



## Violations in two contrasting cases involving parental-contact rights and domestic violence

In today's **Chamber** judgments<sup>1</sup> in the cases [Luca v. the Republic of Moldova](#) (application no. 55351/17) and of [Bîzdîga v. the Republic of Moldova](#) (no. 15646/18) the European Court of Human Rights held, unanimously, that there had been:

in both cases a **violation of Article 8 (right to respect for private and family life)** of the European Convention on Human Rights,

in Ms Luca's case a **violation of Article 3 (prohibition of inhuman and degrading treatment)** and a **violation of Article 14 (prohibition of discrimination) in conjunction with Article 3**, and

in Mr Bîzdîga's case a **violation of Article 6 (right to a fair trial)**.

Ms Luca's case concerned allegations that the authorities had failed to protect her from domestic violence – which on one occasion had led to eight days' hospitalisation – and to help her maintain her relationship with her children when domestic violence proceedings had been initiated and they had left to live with their father.

Mr Bîzdîga's case concerned restrictions on his right to contact with his child and his inability to obtain custody. The courts had given custody to the child's mother and despite new circumstances in the case Mr Bîzdîga had been unable to obtain a court ruling on his request to change that. Furthermore, the child protection authority had issued a visiting schedule, which Mr Bîzdîga considered disproportionately limited. Before the Court, it was revealed that the limitation of visiting rights had been due to previous allegations of domestic abuse against Mr Bîzdîga.

The Court found in particular that in Ms Luca's case the authorities had not acted sufficiently to help her maintain contact; that they had failed to investigate her allegations of domestic violence; and that they had not done so owing to their prejudice against women in her situation.

The Court found in Mr Bîzdîga's case that the decision-making process leading to the decisions on his contact rights had not been fair; and that in rejecting his case, they had denied him access to a court to make his case as new information came to light.

### Principal facts

The applicants, Lilia Luca and Vadim Bîzdîga, are Moldovan nationals who were born in 1978 and 1989 and live in Chişinău and Trinca (Republic of Moldova) respectively.

#### Ms Luca

Ms Luca had two children with A.I. in 2006 in Italy. According to Ms Luca, from about 2015, following their return to Moldova, A.I. subjected her to several incidents of physical abuse, verbal abuse, harassment and emotional abuse.

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](http://www.coe.int/t/dghl/monitoring/execution).

In August 2016 a protection order for her and the children was issued, stating that A.I. had to refrain from contact with them. However, she later alleged to the police that he had broken the terms. No investigation was opened. When she sought an extension of the protection order, including submitting that A.I. had cut off her water supply, the national courts rejected the application.

In November of that year A.I. attacked Ms Luca, causing bruising all over her body including her head. A protection order was again rejected. On appeal, the Chişinău Court of Appeal concluded that she had not been subjected to physical or psychological violence.

In the meantime, in July 2016, Ms Luca made a criminal complaint against A.I., alleging physical abuse. He was given an administrative fine by the police, but no investigation was opened at that time. Investigations into two other allegations against A.I. by Ms Luca – including domestic violence – were opened at a later stage, with A.I. ultimately being convicted and given a suspended prison sentence and ordered to pay damages.

In August 2016 Ms Luca's children moved in with A.I. and contact ceased. She sought help, but the child-protection authority refused to issue a contact schedule. She went to the courts and obtained a contact-schedule order, but allegedly A.I. refused to abide by it.

They divorced in March 2022.

### **Mr Bîzdîga**

In 2015 Mr Bîzdîga had a child with his then wife, C. However, in November of that year C. left their home with the child.

In March 2016 a protection order was issued against Mr Bîzdîga owing to several incidents of psychological violence against C. They divorced in June of that year, with C. being awarded custody of their child.

Mr Bîzdîga sought a contact arrangement, alleging that he had been prevented from seeing the child by C. and her family. The Hânceşti Child Protection Department approved a schedule of two hours' contact per week at the child's home. In proceedings before the Court, it was revealed that, despite the absence in its text of any reference to domestic violence, that decision took into account allegations of violence against Mr Bîzdîga, a previously issued protection order, and a psychological evaluation of C. that stated she had experienced trauma from physical and psychological violence. Contact was later extended to four hours per week on appeal. In November 2016 Mr Bîzdîga brought proceedings for more contact hours before the courts, without success at three levels of jurisdiction.

After several incidents in which he was unable to see his child, he complained to the child-protection authorities. In December 2017 he unsuccessfully sought a change of custody before the national courts.

## **Complaints, procedure and composition of the Court**

Relying on Articles 8 (right to respect for private and family life), 3 (prohibition of inhuman and degrading treatment) and 14 (prohibition of discrimination), Ms Luca complained that the Moldovan authorities had failed to protect her from domestic violence, that they had failed to help her maintain contact with her children, and that their inaction had been a result of her being a woman and complacency regarding domestic violence.

Relying on Articles 8 and 6 (right to a fair trial), Mr Bîzdîga complained that his request for custody had not been decided by a court of law, and that contact with his child had been disproportionately reduced in a procedure that had lacked safeguards.

The applications were lodged with the European Court of Human Rights on 20 March 2018 (no. 15646/18) and 24 July 2017 (no 55351/17).

Judgments were given by a Chamber of seven judges, composed as follows:

Application no. 55351/17:

Arnfinn Bårdsen (Norway), *President*,  
Jovan Ilievski (North Macedonia),  
Egidijus Kūris (Lithuania),  
Saadet Yüksel (Turkey),  
Lorraine Schembri Orland (Malta),  
Diana Sârcu (the Republic of Moldova),  
Davor Derenčinović (Croatia),

No. 15646/18:

Arnfinn Bårdsen (Norway), *President*,  
Jovan Ilievski (North Macedonia),  
Egidijus Kūris (Lithuania),  
Pauliine Koskelo (Finland),  
Frédéric Krenc (Belgium),  
Diana Sârcu (the Republic of Moldova),  
Davor Derenčinović (Croatia),

and also Hasan Bakırcı, *Section Registrar*.

and also Hasan Bakırcı, *Section Registrar*.

## Decision of the Court

### Article 8 (Ms Luca and Mr Bîzdîga)

The Court reiterated that although Article 8 contains no explicit procedural requirements, the decision-making process had to be fair and had to respect the parties' interests, including parents' making their case. National courts, in general, had to conduct an in-depth examination of the entire family situation, particularly the factual, emotional, psychological, material and medical factors, and to make a balanced assessment of the respective interests of each person, with a constant concern for determining what would be the best solution for the child.

In **Ms Luca's case**, the Court reiterated that the obligation on the authorities in such situations was not to force results in terms of family relationships, but to use the means at their disposal to help that process and to maintain parent-child contact. Here, the Moldovan authorities had failed to take into account the domestic violence she had suffered as part of their decision-making process, and had also failed to act promptly to ensure she would be able to maintain contact with her children, leading to a **violation of Article 8**.

In **Mr Bîzdîga's case**, the Court was not satisfied that the decision-making process leading to restrictions on his contact rights had been reasonable, fair and sufficiently expedient. In particular, it held that the alleged history of domestic violence was a relevant and mandatory factor to be weighed in the assessment of domestic authorities when deciding on contact rights. However, the domestic decisions do not appear to have given consideration to this factor and, therefore, did not allow Mr Bîzdîga a fair chance to make his case.. Overall, there had been a **violation of Article 8**.

### Article 3 and Article 14 in conjunction with Article 3 (Ms Luca)

Noting, in particular, the physical violence Ms Luca had suffered, and the psychological impact, the Court considered that her ill-treatment had been sufficiently serious to prompt official action.

The Court was satisfied that Moldovan law provided for the prosecution of alleged domestic abusers. However, the authorities had failed to carry out a proactive assessment of the risk to Ms Luca. In particular, the Court noted the failure to issue protection orders on the grounds that A.I. had not been convicted in a final judgment; their assessment that psychological violence had fallen outside the scope of domestic-violence proceedings; and the discrepancy between the national courts' findings in the civil and criminal proceedings. Overall, there had not been an adequate preventative response to Ms Luca's complaints of domestic violence.

The State had also had a duty to investigate properly any credible claims of domestic violence by Ms Luca. In this the authorities had also failed. They had dismissed her credible claims of psychological and physical violence in 2016, and not ensured prompt prosecution.

Overall there had been a **violation of Article 3** owing to **both the failure to protect Ms Luca from domestic violence and the failure to adequately investigate her allegations**.

The Court found that the failures in the treatment of Ms Luca by the authorities had not been an isolated failure, but instead had been reflective of a discriminatory attitude towards Ms Luca as a woman. It noted, in particular, the language used by the authorities in this case, which seemed to reflect stereotypes and myths around women “abusing the system”.

The Court therefore also found a **violation of Article 14 in conjunction with Article 3**.

#### Article 6 (Mr Bîzdîga)

The Court reiterated that all litigants should have an effective judicial remedy enabling them to assert their civil rights. The Court noted that in this case the Moldovan courts had not genuinely examined the admissibility of Mr Bîzdîga’s application before them, and then had not provided reasons for their rejection. They had thereby deprived him of the possibility to make a case for custody as new facts came to light. Mr Bîzdîga had therefore suffered a disproportionate restriction on his right of access to a court, in **violation of Article 6 § 1 of the Convention**.

#### Just satisfaction (Article 41)

The Court held that the Republic of Moldova was to pay Ms Luca 14,250 euros (EUR) in respect of non-pecuniary damage and EUR 3,840 in respect of costs and expenses; and to pay Mr Bîzdîga EUR 5,900 in respect of non-pecuniary damage and EUR 3,500 in respect of costs and expenses.

*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.