Selected Legislation and Jurisprudence

European Court of Human Rights

ECHR 2014/17 Case of McDonald v. The United Kingdom, 20 May 2014, no. 4241/12 (Fourth Section)

The Facts

The applicant was born in 1943 and lives in London. Due to an incapacitating stroke in 1999 her mobility is severely limited. As a consequence, she cannot access a toilet or commode unaided. The applicant has a small and neurogenic bladder and she usually has to urinate some two to three times a night.

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 the applicant needed assistance to use a commode at night.

However, on 21 November 2008 the local authority informed the applicant 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, subsequently appealed to the Court of Appeal and, ultimately, was granted permission to appeal to the Supreme Court.

Meanwhile, 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

* These summaries are based on the provisional text of the judgements of the European Court of Human Rights. These judgments are still subject to editorial revision before their reproduction in Reports of Judgments and Decisions. For the full provisional text, see: http://www.echr.coe.int.
solution to the applicant’s toileting needs. However, pending the outcome of the judicial proceedings a compromise was reached with the local authority, and the applicant 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. In September 2011, all night-time care was withdrawn.

The Law

_Alleged Violation of Article 8 of the Convention_

The applicant complained under Article 8 of the Convention that the withdrawal of night-time care disproportionately interfered with her right to respect for her private life. In the alternative, she complained that by withdrawing the service the respondent State was in breach of its positive obligation to provide her with a service which enabled her to live with dignity.

The Court has previously held that the notion of “private life” within the meaning of Article 8 is a broad concept which encompasses, _inter alia_, a person’s physical and psychological integrity, the right to “personal development” and the notion of personal autonomy. In a number of cases the Court has held that Article 8 was relevant to complaints about public funding to facilitate the mobility and quality of life of disabled applicants. 

The Court notes that the applicant was faced with the possibility of living in a manner which conflicted with her strongly held ideas of self and personal identity. The Court does not exclude that the particular measure complained of by the applicant in the present case was capable of having an impact on her enjoyment of her right to respect for private life as guaranteed under Article 8 § 1 of the Convention.

The Court shall approach the present case as one involving an interference with the applicant’s right to respect for her private life, without entering into the question whether or not Article 8 § 1 imposes a positive obligation on the Contracting States to put in place a level of entitlement to care equivalent to that claimed by the applicant.

_The Period from 21 November 2008 to 4 November 2009_

With regard to the period from 21 November 2008 to 4 November 2009 the Court finds that the interference with the applicant’s right to respect for her private life was not “in accordance with the law” and therefore in breach of Article 8 of the Convention.