.P.'s guilt, the Court finds that the investigation into the applicant's case fell short of the requirements inherent in the States' positive obligations to effectively apply a criminal-law system punishing all forms of rape and sexual abuse.

203. There has accordingly been a violation of Articles 3 and 8 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION READ in conjunction with Articles 3, 4 and 8 of the Convention

204. The applicant complained that societal stigma towards women with intellectual disabilities had been behind the domestic authorities' failure to protect her from human trafficking and sexual abuse, and that discriminatory attitudes had prevented a proper investigation into her complaints. She relied on Article 14 of the Convention, read in conjunction with Articles 3, 4 and 8. Article 14 reads as follows:

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

A. The parties' submissions

1. The applicant

205. In particular, the applicant submitted that she had been subjected to discrimination by the domestic authorities owing to the use of stereotypes in relation to her disability and gender. The courts had dismissed her case with reference to stereotypical assumptions that as a person with a disability, she should have been grateful for any type of "care" provided to her. Her statements had also been given less weight compared with those of the defendants, simply because she was a woman with disabilities.

206. The applicant further argued that at the pre-trial phase she had not been provided with any reasonable accommodation or procedural accommodation to allow her to properly understand the questions asked by the police, fully express her grievance and effectively assert her rights. Procedural accommodation was essential for ensuring equal access to justice for persons with disabilities, and was a form of reasonable accommodation to which persons with disabilities were entitled by virtue of Article 14 of the Convention (see *G.L. v. Italy*, no. 59751/15, 10 September 2020; *Enver Şahin v. Turkey*, no. 23065/12, 30 January 2018; and *Çam v. Turkey*, no. 51500/08, 23 February 2016). Denying a person such accommodation was a form of discrimination on the basis of disability.

207. The applicant emphasised that her discrimination claim mainly concerned the fact that she had found herself in a situation of exploitation and abuse only because of the intersection of her disability and gender. On the one hand, she had been institutionalised and then deinstitutionalised only because of her intellectual disability, because in Moldova "care for adults" was only for persons with disabilities, like herself. Had she had no disability, the director of the asylum could not have

"traded" her to a farm owner for work. On the other hand, she had been selected for a placement with the P. family only because she was a woman, in order to be G.B.'s housewife. At the farm she had repeatedly been raped and sexually abused because she was a woman. Rape was a form of gender-based violence which constituted discrimination against women.

208. While comparators were difficult to identify in cases of intersectional discrimination, it was clear that neither a man with a disability nor a woman without a disability would have experienced the same human rights violations in the same situation. Even assuming that such a difference in treatment could pursue a legitimate aim and be justified, there had been no reasonable relationship of proportionality between the means employed and the aim sought to be realised. Such grave forms of abuse could not be used to pursue any legitimate aim.

209. The applicant contended that her situation had been directly condoned and facilitated by the State, and the sexual slavery to which she had been subjected had been negligently ignored by the authorities. A State's failure to effectively prevent gender-based violence is a form of systemic discrimination against women (see *Opuz v. Turkey*, no. 33401/02, §§ 199-202, ECHR 2009, and *Eremia v. the Republic of Moldova*, no. 3564/11, §§ 88-89, 28 May 2013). In such circumstances, the applicant submitted that she had been the victim of multiple and intersectional forms of discrimination due to her disability and gender.

2. The Government

210. The Government submitted that the applicant had failed to provide any evidence in support of her allegations of discrimination. They argued that there was nothing in the present case to suggest that there had been a biased attitude based on stereotypes towards the applicant as a woman and as a person with an intellectual disability. The authorities had only sought her social reintegration by offering her the opportunity to be part of a family of her own choosing and to live a normal life. They had only sought to fulfil her wish "to have a family and become a mother", and had done so after a preliminary investigation had concluded that deinstitutionalisation would only benefit her. The authorities had put in place a legal framework to secure the successful integration of persons with intellectual disabilities and to provide them with a better way of living outside asylums.

211. The Government noted that the criminal proceedings had paid particular attention to the applicant as a woman and as a person with an intellectual disability, in order to secure her rights and interests but not to discriminate against her on those grounds. The investigation had been initiated promptly even if the initial complaint and statements had not clearly pointed to sexual offences. The complaint concerning trafficking had also been investigated and charges had been brought against the alleged perpetrators. The authorities' treatment of the applicant had only been intended to compensate for the disadvantage associated with her disability. However the applicant's contradictory statements could not secure a conviction, and this fact on its own had not amounted to discrimination. There was nothing to suggest that the authorities had acted in a discriminatory manner, and the applicant's allegations were ill-founded.

212. The Government disputed the allegations that the applicant's statements had been treated as less credible simply because of her disability. Her statements at various procedural stages had been contradictory and had not been supported by other evidence. The applicant had never raised a complaint concerning reasonable procedural accommodation during the domestic criminal proceedings, and had done so for the first time in her submissions before the Court. In any event,

for the reasons stated above (see paragraphs 118 above), the domestic authorities had not considered such adjustments necessary and had acted in a proactive manner at all times.

B. The Court's assessment

1. General principles

213. 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 that Article. A discrimination potentially contrary to the Convention may result not only from a legislative measure , but also 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). Article 14 of the Convention must be read in the light of international requirements regarding reasonable accommodation – understood as necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case – which persons with disabilities are entitled to expect in order to ensure the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms. Such reasonable accommodation helps to correct factual inequalities which are unjustified and therefore amount to discrimination (see *mutatis mutandis, Çam,* cited above, § 65).

214. 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; *A.E. v. Bulgaria*, no. 53891/20, § 116, 23 May 2023).

215. 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).

2. Application of the above-mentioned principles to the present case

216. Having regard to the arguments advanced by the applicant, the Court notes that the alleged difference in the treatment of women with intellectual disabilities in the Republic of Moldova did not result from the wording of any statutory provisions, but rather a *de facto* policy of State agents. Accordingly, the issue to be determined in the instant case is whether the failure of the authorities to protect the applicant from servitude and to investigate her allegations about servitude and sexual abuse was the result of a discriminatory approach, stemmed from a wider institutional tolerance of violence against women and neglect of persons with disabilities and the Moldovan authorities' complacency in relation to such cases which undoubtedly affected women more than men.

217. The Court recalls its findings above concerning the failure of the domestic authorities to assess and give weight to the applicant's vulnerability due to her gender, intellectual disability and lifelong institutionalisation, and how such a failure affected the State's capacity to provide her with effective

protection against treatment contrary to Articles 3, 4 and 8 of the Convention (see paragraphs 149, 170-172, and 198-200 above).

218. The Court observes that the United Nations bodies have consistently reported the existence of systemic discrimination against persons with disabilities in Moldova, and their concern about the intersecting forms of discrimination faced by women with disabilities in the country (see paragraphs 83-84 above). Persons with disabilities were still mostly perceived as being devoid of agency, while gender was an additional source of vulnerability and discrimination among persons with disabilities. Multiple forms of discrimination against women with disabilities affected all areas of life, but particularly deprived women affected by violence of access to mainstream services and justice, owing to a lack of reasonable accommodation and legal aid (see paragraphs 77 and 84 above).

219. Turning to the circumstances of the case, the Court notes the lack of procedural accommodation in the course of the domestic proceedings despite the applicant's intellectual disability and the intimate and sensitive nature of her complaints (see paragraph 200 above). The domestic courts relied heavily on the conclusion that there had been no traumatic consequences for the applicant (see paragraph 64 above), thus failing to properly factor in her vulnerability due to her intellectual disability when interpreting her perception of what she had experienced, despite her explicit grievances. At the same time, the appellate court used the applicant's intellectual disability to justify any restrictions of her freedom of movement after her deinstitutionalisation (see paragraph 65 above).

220. The Court also notes how the courts concluded that the applicant had been untruthful by choosing to rely on the statements made by witnesses who had expressed discriminatory views about the applicant's credibility, as a woman with intellectual disability, while refusing to accept the evaluation of a professional who had attested to the applicant's truthfulness and trauma (see paragraphs 29, 31, 47, 59 and 64 above). As already observed above, such an approach to the assessment of the applicant's complaints exposed her to secondary victimisation and amounted to a failure to provide the necessary accommodation to correct unjustified inequality related to her disability (see paragraphs 199 and 200 above).

221. The Court observes that the domestic courts were of the view that it was lawful to get a woman with intellectual disabilities from an asylum to be a housewife or partner for a man working for the family and then consider that any unremunerated domestic or farm work carried out by that woman would not represent any material added value capable of amounting to labour exploitation (see paragraphs 58 and 64 above). Such views seem to convey stereotypes, preconceived beliefs and myths about persons with disabilities lacking agency, about a woman's role being that of a housewife who attends to the needs of a man and the family, and about the domestic work carried out by women lacking any economic value.

222. In the Court's opinion, the combination of the factors above clearly reflect a discriminatory attitude towards the applicant as a woman with intellectual disabilities. The above elements, taken together, are sufficient for the Court to find that the authorities have not rebutted the applicant's prima facie case of a general institutional passivity and/or lack of awareness of the phenomenon of violence against women with disabilities in Moldova. Moreover, the Court considers that the domestic authorities have failed to provide a reasonable accommodation which might have enabled the applicant to obtain justice.

223. 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 Articles 3, 4 and 8 of the Convention.

VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

224. Lastly, the applicant complained under Articles 6 and 13 of the Convention that the court judgments rejecting her allegations of sexual abuse had lacked reasoning and that she had had no effective remedies in respect of her complaints under Articles 3 and 4 of the Convention.

225. The Court notes that in reaching its findings relating to Articles 3 and 4 of the Convention, it has already taken into account factors such as the respondent Government's failure to investigate the applicant's allegations of exploitation and ill-treatment (see paragraphs 177 and 203 above). The Court therefore considers that it is not necessary to examine separately the complaints under Articles 6 and 13 of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

226. 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."

A. Non-pecuniary damage

227. The applicant claimed 35,000 euros (EUR) in respect of non-pecuniary damage. She relied on the serious long-term emotional and psychological harm caused to her as a result of the State's failure to fulfil its obligations under the Convention. She cited the conclusions of psychological reports about the post-traumatic stress disorder which she had developed, which required long-term psychological care. She also relied on the amounts awarded to the applicants in *G.M. and Others v. the Republic of Moldova* (cited above).

228. The Government submitted that the claim was excessive and unsubstantiated. The reference to *G.M. and Others* (ibid.) was inappropriate, in view of the difference in the factual circumstances of the cases. They argued that the applicant had failed to demonstrate the harm which she had allegedly suffered, as she had returned to the asylum in 2021 and had continued to request permission for leave outside the asylum.

229. In the light of the circumstances of the case, the Court awards the applicant the sum of EUR 35,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

230. The applicant also claimed EUR 8,587 for the costs and expenses incurred before the domestic courts and before the Court, to be paid directly into the account of the Validity Foundation. She submitted invoices and proof that the Validity Foundation had paid her lawyers in the domestic proceedings.

231. The Government contended that the claim was excessive and unsubstantiated. The applicant had not explained why she had needed to be represented by two lawyers, one national and one foreign, nor had she provided a clear breakdown of the costs.

232. 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).

233. 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 8,587 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 her 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).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins to the merits,* the Government's preliminary objection concerning the applicability of Article 4 of the Convention and *dismisses* it;
2. *Dismisses,* the Government's other preliminary objections;
3. *Declares,* the application admissible;
4. *Holds* that there has been a violation of Article 4 of the Convention in its procedural and substantive limbs;
5. *Holds* that there has been a violation of Articles 3 and 8 of the Convention;
6. *Holds* that there has been a violation of Article 14 of the Convention, read in conjunction with Articles 3, 4 and 8 of the Convention;
7. *Holds* that there is no need to examine the complaints under Articles 6 and 13 of the Convention;
8. *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 35,000 (thirty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 8,587 (eight thousand five hundred and eighty-seven euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(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 27 February 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik — Registrar

Mattias Guyomar — President