

**Press release issued by the Registrar**

**CHAMBER JUDGMENT IN THE CASE OF GLASS v. THE UNITED KINGDOM**

The European Court of Human Rights has today notified in writing a judgment<sup>1</sup> in the case of *Glass v. the United Kingdom* (application no. 61827/00).

The Court held unanimously that there had been a **violation of Article 8** (right to respect for private life) of the European Convention on Human Rights.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicants 10,000 euros (EUR) for non-pecuniary damage and EUR 15,000 for costs and expenses. (The judgment is available only in English.)

**1. Principal facts**

The applicants, Carol and David Glass, are both United Kingdom nationals. David, born in 1986, is severely mentally and physically disabled and requires 24-hour attention. Ms Glass is David's mother and legal proxy.

In July 1998 David was admitted to St Mary's Hospital, one of two hospitals belonging to the Portsmouth Hospitals National Health Service Trust. Following an operation to alleviate an upper respiratory tract obstruction, David suffered complications, became critically ill and had to be put on a ventilator. During his treatment, Ms Glass was informed by hospital staff that David was dying and that further intensive care would be inappropriate. However, David's condition improved and he was able to return home on 2 September 1998.

On 8 September 1998, when David was re-admitted to the hospital with a respiratory tract infection, doctors discussed with Ms Glass the possible use of morphine to alleviate distress. Ms Glass expressed her opposition, telling doctors that if David's heart stopped she would expect resuscitation including intubation. Dr W. considered that this would not be in David's best interests, and stated in his notes that a "second opinion", if necessary from the courts, was needed. Dr H. also noted that "in the event of total disagreement we should be obliged to go to the courts".

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<sup>1</sup> Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

David's condition deteriorated. On 20 October 1998 the doctors treating David considered that he was dying and recommended that diamorphine be given to him to relieve his distress. Ms Glass did not agree that her son was dying and was very concerned that the administration of diamorphine (previously morphine had been mentioned) would compromise his chances of recovery. Ms Glass voiced her concerns at a meeting with the doctors at which a police officer was also present.

She subsequently asked to take David home if he was dying, but a police officer advised her that if she attempted to remove him, she would be arrested. David was given a diamorphine infusion at 7 p.m. on 20 October 1998.

A dispute broke out in the hospital involving other family members and the doctors. The family members believed that David was being covertly euthanased and attempted to prevent the doctors from entering his room. The hospital authorities called the security staff and threatened to exclude the family from the hospital by force.

A "Do Not Resuscitate" (DNR) order was put in the first applicant's medical notes without consulting Ms Glass.

The following day Ms Glass found that her son's condition had deteriorated alarmingly and was worried that this was due to the effect of diamorphine. The family demanded that diamorphine be stopped. Dr W. stated that this was only possible if they agreed not to resuscitate David. However, the family tried to revive David and a fight broke out between members of the family and the doctors. While the fight was going on, Ms Glass successfully resuscitated David.

Police were summoned to the hospital. Dr W. and Dr A. and several police officers were injured and all but one of the children on the ward had to be evacuated.

David's condition improved and he went home on 21 October 1998.

Ms Glass applied unsuccessfully for judicial review and permission to appeal to the Court of Appeal concerning the decisions taken by the hospital authority.

The General Medical Council found that the doctors involved had not been guilty of serious professional misconduct or seriously deficient performance and that the treatment complained of had been justified. The Crown Prosecution Service did not bring charges against the doctors involved for lack of evidence.

## 2. Procedure and composition of the Court

The application was lodged on 5 June 2000 and declared partly admissible on 18 March 2003.

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

Matti **Pellonpää** (Finnish), *President*,  
Nicolas **Bratza** (British),  
Josep **Casadevall** (Andorran),  
Rait **Maruste** (Estonian),  
Stanislav **Pavlovschi** (Moldovan),  
Javier **Borrego Borrego** (Spanish),  
Elisabet **Fura-Sandström** (Swedish), *judges*,

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

## 3. Summary of the judgment<sup>1</sup>

### Complaint

The applicants argued that United Kingdom law and practice failed to guarantee the respect for David's physical and moral integrity required by Article 8 of the Convention (right to respect for private life). In particular, the decisions to administer diamorphine to David against his mother's wishes and to place a DNR notice in his notes without her knowledge interfered with both their rights under Article 8.

They also maintained that leaving the decision to involve the courts to the discretion of doctors was a wholly inadequate basis on which to ensure effective respect for the rights of vulnerable patients.

### Decision of the Court

#### Article 8

The Court considered that the decision to impose treatment on David in defiance of his mother's objections gave rise to an interference with his right to respect for his private life, and in particular his right to physical integrity. It considered that it was not required to examine whether the treatment concerned gave rise to an interference with Ms Glass's right to respect for her family life.

The Court found that the interference was in accordance with the law. The regulatory framework in the United Kingdom was firmly based on the duty to preserve the life of a patient, save in exceptional circumstances. The same framework prioritised the requirement of parental consent and, save in emergency situations, required doctors to seek the intervention of the courts in the event of parental objection.

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<sup>1</sup> This summary by the Registry does not bind the Court.

The Court also considered that the action taken by the hospital staff pursued a legitimate aim. It was intended, as a matter of clinical judgment, to serve David's interests. The Court rejected any suggestion that it was the doctors' intention unilaterally to hasten David's death whether by administering diamorphine to him or by placing a DNR notice in his case notes.

In deciding whether the interference was necessary in a democratic society, the Court considered that the situation which arose at St Mary's Hospital between 19 and 21 October 1998 could not be isolated from the earlier discussions between members of the hospital staff and Ms Glass about David's condition. The doctors at the hospital were obviously concerned about Ms Glass' reluctance to follow their advice, in particular their view that morphine might have to be administered to her son. Both Dr W. and Dr H. had found that recourse to the courts might be necessary.

It had not been explained to the Court's satisfaction why the trust did not at that stage seek the intervention of the High Court. The doctors at that time all shared a gloomy prognosis of David's capacity to withstand further crises and they were left in no doubt that their proposed treatment would not meet with the agreement of his mother. Admittedly, Ms Glass could have brought the matter before the High Court. However, the Court considered that the onus was on the trust to take the initiative and to defuse the situation in anticipation of a further emergency.

The Court accepted that the doctors could not have predicted the level of confrontation and hostility which in fact arose on 18 October 1998. It was nevertheless the case that the trust's failure to make a High Court application at an earlier stage contributed to the situation.

That being said, the Court was not persuaded that an emergency High Court application could not have been made by the trust when it became clear that Ms Glass was firmly opposed to the administration of diamorphine to David. The trust was able to secure the presence of a police officer to oversee the negotiations with Ms Glass but, surprisingly, did not consider making a High Court application even though it would have been possible at short notice.

The Court considered that the decision of the authorities to override Ms Glass's objection to the proposed treatment in the absence of authorisation by a court resulted in a breach of Article 8.

In view of that conclusion, the Court did not consider it necessary to examine separately the applicants' complaint regarding the inclusion of the DNR notice in David's case notes without her consent and knowledge. It stressed, however, that the notice was only directed against the application of vigorous cardiac massage and intensive respiratory support, and did not exclude the use of other techniques, such as the provision of oxygen, to keep David alive.

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The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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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. Since 1 November 1998 it has sat as a full-time Court composed of an equal number of judges to that of the States party to the Convention. The Court examines the admissibility and merits of applications submitted to it. It sits in Chambers of 7 judges or, in exceptional cases, as a Grand Chamber of 17 judges. The Committee of Ministers of the Council of Europe supervises the execution of the Court's judgments.