



Domestic courts should have ensured respect for a father's right of contact with his child

In today's **Chamber** judgment¹ in the case of **Bondavalli v. Italy** (application no. 35532/12) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned the applicant's inability to exercise fully his right of contact with his son on account of negative reports by the Scandiano social services, with which the mother had professional links.

The Court noted that in spite of several applications lodged by Mr Bondavalli and a number of assessments produced by him, according to which he was not suffering from any psychological problems, the domestic courts had continued to entrust the supervision of his right of contact to the Scandiano social services.

The Court found in particular that the domestic courts had not taken any appropriate measure to protect Mr Bondavalli's rights and to take his interests into account. In view of the irremediable consequences of the passage of time on the relationship between the child and his father, the Court took the view that it was for the domestic authorities to re-examine Mr Bondavalli's right of contact, in a timely manner, taking into account the best interests of the child.

Principal facts

The applicant, Claudio Bondavalli, is an Italian national who was born in 1964 and lives in Chiozza di Scandiano (Italy).

In August 2005 Mr Bondavalli and the mother of his child decided to separate. In October 2006 he applied to the Bologna Minors Court to obtain joint custody of his son. The court granted him a right of contact two afternoons a week, with special arrangements for weekends and school holidays. The Court of Appeal upheld that decision.

In April 2009 Mr Bondavalli informed the social services that he suspected the mother of ill-treating the child and asked doctors to record scratch marks on the child's body.

The social services, asked by the court to monitor the child and to supervise contact, took the view that Mr Bondavalli's state of agitation and stress necessitated the child's protection and they decided to organise contact in the form of supervised meetings. They also found that the allegations of ill-treatment had not been proven and suggested that a psychological assessment of the parents be ordered. The expert's report concluded that Mr Bondavalli showed signs of a paranoia-type delusional disorder, observing that he was convinced that his son was being ill-treated.

Mr Bondavalli challenged that assessment on account of the fact that the expert psychiatrist had done his end-of-studies internship with his son's mother. He also complained about bias on the part

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.

of the social services on account of their professional links with the mother, who was a psychiatrist in the same administrative entity. His applications to have their psychological assessment transferred to other social services and to obtain an extension of his contact rights were rejected by the domestic courts, which regarded his arguments as being related to his psychological condition.

Mr Bondavalli produced a number of experts' reports which concluded that he did not have any mental-health condition or personality disorder. Those reports also underlined that the social services had not taken any positive measures to encourage a real father-son relationship, having always acted in favour of the mother. The reports were, however, rejected by the domestic courts, which took the view that they were not reliable and asked the social services to organise supervised contact between father and son.

The social services prohibited any telephone calls between Mr Bondavalli and his son, and the meetings between them were suspended on a number of occasions. Some visits were cancelled and never made up.

Since March 2015 Mr Bondavalli has had contact with his son two hours a week in the presence of a social worker and two and a half hours a week in the mother's presence. He is not allowed to take his son on holiday or to accommodate him and can only call the boy once a week on his mother's mobile.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), Mr Bondavalli complained that the social services had too much autonomy in implementing the decisions of the Bologna Minors Court. He also criticised that court for failing to exercise regular supervision of the social services' work. He alleged in particular that the psychologist who drafted an expert's report and the staff of the social services had been influenced by the mother on account of their professional connections.

The application was lodged with the European Court of Human Rights on 29 May 2012.

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

Päivi **Hirvelä** (Finland), *President*,
 Guido **Raimondi** (Italy),
 George **Nicolaou** (Cyprus),
 Ledi **Bianku** (Albania),
 Paul **Mahoney** (the United Kingdom),
 Krzysztof **Wojtyczek** (Poland),
 Yonko **Grozev** (Bulgaria),

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

Decision of the Court

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

The Court observed that, from September 2009 onwards, in spite of the decision of the Bologna Minors Court granting him a very broad right of contact, Mr Bondavalli was only able to exercise that right in a very limited manner on account, firstly, of the negative reports of the social services, which were part of the same administrative structure as that in which the child's mother worked as a psychiatrist, and, secondly, of a report by an expert psychiatrist who had done his end-of-studies internship with the mother.

The Court further noted that Mr Bondavalli had, on several occasions, complained of bias on the part of the psychiatrist and the social services. The domestic courts had, however, continued to entrust the latter with the child's monitoring and had limited Mr Bondavalli's contact, even though a number of reports produced by him showed that he was not suffering from any psychological problems.

The Court observed that it had already found fault with the Italian authorities for not taking into account the existence of a link between the expert responsible for a psychological assessment of a child and the child's step-father². In the present case, the Court noted that there had clearly been professional links between the child's mother, the social services and the psychiatrist responsible for the expert's report.

The Court took the view that it would have been in the interest of Mr Bondavalli and the child for the domestic courts to have responded favourably to his requests. On the basis of the reports produced by Mr Bondavalli, they could have carried out a better assessment of whether it was necessary to restrict or extend his right of contact.

The Court noted that the domestic courts had not taken any appropriate measures to create the necessary conditions for the father to exercise fully his right of contact with his son. The procedure should have been accompanied by adequate safeguards enabling Mr Bondavalli's rights to be protected and his interests to be taken into account. The domestic courts had not, however, acted with the necessary diligence and, for about seven years, Mr Bondavalli had had a very limited right of contact. In addition, in view of the irremediable consequences of the passage of time on the relationship between the child and his father, the Court took the view that it was for the domestic authorities to re-examine Mr Bondavalli's right of contact, in a timely manner, taking into account the best interests of the child.

Having regard to the foregoing and taking into account Italy's room for manoeuvre ("margin of appreciation") in such matters, the Court found that the national authorities had not made appropriate and sufficient efforts to ensure that Mr Bondavalli had been able to exercise his right of contact with his child and had thus breached his right to respect for his family life. There had therefore been a violation of Article 8 of the Convention.

Article 41 (just satisfaction)

The Court held that Italy was to pay Mr Bondavalli 10,000 euros (EUR) in respect of non-pecuniary damage and EUR 15,000 in respect of costs and expenses.

The judgment is available only in French.

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² *Piazzini v. Italy* (no. 36168/09, § 61, 2 November 2010)

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.