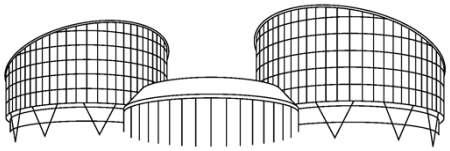

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF DIACONEASA v. ROMANIA

(Application no. 53162/21)

JUDGMENT

Art 8 • Private life • Withdrawal of the provision of a State-funded personal assistant for a physically disabled individual resulting in a severe loss of autonomy • Absence of a thorough assessment of the severity of the applicant's disability and of alternative practical arrangements • Failure to strike a fair balance between competing interests at stake

Prepared by the Registry. Does not bind the Court.

STRASBOURG

20 February 2024

FINAL

20/05/2024

This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.

In the case of Diaconeasa v. Romania,

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

Gabriele Kucsko-Stadlmayer*, President*,
Faris Vehabović,
Branko Lubarda,
Anja Seibert-Fohr,
Ana Maria Guerra Martins,
Anne Louise Bormann,
Sebastian Răduleţu*, judges*,
and Milan Blaško, *Section Registrar,*

Having regard to:

the application (no. 53162/21) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Romanian national, Ms Angelica Diaconeasa ("the applicant"), on 11 October 2021;

the decision to give notice to the Romanian Government ("the Government") of the complaint concerning the scope of the disability benefits granted to the applicant and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 30 January 2024,

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

INTRODUCTION

1. The application concerns the withdrawal by the authorities of the provision of a personal assistant for the applicant, a physically disabled individual. The Government were given notice of the application under Article 8 of the Convention.

THE FACTS

2. The applicant was born in 1953 and lives in Lupeni. She was represented by Ms C. Kis, a lawyer practising in Petroşani.

3. The Government were represented by their Agent, Ms O.F. Ezer, of the Ministry of Foreign Affairs.

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

I. THE APPLICANT'S DISABILITY

5. The applicant had a stroke in 2013 which left her unable to move, talk or take proper care of her basic needs.

6. In 2015 and again on 9 November 2016 the Commission for the Protection of Adults with Disabilities ("the Commission" – see paragraph 24 below) issued a certificate, valid for one year, stating that the applicant suffered from a severe disability necessitating a personal assistant.

II. THE CERTIFICATE OF 22 NOVEMBER 2017

7. On 29 June 2017 a neurologist evaluated the applicant's functional status by reference to the index of independence in activities of daily living ("the ADL index") and established an overall score of 2/8, given that the applicant was able to use the telephone and to administer her medication but unable to go grocery shopping, prepare food, clean her house, do her laundry, use means of transport or manage money.

8. The same doctor assessed the applicant on the Barthel scale, and gave her a score of 45/100 points. She observed that the applicant was totally dependent on others to maintain her personal hygiene, needed help to feed and dress herself, use the toilet and use the stairs, and was able to walk only with mechanical aids or with someone's help. In the printed form on which the doctor noted the applicant's performance on the Barthel scale, the scores were explained as follows:

> "Maximum score is 100 points and represents complete autonomy. 60 points represents 'assisted independence' and 75 points [represents] quasi-independence."

9. On 3 October 2017 the Commission undertook a "complex evaluation" of the applicant's capacities, as required by law (see paragraph 24 below), and filled in a one-page form with the conclusions of its social, medical and psychological assessment. It noted that the applicant received help from her two daughters and recommended that they continue their support. It also noted, in the psychological assessment, that because of her condition she had a low tolerance of frustration.

10. On 22 November 2017 the Commission issued a new certificate, valid for two years, whereby the applicant was assessed as having a severe disability not necessitating a personal assistant.

11. On 18 December 2017 the applicant lodged an objection with the Hunedoara County Court, asking it to cancel that certificate and to order the Commission to issue a new certificate recognising her right to a personal assistant. She argued that her personal situation had not changed and her health had not improved in the past year, as attested by the medical evaluations submitted to the Commission (see paragraphs 7 and 8 above).

12. In a decision of 26 September 2019 the County Court allowed the applicant's objection. It relied on the Commission's complex evaluation report (see paragraph 9 above), a social enquiry report on the applicant's living conditions, and the medical and psychosocial criteria set by law for the classification of the various degrees of disability. It noted that the applicant's condition had not improved since the 2016 evaluation (see paragraph 6

above) and that she still needed help with her personal hygiene and in preparing food, grocery shopping, moving around and using transport. The reports concluded that she was unable to manage on her own.

13. The court further noted that the certificate had not mentioned the reasons for changing the level of disability.

14. It thus concluded that, as neither the applicant's condition nor the criteria for the complex evaluation of the level of disability required by the Disability Act had changed since the 2016 evaluation, the 2017 certificate was invalid. It therefore cancelled it and ordered the Commission to issue a new certificate stating that the applicant required the help of a personal assistant.

15. The Commission appealed and in a final decision of 15 June 2020 the Alba Iulia Court of Appeal quashed the decision of 29 September 2019 (see paragraph 12 above), dismissed the applicant's objection and upheld the 2017 certificate (see paragraph 10 above). The court observed that the applicant could move around with the help of a cane or walking frame (according to the complex evaluation by the Commission – see paragraph 9 above) and she only needed partial assistance for her daily home activities (according to the social enquiry report). It therefore concluded that the applicant had not completely lost the capacity to take care of herself and perform her daily tasks and did not need permanent help. The County Court had wrongly interpreted and applied the law, namely Order no. 762/1992/2007 (see paragraphs 26-27 below), when it had ordered that she should be provided with a personal assistant.

III. THE CERTIFICATE OF 20 NOVEMBER 2019

16. Meanwhile, on 20 November 2019 the Commission had issued a new certificate in the same terms as that delivered in 2017 (see paragraph 10 above). In addition, the new certificate stated that the Commission considered that the applicant's condition was permanent and did not necessitate periodic reassessment.

17. The certificate was issued on the basis of a social enquiry report produced by the Lupeni Directorate of Social Welfare on 4 September 2019. The social assistant found that the applicant needed comprehensive support with personal hygiene and dressing; was unable to clean her home or do laundry and needed help in moving around her flat, going outside, using public transport and the telephone, preparing food, managing her money, and grocery shopping; but that she could walk with a cane or with support from another person and could feed herself independently. She could not or did not wish to engage in any leisure activities. Furthermore, the report stated that the applicant suffered from complete memory loss, was disoriented in space and time and needed a great deal of care. It was also mentioned that the applicant's

daughters took care of her and helped her with money, food, hygiene, and going outside.

18. The applicant contested the new certificate, arguing mainly that her physical condition had not improved since 2016.

19. A forensic medical examination carried out in the Deva County Hospital, at the request of the Hunedoara County Court, on 15 October 2020 revealed that the applicant could not use her left arm and had difficulties walking, which made it impossible for her to deal with her personal hygiene, dress herself or prepare food. The forensic expert concluded that she needed permanent help with those activities. The expert also observed that the applicant's situation had remained unchanged since 2016.

20. According to the information submitted by the Lupeni Directorate of Social Welfare before the Hunedoara County Court, in 2019 the applicant scored 30 on the Barthel scale, allegedly due to a recent bone fracture of the left arm.

21. The Hunedoara County Court ordered a social enquiry into the applicant's situation. A report issued by the Lupeni Directorate of Social Welfare on 24 June 2020 reiterated the same findings as the report of 4 September 2019 (see paragraph 17 above), notably: the assistance required by the applicant for her daily activities and the help she received from her daughters who lived nearby.

22. In a decision of 25 November 2020, the County Court allowed the action and cancelled the certificate of 20 November 2019 (see paragraph 16 above).

23. In a final decision of 12 April 2021, the Court of Appeal quashed the County Court's decision and upheld the certificate issued by the Commission (see paragraph 16 above). It relied on the Methodological Rules for the application of the provisions of Law no. 448/2006 (see paragraph 28 below) and on Order no. 762/1992/2007 (see paragraphs 26-27 below). The relevant parts of the decision read as follows (bold, underline and italics as in the original text):

> "In assessing the degree of disability the following provisions should be taken into account: ***Chapter VII*** *Neuro-musculoskeletal functions and related movements,* ***point III****- Assessment of the degree of disability in motor function impairment* ***/2.*** *Central and peripheral nervous system disorders according to the* **Medico-psycho-social criteria for classification [of levels of] disability** approved by ***Order no.762/1992/2007*** *of the Minister of Labour, Family and Equal Opportunities and the Minister for Public Health, according to which a severe disability is a serious deficit of locomotion, corresponding to the degree of severe disability, if:*
>
> *- the person cannot move either with or without support, being dependent on a suitable means of transport (wheelchair, other devices) or is bedridden;*
>
> *- [the person] is unable to carry out the activities of daily living, requires adaptations and significant accommodation in order to perform his or her work;*
>
> *- [the person] can only have his or her needs satisfied with full or partial support from another person.*

It appears from the medical records submitted in the case that [the applicant] obtained a score of 30 points in the Barthel assessment, which determines her classification in the category [of disability] of *assisted independence*.

Accordingly, from the point of view of her medical conditions, [the applicant] should have received the classification **severe**.

...

From the detailed assessment report and the social enquiry report it appears that [the applicant] *moves around inside her home with the help of a cane and supported by another person*. Consequently she is not a person who cannot move; she is not immobile or dependent on a wheelchair; she is not a person with *a **total** lack of capacity to take care of herself and perform her daily tasks and in need of permanent help* – [and only the latter situation] falls into the category of severe disability with the need for a personal assistant.

...

Besides the subjective perception of [the applicant]'s situation and the inherent empathy for her (with which we fully agree), support should and must be granted ... within the scope of the *objective* information provided by the *authorities exclusively designated* as such by the applicable laws.

...

It follows that the [County Court] ... wrongly assessed that the applicant was in the category of severe disability necessitating a personal assistant, thus erroneously interpreting the applicable law..."

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW

24. Law no. 448/2006 on the protection and promotion of the rights of people with disabilities ("the Disability Act") puts in place a mechanism for protecting people with disabilities, based on the following principles: respect for human rights; non-discrimination; equal opportunities; social solidarity; freedom to choose, control and make decisions concerning one's own life and the services and type of support received; social inclusion; and respect for the specific needs of people with disabilities. It sets up for each county a Commission for the Assessment of Adults with Disabilities, which operates under the authority of the relevant local council and consists of two physicians, a psychologist, a representative of civil society and a social assistant (Article 85). The Act also sets up, within each County Directorate General for Social Welfare and Child Protection, a Service for the Complex Evaluation of Adults with Disabilities (Articles 87 and 88). The role of that service is to prepare reports of "complex evaluations" of people seeking disability benefits under the Act. On the basis of such reports, the Commission for the Assessment of Adults with Disabilities assesses the level of disability of the persons concerned, in accordance with criteria (medical,

psychological and social) and scales laid down by joint order of the Ministry of Work, Family and Equal Opportunity and the Ministry of Health.

25. Under Article 86 of the Disability Act, the levels of disability are: mild, medium, elevated and severe. Under Article 35 of the same Act, a person with severe disability is entitled to a personal assistant, based on a social, psychological and medical evaluation.

26. By Order no. 762/1992/2007, the Ministry of Work, Family and Equal Opportunity and the Ministry of Health approved the criteria for the complex evaluation of the level of disability required by the Disability Act, as well as for assessment using the ADL index (see paragraph 7 above).

27. Chapter 7.III.2 of the Order describes the level of disability and the accommodations required in the case of motor function impairment caused by disorders of the nervous system (see paragraph 23 above).

28. The Methodological Rules for the application of the provisions of Law no. 448/2006 on the protection and promotion of the rights of persons with disabilities (approved by Government Decision no. 268/2007) read as follows:

> "1. The assessment of adults with disabilities is a complex and continuous process through which their developmental, integration and social inclusion needs are assessed and recognised. The process involves gathering as much information as possible and interpreting it to guide decision-making and intervention.
>
> 2. The assessment is subject to the principle of the interests of the person with a disability, according to which any decision or measure is taken solely in the interests of that person, and decisions based on feelings of pity and perceptions of people with disabilities as helpless are unacceptable."

29. In the 2022-2027 National Strategy for the Rights of Persons with Disabilities the authorities identified the key changes needed to ensure independent living and integration into the community. Among them, the following actions feature:

> "Disability must no longer be assessed based on the person's medical condition but should be based on a bio-psycho-social model that reflects the interaction between that person's medical condition and the surrounding environment in which he or she lives.
>
> ...
>
> It is necessary to clarify the way in which authorities must manage the case of each person with disabilities in accordance with his or her needs and should take into account all of the forms of support needed by that person."

II. INTERNATIONAL MATERIAL

30. The relevant provisions of European Union law, as well as those of the United Nations Convention on the Rights of Persons with Disabilities ("the CRPD"), which was ratified by Romania on 31 January 2011, are summarised in *Jivan v. Romania* (no. 62250/19, §§ 20-23, 8 February 2022).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

31. The applicant complained that the authorities' refusal to provide her with a personal assistant had disproportionately affected her right to respect for her private life, as it had forced her into isolation and had deprived her of her autonomy. Although she relied on several Articles of the Convention (Articles 5, 6 § 1 and 14), the Court, which is master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114, 124 and 126, 20 March 2018), will examine the complaint from the standpoint of Article 8 of the Convention (see, *mutatis mutandis*, *Jivan v. Romania*, no. 62250/19, § 28, 8 February 2022), which, in so far as relevant, reads as follows:

> "1. Everyone has the right to respect for his private ... life ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

1. Applicability

32. The Court must first decide whether Article 8 is applicable to the facts of the present case (see *Denisov v. Ukraine* [GC], no. 76639/11, § 93, 25 September 2018). In this connection, it observes that it has previously found that Article 8 was applicable in a case brought by a severely incapacitated and elderly man who had been denied the provision of a personal assistant and who complained that the inadequate level of care offered by the authorities had forced him into isolation and deprived him of his autonomy (see *Jivan*, cited above, §§ 30-35).

33. Bearing in mind the similarities between that case and the present case for the purposes of the scope of Article 8, the Court has no reason to depart from its earlier analysis in the present case, and therefore finds that Article 8 is applicable to the facts brought before it by the applicant.

2. Compliance with the six-month time-limit

(a) The parties' submissions

(i) The Government

34. The Government argued that the applicant's situation had been affected when the certificate of 22 November 2017 (see paragraph 10 above) was upheld by the final decision of 15 June 2020 (see paragraph 15 above).

The certificate of 20 November 2019 (see paragraph 16 above) had done no more than confirm the situation put in place by the 2017 certificate. The six-month time-limit had therefore started running on 15 June 2020, while the application was introduced on 11 October 2021.

(ii) The applicant

35. The applicant submitted in reply that the refusal to grant her a personal assistant had only become permanent when the 2019 certificate had been issued, and consequently the six-month time-limit should be calculated from the date when that certificate had been upheld, by means of the final decision of 12 April 2021 (see paragraph 23 above).

36. Moreover, at the date when the decision of 15 June 2020 was taken, confirming the 2017 certificate (paragraph 15 above), the applicant had already been engaged in litigation concerning the 2019 certificate which had permanently deprived her of a personal assistant. It would therefore have been premature for her to lodge her application with the Court at that point.

(b) The Court's assessment

37. The general principles concerning the six-month time-limit have been reiterated in *Lekić v. Slovenia* ([GC], no. 36480/07, §§ 64-65, 11 December 2018). Following the entry into force of Protocol No. 15 to the Convention on 1 February 2022, the time-limit to introduce an application to the Court was reduced from six to four months. However, this new time-limit does not apply to applications in respect of which the final domestic decision was taken before the entry into force of the new rule[1].

38. In particular, Article 35 § 1 cannot be interpreted in a manner which would require an applicant to inform the Court of his or her complaint before his or her position in connection with the matter had been finally settled at the domestic level, otherwise the principle of subsidiarity would be breached (ibid., § 65).

39. The applicant's complaint to the Court concerns the loss of the benefit of a personal assistant. While that benefit was initially withdrawn for a period of two years by the certificate of 22 November 2017 (see paragraph 10 above), the applicant did not lose it permanently until the certificate of 20 November 2019 was issued (see paragraph 16 above). From then on, the applicant's situation was also no longer subject to specialist reassessment, as the Commission had considered her condition to be permanent. The Court therefore considers that the six-month time-limit started running from the moment the applicant had exhausted the domestic remedies in respect of the cancellation of the 2019 certificate (see paragraph 23 above), although she had been affected by the loss of a personal assistant from the date of the 2017

[1] See Article 8 § 3 of Protocol No. 15 and paragraphs 21-22 of the Explanatory Report to Protocol No. 15.

certificate. In the same vein, the Court also observes that it would have been unrealistic for the applicant to bring her grievance before it in relation to the 2017 certificate, given that by the time the proceedings concerning its cancellation had finished that certificate was no longer valid, because of its expiry (see paragraph 10 above).

40. Reiterating that applicants are expected to make normal use of those domestic remedies which are available and sufficient (see *Gherghina v. Romania* (dec.) [GC], no. 42219/07, § 85, 9 July 2015), the Court concludes that the applicant cannot be reproached for waiting until the end of the proceedings concerning the cancellation of the 2019 certificate before lodging the present application with the Court.

41. As those proceedings ended on 12 April 2021 (see paragraph 23 above), the Court considers that the present application, introduced on 11 October 2021, has complied with the six-month time-limit.

3. Other grounds for inadmissibility

42. The Court further 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.

B. Merits

1. The parties' submissions

(a) The applicant

43. The applicant asserted that the medical certificates had left no doubt as to her need for assistance in her daily activities. Nothing had changed in her situation since 2016 to justify lowering the level of assistance provided to her. Her ADL and Barthel scores (see paragraphs 7 and 8 above), which classified her situation as "assisted independence", as well as the conclusions of the multiple medical assessments and social enquiries, had all confirmed that she was in need of assistance. However, those documents had been ignored by the Court of Appeal (see paragraphs 15 and 23 above).

44. She pointed out that she had only survived because of the help she received from her two adult daughters, who had sacrificed their own private and family life in order to support her.

(b) The Government

45. The Government argued that the authorities had provided an appropriate regulatory framework, as required under Article 8. That framework had subsequently been correctly applied by the Commission in the applicant's case. Moreover, the courts had undertaken an in-depth and diligent examination of the applicant's complaints.

46. They argued that the present case differed significantly from that of *Jivan* (cited above, §§ 46 and 49), in which the applicant had been in a state of total dependency requiring assistance for his basic needs and had lacked a support network. In contrast, in the present case the applicant had preserved a situation of "assisted independence" (see paragraph 43 above) and had a support network around her consisting of her adult daughters (see paragraphs 21 and 44 above).

2. The Court's assessment

(a) General principles

47. Although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in effective respect for private life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves. The boundaries between the State's positive and negative obligations under Article 8 do not lend themselves to precise definition. The applicable principles are nonetheless similar. In particular, in both instances regard must be had to the fair balance which has to be struck between the competing interests; and in both contexts the State enjoys a certain margin of appreciation (see *Evans v. the United Kingdom* [GC], no. 6339/05, § 75, ECHR 2007-I, and *Jivan*, cited above, § 40).

48. The Court reiterates that a wide margin is usually allowed to the State under the Convention in issues of general policy, including social, economic, and healthcare policies (see, for instance, *McDonald v. the United Kingdom*, no. 4241/12, § 54, 20 May 2014, with further references). However, if a restriction on fundamental rights applies to a particularly vulnerable group in society that has suffered considerable discrimination in the past, such as persons with disabilities or elderly dependent people, then the State's margin of appreciation is substantially narrower and it must have very weighty reasons for the restrictions in question (see *Jivan*, cited above, § 42, with further references).

(b) Application of those principles to the facts of the present case

(i) Interference or positive obligation

49. The Court has previously considered a number of cases concerning funding for care and medical treatment to fall within the sphere of possible positive obligations when the applicants complained in substance not of action but of a lack of action by the respondent State (see, for example, *Sentges v. the Netherlands* (dec.), no. 27677/02, 8 July 2003, and *Pentiacova and Others v. Moldova* (dec.), no. 14462/03, ECHR 2005-I). Those cases

concerned the refusal by the State to provide funding for medical equipment and/or treatment. In the same vein the Court has considered that the refusal by the State to grant an applicant the right to adequate support also fell within the scope of the State's positive obligations (see *Jivan*, cited above, § 41).

50. In the present case, however, the authorities had initially provided the applicant with a personal assistant (see paragraph 6 above). The applicant is therefore complaining not of a lack of action but rather of the decision of the Commission to reduce the level of care provided to her and to no longer provide her with a personal assistant (see paragraphs 10 and 16 above). A more appropriate comparator would be the case of *McDonald* (cited above), which the Court approached from the standpoint of an interference with the right in issue, given that it concerned the refusal of a benefit which had been previously provided (see *McDonald*, cited above, §§ 48 and 49).

51. The Court is therefore prepared to approach the case as one involving an interference with the applicant's right to respect for her private life (contrast *Jivan*, cited above, § 41).

(ii) Compliance with Article 8 § 2

52. Such an interference will be in breach of Article 8 of the Convention unless it can be justified under paragraph 2 of Article 8 as being "in accordance with the law", pursuing one or more of the legitimate aims listed therein, and being "necessary in a democratic society" in order to achieve the aim or aims concerned (see *McDonald*, cited above, § 50).

53. At the outset, the Court observes that the interference was "in accordance with the law", that is, the Disability Act and Order no. 762/1992/2007 (see paragraphs 15, 23, and 24-28 above). The Court also accepts that the interference pursued a legitimate aim, namely the economic well-being of the State and the interests of other care-users (see, *mutatis mutandis*, *McDonald*, cited above, § 53).

54. It therefore remains to be ascertained whether the decision to withdraw the benefit of a personal assistant was "necessary in a democratic society" within the meaning of Article 8 § 2 of the Convention and in particular whether the State, within its margin of appreciation, struck a fair balance between the applicant's interest in maintaining the benefit of a personal assistant and the relevant interests of the community (see the case-law quoted in paragraphs 47-48 above).

55. In this connection, the Court notes that the Disability Act calls for the protection of people with disabilities in the light of the guiding principles enshrined in that Act, including freedom of choice, social inclusion and respect for the specific needs of the individuals concerned. The level of protection afforded is based on a complex and personalised evaluation establishing an individual's level of disability. That assessment must take into account not only medical data but also other indicators of the individual's

degree of autonomy (or lack thereof), assessed in the light of his or her living conditions (see paragraphs 24 to 28 above).

56. Moreover, the CRPD, to which the respondent State is a party (see paragraph 30 above), recognises people with disabilities as full subjects of rights and as rights holders. The CRPD encourages respect for dignity, individual autonomy and independence (see *Jivan*, cited above, §§ 20-23 and 44).

57. The principles reflected in Articles 19, 20 and 28 of the CRPD are of particular relevance to the present case. The respondent State, as a party to that convention, has recognised the equal rights of all persons with disabilities and their right to an adequate standard of living and social protection, and has committed itself to take effective and appropriate measures to help persons with disabilities to live independently and be included in the community and to ensure their personal mobility (ibid., § 45).

58. On the basis of the domestic requirements, medical professionals and social services assessed that the applicant's situation had not improved since 2016 and that she needed help with the most basic tasks, such as personal hygiene, dressing herself, using the toilet, cleaning, cooking, walking, shopping, using means of transport and managing money (see paragraphs 7, 8, 17, 19, and 21 above). This view was also shared by the County Court, which concluded that the applicant was unable to manage on her own (see paragraphs 12-14 and 22 above). However, in stark contrast with those findings, both the Commission, which issued the certificates of 2017 and 2019, and, ultimately, the Court of Appeal, which upheld those certificates, considered that the applicant did not need a personal assistant (see paragraphs 10, 15, 16 and 23 above).

59. In the light of the principle of subsidiarity, it is not for the Court to substitute its own views for those of the national authorities and to interpret and apply the domestic law. However, the domestic courts, to whom that task falls, must interpret the domestic law in a manner which is compliant with the States' obligations under the Convention (see *Jivan*, cited above, § 47).

60. In this connection, the Court of Appeal noted that the applicant's medical condition only warranted the classification "severe" for her disability and that she was able to move around with help and only needed partial assistance in her daily activities (see paragraphs 15 and 23 above). However, that court does not appear to have engaged with the applicant's predicament, and gave no consideration in reaching its decisions to the medical, social, and neurological assessments that consistently indicated the applicant's need for assistance (see paragraphs 7, 8, 17 and 21 above). The applicant's argument, supported by evidence, to the effect that her medical condition had not improved since 2016 (see paragraphs 11-12 and 18-19 above) was not addressed by the Court of Appeal either.

61. Moreover, when finding that the applicant needed partial assistance, neither the Commission nor the Court of Appeal explored alternative practical

arrangements to ensure respect for her dignity and the effective enjoyment of her right to autonomy (see, *mutatis mutandis*, *Jivan*, cited above, § 49). Admittedly, the Commission recommended that the applicant should continue to receive support from her family (see paragraph 9 above), and the social enquiry reports noted that she received such support (see paragraphs 17 and 21 above). However, neither the Commission nor the Court of Appeal assessed the quality and dependability of that support. In the absence of a thorough domestic assessment, the Court cannot accept that support spontaneously given by family members could replace adequate disability benefits, as the Government seem to suggest (see paragraph 46 above).

62. In this connection, the Court notes that in the National Strategy for the Rights of Persons with Disabilities the authorities identified that, in order to ensure independent living and integration into the community for people with disabilities, the assessment of a disabled person's needs must be broadened and all forms of support must be taken into account (see paragraph 29 above).

63. It is also to be noted that the present case differs from the situation in *Sentges* and *Pentiacova and Others* (both cited above), which both concerned the State's refusal to provide funding for additional medical equipment and/or treatment, even though support and treatment were already available free of charge to the applicants. Those cases, declared inadmissible by the Court, did not concern a severe loss of autonomy such as that experienced by the applicant in the present case. The issue at stake in the present case is not a choice between basic care or additional, more expensive care – which, being a matter of allocation of limited State resources, falls within the State's margin of appreciation (see the case-law quoted in paragraph 48 above and *Pentiacova and Others*, cited above) – but rather about ensuring the applicant the appropriate level of care and dignity, as provided for by law and its interpretation in the light of its aims and principles (see, *mutatis mutandis*, *Jivan*, cited above, § 50).

64. Bearing in mind what was at stake for the applicant, as well as her overall vulnerability – which required enhanced protection from the authorities (see the case-law quoted in paragraph 48 *in fine* above) – and notwithstanding its subsidiary role and the respondent State's margin of appreciation, the Court is not convinced that in their decisions, the Commission and the Court of Appeal struck a fair balance between the competing public and private interests at stake as required by Article 8 (see, *mutatis mutandis*, *Jivan*, cited above, §§ 51-52).

65. For these reasons, the Court concludes that there has been a violation of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

66. 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. Damage

67. The applicant claimed 50,000 euros (EUR) in respect of all damage sustained.

68. The Government argued that the applicant had failed to provide any documents in support of her claim in respect of pecuniary damage and thus asked the Court not to award any sum under that head. They further argued, in respect of non-pecuniary damage, that the sum claimed by the applicant was excessive and that the finding of a violation should constitute sufficient just satisfaction.

69. In the absence of any substantiation of the alleged pecuniary damage sustained, the Court is unable to make an award under that head. However, having regard to the nature of the violation found and making its assessment on an equitable basis, the Court awards the applicant EUR 7,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

70. The applicant did not claim any sum for costs and expenses.

71. Accordingly, the Court is not called upon to make any award under this head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *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, EUR 7,500 (seven thousand five hundred euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 February 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško Registrar	Gabriele Kucsko-Stadlmayer President