



It was up to the UK authorities to decide on the reduction in night-time care for an elderly lady

The case concerned a lady with severely limited mobility who complained about a reduction by a local authority of the amount allocated for her weekly care. The reduction was based on the local authority's decision that her night-time toileting needs could be met by the provision of incontinence pads and absorbant sheets instead of a night-time carer to assist her in using a commode.

In today's Chamber judgment in the case of [McDonald v. the United Kingdom](#) (application no. 4241/12), which is not final¹, the European Court of Human Rights held, unanimously, that:

the decision to reduce the amount allocated for Ms McDonald's care interfered with her right to respect for her family and private life, insofar as it required her to use incontinence pads when she was not actually incontinent;

there had been a **violation of Article 8 (right to respect for private and family life)** of the European Convention on Human Rights in respect of the period **between 21 November 2008 and 4 November 2009** because the interference with her rights had not been in accordance with domestic law during this period ; but

the complaint concerning the period **after 4 November 2009** was **inadmissible as manifestly ill-founded** because the State had considerable discretion when it came to decisions concerning the allocation of scarce resources and, as such, the interference with Ms McDonald's rights had been "necessary in a democratic society".

Principal facts

The applicant, Elaine McDonald, is a British national who was born in 1943 and lives in London (the United Kingdom).

Her mobility is severely limited. As a consequence, she cannot access a toilet or commode unaided. Beginning in March 2007, the local authority provided her with a night-time care package which included the provision of a night-time carer to assist her in using a commode during the night. A care plan dated 27 April 2007 concluded that Ms McDonald needed assistance to use a commode at night.

However, on 21 November 2008 the local authority informed Ms McDonald of a decision to reduce the allocation for her weekly care and told her that she would be provided with incontinence pads at night instead of a night-time carer. She sought judicial review of that decision on the basis that the local authority had made the assessment that she needed access to a commode at night and, in supplying her with incontinence pads, it was unlawfully failing to meet her assessed need. She further submitted that the local authority's actions would cause her to suffer indignity which would

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

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

amount to an interference with her right to respect for her private life in breach of Article 8 of the European Convention. The application was refused on both grounds.

Further care plan reviews were carried out on 4 November 2009 and 15 April 2010 which concluded that the use of incontinence pads was a practical solution to Ms McDonald's toileting needs. However, pending the outcome of the judicial proceedings a compromise was reached with the local authority and Ms McDonald continued to receive night-time care for four or five nights per week, with her partner assisting her on the other nights of the week.

Ms McDonald appealed to the Court of Appeal. The court accepted that between 21 November 2008 (the date of the decision to reduce Ms McDonald's care) and 4 November 2009 (the date of the first care plan review) the local authority had been in breach of its statutory duty to provide Ms McDonald with a level of care commensurate with her assessed need (namely, safe access to a commode). However, it had mitigated the breach by entering into an arrangement with Ms McDonald's partner and no substantive complaint could therefore be made out. The court further found that there had been no breach of Article 8 of the European Convention.

Ms McDonald was granted permission to appeal to the Supreme Court. In respect of Article 8, that court found that there had been no interference with Ms McDonald's right to respect for her private and family life. However, it noted that if there had been an interference, that interference would not have been in accordance with the law between 21 November 2008 and 4 November 2009 as the local authority had not met Ms McDonald's assessed need for assistance to safely access a commode at night.

In September 2011, all night-time care was withdrawn.

Complaints, procedure and composition of the Court

Relying on Article 8, Ms McDonald alleged that the decision to reduce her care allowance on the basis that she could use incontinence pads at night, even though she was not incontinent, amounted to an unjustifiable and disproportionate interference with her right to respect for private life, and exposed her to considerable indignity.

The application was lodged with the European Court of Human Rights on 5 January 2012.

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

Ineta **Ziemele** (Latvia), *President*,
Päivi **Hirvelä** (Finland),
Ledi **Bianku** (Albania),
Nona **Tsotsoria** (Georgia),
Paul **Mahoney** (the United Kingdom),
Krzysztof **Wojtyczek** (Poland),
Faris **Vehabović** (Bosnia and Herzegovina),

and also Françoise **Elens-Passos**, *Section Registrar*.

Decision of the Court

[Article 8 \(right to respect for private and family life\)](#)

The Court found that the reduction in Ms McDonald's care allowance on the basis that she could use incontinence pads at night had interfered with her right to respect for her family and private life under Article 8 of the Convention. The Court noted the Supreme Court's concession – which had been accepted by the Government – that any interference with her right to respect for her family

and private life had not been “in accordance with the law” during the period between 21 November 2008 and 4 November 2009. It therefore found that there had been a violation of Article 8 of the Convention during this period.

However, from 4 November onwards the Court found that the local authority’s decision not to provide her with night-time care to aid her toileting needs was in accordance with domestic law. That interference had pursued a legitimate aim, namely the economic well-being of the State and the interests of other care-users. The case therefore turned on whether the interference was “necessary in a democratic society”, especially when weighed against the economic well-being of the State.

In carrying out that balancing act, the Court bore in mind that States had considerable discretion (“a wide margin of appreciation”) in issues involving social, economic and health-care policy, especially when deciding how to allocate scarce resources. It was therefore not for the Court to substitute its own assessment of the merits of the contested measure for that of the competent national authorities.

In this regard, the Court found that both the local authority (via regular care reviews) and the national courts (including the Court of Appeal and the Supreme Court) had balanced Ms McDonald’s need for care with its social responsibility for the well-being of other care-users in the community at large. Therefore, despite the very distressing situation Ms McDonald was facing, the Court held that from 4 November 2009 onwards the interference with her right to respect for private life had been both proportionate and justified as “necessary in a democratic society” and rejected this part of her complaint as inadmissible.

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

The Court held that the United Kingdom was to pay Ms McDonald 1,000 euros (EUR) in respect of non-pecuniary damage and EUR 9,500 to cover the costs and expenses of her lawyer.

The judgment is available only in English.

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