



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

FIFTH SECTION

CASE OF SIA AKKA/LAA v. LATVIA

(Application no. 562/05)

JUDGMENT

STRASBOURG

12 July 2016

FINAL

12/10/2016

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

In the case of SIA AKKA/LAA v. Latvia,

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

Angelika Nußberger, *President*,

Khanlar Hajiyeu,

Erik Møse,

Faris Vehabović,

Yonko Grozev,

Carlo Ranzoni,

Mārtiņš Mits, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 21 June 2016,

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

PROCEDURE

1. The case originated in an application (no. 562/05) against the Republic of Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by SIA AKKA/LAA (“the applicant organisation”), on 6 August 2004.

2. The applicant organisation was represented by Mr L. Liepa, a lawyer practising in Riga. The Latvian Government (“the Government”) were represented by their Agent, Ms K. Līce.

3. The applicant organisation alleged violations under Article 6 and Article 1 of Protocol No. 1 to the Convention on the grounds that the domestic courts had restricted the copyright of authors whose musical works were collectively managed by the applicant organisation.

4. On 24 June 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant organisation, SIA AKKA/LAA (SIA “Autortiesību un komunikēšanās konsultāciju aģentūra/Latvijas Autoru apvienība” – Copyright and Communication Consulting Agency Ltd./Latvian Authors Association) is a non-profit organisation founded in Riga by a separate

non-profit organisation, the Latvian Authors Association, whose members are various Latvian artists.

6. At the end of the 1990s the applicant organisation, acting as a representative of approximately 2000 domestic and two million international authors who had entrusted the applicant organisation to manage the copyright of their musical works, was concluding licence agreements with several broadcasters in Latvia. From 1998 to 1999, after the expiry of the previous licence agreements, the applicant organisation and certain broadcasting organisations in Latvia could not reach an agreement on the terms of the future licence agreements, especially with regard to the remuneration to be paid for the broadcasting of music. As a result some broadcasting organisations continued to use the protected musical works without a written agreement, either without paying any remuneration or paying the amount the broadcasting organisations unilaterally considered equitable. In 2002 the applicant organisation instituted civil proceedings against several broadcasters operating in Latvia.

A. First set of proceedings – [the applicant organisation] v. Radio SWH

7. In July 2002 the applicant organisation lodged a claim against a private radio station, Radio SWH, and requested that the Riga Regional Court, acting as a first-instance court, recognise that by broadcasting protected musical works without a valid licence agreement between 1 January 1999 and 31 December 2001, the defendant had violated economic interests of the authors represented by the applicant organisation. The applicant organisation further asked that the court award compensation for unauthorised use of musical works. By relying on the authors' exclusive rights to control the use of their musical works, the applicant organisation asked the court to apply an injunction precluding the defendant from using the authors' works before a valid licence agreement between the parties had come into effect.

8. The defendant lodged a counterclaim arguing that the applicant organisation had abused its dominant position and had fixed an unreasonably high royalty rate, which was six times the rate which had been applicable for the period from 1995 to 1998. They asked the court to order the applicant organisation to conclude a licence agreement with the defendant organisation and to lay down an equitable royalty rate.

9. During the first-instance court's hearing, the applicant organisation admitted that the parties had a dispute over the royalty rate in the draft licence agreement negotiated by the parties, but that the court was precluded under section 41 of the Copyright Law from setting the rate as long as there was no licence agreement concluded between the parties (see paragraph 26 below).

10. On 16 January 2003 the first-instance court partly upheld the claim and fully upheld the counterclaim. It established that between 1 January 1999 and 31 December 2001 the defendant had infringed the authors' rights by broadcasting the protected works without authorisation, contrary to the provisions of the Copyright Law. The first-instance court ordered the defendant to pay to the applicant organisation compensation for the above period in the amount of 78,000 Latvian lats (LVL, equivalent to 111,500 euros (EUR)), which was 1.5% of the defendant's net turnover over this period.

11. Furthermore, the first-instance court ordered the applicant organisation to conclude a licence agreement with the defendant for the next three-year period with a royalty rate set at 2% of the defendant's monthly net turnover (*ikmēneša neto apgrozījums*).

12. Lastly, by relying on the preamble of the WIPO Copyright Treaty and Articles 11 and 11bis of the Berne Convention (see paragraph 37 below), the first-instance court dismissed the applicant organisation's application to have an injunction granted to prohibit the defendant from broadcasting works of the rightsholders represented by the applicant organisation. By referring to the testimonies of two authors represented by the applicant organisation, the first-instance court concluded that the authors themselves were interested in their musical works being publicly broadcasted. An interdiction on broadcasting of the musical works would infringe the authors' exclusive rights to have their work reproduced, as well as it would negatively affect the interests of the society to listen to music.

13. On 23 October 2003 the Civil Cases Chamber of the Supreme Court, acting as an appellate court, upheld the part of the first-instance judgment concerning the compensation for copyright infringement and the injunction.

14. On the issue of ordering the conclusion of a licence agreement, the appellate court observed that both parties had expressed their intention to enter into a such an agreement, as attested by a draft licence agreement of 7 October 2003 in which the parties had agreed on certain terms and conditions such as the duration of the licence and the income from which royalties should be calculated. The appellate court noted that it was partly due to the applicant organisation's inconsistent negotiating that a licence agreement could not be concluded. The appellate court accordingly recognised that the licence agreement was to be considered concluded in the wording as agreed by the parties on 7 October 2003. On the question of remuneration, the appellate court established that in the negotiation process the applicant organisation had changed the royalty rate from 6% to 4% and then to 3.5%, whereas the defendant had insisted on 1.6% of the income from which royalties should be calculated. The appellate court took note of the characteristics of the defendant's activities and concluded that an equitable remuneration would be 2% of the income from which, as agreed by the parties, the royalties should be calculated.

15. On 11 February 2004, following an appeal on points of law, the Senate of the Supreme Court upheld the appellate court's findings that after the expiry of the earlier licence agreement on 31 December 1998 the *de facto* contractual relationship between the parties had continued mainly owing to the fact that the applicant organisation had failed to reach an agreement with the defendant on the terms of the licence agreement. The Senate of the Supreme Court further observed that the parties did not contest that the authors had a right to receive equitable remuneration, but that to that day the parties had not reached an agreement on the rate of the royalty payments. Given that there was no other authority responsible to decide on this matter, the Senate of the Supreme Court concluded that pursuant to Article 11*bis* of the Berne Convention and section 5 of the Civil Law, it was within the court's competence to set the royalty rate. The Senate of the Supreme Court also dismissed the allegations that the appellate court's judgment had infringed the intellectual property rights protected under the Constitution of the Republic of Latvia.

B. Second set of proceedings – [the applicant organisation] v. Latvijas Radio

16. In their claim against Latvijas Radio, a state-owned limited liability company, the applicant organisation asked the Riga Regional Court, acting as a first-instance court, to find that by broadcasting the rightsholders' musical works without a valid licence agreement between 1 January 2000 and 31 December 2001, the defendant had violated economic interests of the authors represented by the applicant organisation. The applicant organisation further asked that the court award compensation for unauthorised use of musical works. By relying on the authors' exclusive rights to control the use of their musical works, the applicant organisation asked the court to apply an injunction precluding the defendant from using the authors' works before a valid licence agreement between the parties had come into effect.

17. By lodging a counterclaim the defendant in essence asked the court to recognise that in the disputed period the parties had a *de facto* contractual relationship.

18. On 2 April 2003 the Riga Regional Court dismissed the applicant organisation's claim and upheld the counterclaim. The court established that even though the licence agreement concluded between the parties with the royalty rate set at 3.2% of the defendant's annual income had expired in 1999, the applicant organisation had continued receiving royalty payments from the defendant, which continued to pay at a lower rate. Given that the applicant organisation had not referred to objections to the broadcasting of the musical works, the existence of a *de facto* contractual relationship between the parties had been proven. Relying on section 41 of the

Copyright Law the court set the royalty rate from 2000 to 2001 at 1.57% of the defendant's annual income.

19. On 26 November 2003 the Civil Cases Chamber of the Supreme Court, acting as an appellate court, diverted from the first-instance court's findings and recognised that the defendant had infringed copyright by broadcasting the musical works over a prolonged period of time without a valid written licence agreement. It awarded the applicant organisation compensation in the amount of LVL 100,000 (EUR 143,000), which exceeded the amount the defendant had paid under the expired licence agreement. It considered that it would be fruitless to issue an injunction prohibiting the defendant from broadcasting the works. The appellate court observed that in principle the parties had expressed their interest in concluding a licence agreement but that before and during the court proceedings the parties had not agreed on the equitable royalty rate. It also pointed to the applicant organisation's responsibility in failing to reach an agreement in the negotiation of a new licence. As a result, over a prolonged period of time the authors' rights had been unprotected. As the parties had not asked the court to decide on the exact terms and conditions of a licence agreement, the appellate court decided to impose on the parties a general obligation to conclude a licence agreement by 1 March 2004. Given that the parties had been unable to agree on a royalty rate, the appellate court set the rate at 3% of the defendant's net turnover. In reaching this conclusion the appellate court took into consideration such elements as, *inter alia*, the royalty rate set in other court proceedings and the existing practice in certain other EU member States.

20. The applicant organisation appealed on points of law arguing that by, *inter alia*, ordering the parties to conclude a licence agreement and setting its terms, the court had overstepped its powers and acted in breach of section 11*bis* of the Berne Convention and section 15 of the Copyright Law.

21. On 17 March 2004 the Senate partly upheld the lower court's judgment with similar reasoning as in the first set of proceedings.

II. RELEVANT DOMESTIC LAW

A. The Constitution:

22. Article 113 provides that the State shall recognise the freedom of scientific research, artistic and other creative activity, and shall protect copyright and patent rights.

B. The Civil Law

23. Section 5 provides that a judge must be guided by the general principles of law and justice when a court is called upon to adjudicate on its own discretion or when exceptional circumstances have to be taken into account.

C. Copyright Law (Autortiesību likums) (wording in force at the material time)

24. Section 7(2) provides that rightsholders may exercise copyright themselves or through a representative, such as an organisation for collective management of rightsholders' economic rights arising from copyright (hereinafter – “the collective management of copyright”). The rights of a rightsholder are set out in section 15 and encompass, among other things, the authors' exclusive rights to publish, reproduce and broadcast their work. Authors shall have the right to use their work in any manner, to permit or prohibit its use, to receive remuneration for permission to use it, except in cases provided for by law (section 15(4)).

25. Pursuant to section 40, permission to use a work is given in the form of a licence, which must be obtained in order to have a right to use a protected work.

26. Section 41 provides that by entering into a licence agreement the copyright holders authorise the parties to the agreement to use the protected works. The licence agreement sets out the conditions for the use of work, the remuneration and the payment procedure. Part three of the above section provides that if the licence agreement does not set out the royalty rate, the latter shall be decided by the domestic courts.

27. Under section 42(4) general licences are issued by organisations for collective management of copyright, and the licence gives a right to use the work of all the authors represented by the organisation.

28. Chapter X sets out the regulations on the collective management of copyright. Specifically, in a case where the protection of copyright cannot be ensured on an individual basis or if such protection is encumbered, copyright protection is ensured by a collective management organisation (section 63(1)). It sets out that such economic rights which arise from broadcasting of protected works shall only be administered collectively (section 63(2)). The organisation for collective management is founded by authors and it operates within the powers vested in it by the authors (section 63(3)).

29. The organisation for collective management has, *inter alia*, the following tasks: it sets an equitable royalty rate in cases provided for by law (see section 63(2) above); it negotiates with the users of protected works on the terms of remuneration, on procedures for payment and on conditions for

the issuing of licences; the organisation issues licences to the users of works in relation to the rights administered by it; it collects royalty payments as specified in the licence, and distributes them (section 65(1)).

30. On the scope of the rights of an organisation for collective management, section 64 provides that such an organisation shall protect the rightsholders' economic rights arising from their copyright over artistic works, and that the organisation shall represent the authors' rights and interests in all matters with any public or private party, including in court proceedings and matters related to such proceedings.

31. Section 69 provides that in a case of copyright violation, the rightsholders' as well as the collective management organisation have the right to ask the perpetrator to recognise the protected rights; to prohibit the use of the protected work; to request immediate termination of any unlawful activities; and to claim damages, including for lost earnings, or to claim compensation in an amount set by the court.

D. Other relevant information

32. Pursuant to part 3 of the articles of association of the applicant organisation (*SIA AKKA/LAA statūti*), the applicant organisation has its own property which consists primarily of deductions from the collected royalty payments. The income exceeding the administration expenses was put into savings to be used by the applicant organisation following the decisions of its shareholders – that is to say the authors.

33. On the basis of the standard representation agreements concluded between the applicant organisation and authors for the protection of authors' rights, the applicant organisation has rights in its own name (*savā vārdā*) to, without obtaining additional authorisation, carry out all procedural matters in court proceedings, to bring claims, and lodge appeals, and to receive court awarded damages. The application organisation was mandated to deduct no more than 25% of the collected sums as remuneration for the services provided, whereas the authors agreed not to, *inter alia*, defend or carry out any activities associated with any of the rights entrusted to the applicant organisation.

III. RELEVANT INTERNATIONAL LAW

A. WIPO Copyright Treaty (adopted in Geneva on December 20, 1996), to which Latvia acceded on 22 March 2000; and which came into effect on 6 March 2002

34. In the Preamble of the WIPO Copyright Treaty the contracting States emphasised the outstanding significance of copyright protection as an

incentive for literary and artistic creation, as well as recognising the need to maintain a balance between the rights of authors and the larger public interest, particularly education, research and access to information, as reflected in the Berne Convention.

35. Articles 8 and 11 of the WIPO Copyright Treaty state as follows:

Article 8
Right of Communication to the Public

“Without prejudice to the provisions of Articles 11(1)(ii), 11*bis*(1)(i) and (ii), 11*ter*(1)(ii), 14(1)(ii) and 14*bis*(1) of the Berne Convention, authors of literary and artistic works shall enjoy the exclusive right of authorizing any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them.”

36. Explanatory remark to the above Article reads as follows:

“It is understood that the mere provision of physical facilities for enabling or making a communication does not in itself amount to communication within the meaning of this Treaty or the Berne Convention. It is further understood that nothing in Article 8 precludes a Contracting Party from applying Article 11*bis*(2).

...”

Article 11
Obligations concerning Technological Measures

“Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors in connection with the exercise of their rights under this Treaty or the Berne Convention and that restrict acts, in respect of their works, which are not authorized by the authors concerned or permitted by law.”

B. Berne Convention for the Protection of Literary and Artistic Works (hereinafter – “the Berne Convention” (in force with respect to Latvia from 11 August 1995)

37. Article 11*bis* of the Berne Convention sets out provisions in relation to broadcasting and related rights:

“(1) Authors of literary and artistic works shall enjoy the exclusive right of authorizing:

(i) the broadcasting of their works or the communication thereof to the public by any other means of wireless diffusion of signs, sounds or images;

(ii) any communication to the public by wire or by rebroadcasting of the broadcast of the work, when this communication is made by an organization other than the original one;

(iii) the public communication by loudspeaker or any other analogous instrument transmitting, by signs, sounds or images, the broadcast of the work.

(2) It shall be a matter for legislation in the countries of the Union to determine the conditions under which the rights mentioned in the preceding paragraph may be exercised, but these conditions shall apply only in the countries where they have been prescribed. They shall not in any circumstances be prejudicial to the moral rights of the author, nor to his right to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority.

(3) In the absence of any contrary stipulation, permission granted in accordance with paragraph (1) of this Article shall not imply permission to record, by means of instruments recording sounds or images, the work broadcast. It shall, however, be a matter for legislation in the countries of the Union to determine the regulations for ephemeral recordings made by a broadcasting organization by means of its own facilities and used for its own broadcasts. The preservation of these recordings in official archives may, on the ground of their exceptional documentary character, be authorized by such legislation.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

38. The applicant organisation complained that the domestic courts had restricted the copyright of authors whose musical works were collectively managed by the applicant organisation. They complained, in particular, that as a result of the domestic proceedings in which the domestic courts had ordered the applicant organisation to conclude licence agreements with defendant organisations and had set a royalty rate, the authors’ exclusive rights to freely conclude licence agreements for the use of their musical works had been restricted, contrary to Article 1 of protocol No. 1 of the Convention, which reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A. Admissibility

1. *Compatibility* *ratione materiae*

39. The Government argued in substance that the contested domestic proceedings related to the setting of royalty rates and not to property rights.

40. The applicant organisation contested the Government’s argument.

41. The Court reiterates that the protection of intellectual property rights, including the protection of copyright, falls within the scope of Article 1 of Protocol No. 1 to the Convention (see *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 72, ECHR 2007-I, and *Melnychuk v. Ukraine* (dec.), no. 28743/03, 5 July 2005). The Court observes that the domestic courts in the course of the impugned civil proceedings acknowledged, among other issues, the infringement of the copyright of authors represented by the applicant organisation. The protection of musical works and the economic interests deriving from them thus fall within the scope of rights protected under Article 1 of Protocol No. 1.

42. Consequently, the Court dismisses the objection raised by the Government in this regard.

2. *Compatibility* *ratione personae*

(a) Arguments of the Parties

43. The Government contended that the applicant organisation had acted merely as an intermediary between the users of artistic works and the authors, who had transferred only the implementation of part of their pecuniary rights to the applicant organisation. The Government argued that the applicant organisation had not been directly affected by any measures and it had not by virtue of its administrative and representative function acquired any “possession” within the meaning of Article 1 of Protocol No. 1 to the Convention. The recognition of the applicant organisation’s *locus standi* in the domestic proceedings according to the Government did not automatically envisage compliance with Article 34 of the Convention. The Government maintained that the applicant organisation could not claim to be a victim of a measure that infringed the rights guaranteed by the Convention to its members.

44. The applicant organisation argued that under domestic law and following the practice of the domestic courts they were the only entity under the national law that had the legal capacity to exercise the copyright of authors’ works and to protect and manage authors’ rights in legal relationships with users of such works, including the protection of the fundamental rights of the authors. It emphasised that the contested domestic proceedings had been brought in the name of the organisation itself as, under domestic law, the authors themselves could not enter into licence agreements with the broadcasters or bring claims. This, in the applicant organisation’s opinion, proved that they should be considered as a direct victim in the light of the Convention. In the alternative, the applicant organisation asked the Court to recognise it as an indirect victim on the ground of the applicant organisation’s very close link to the direct victims, notably, the authors. Under domestic law the latter had been obliged to

establish the applicant organisation which had since been managing and protecting their artistic works.

(b) The Court's assessment

45. The Court has held that two conditions must be met in order to comply with Article 34 of the Convention: an applicant must fall into one of the categories of petitioners mentioned in Article 34, and he or she must be able to make out a case that he or she is the victim of a violation of the Convention. In addition, in order for an applicant to be able to claim to be a victim of a violation of the Convention, there must be a sufficiently direct link between the applicant and the harm allegedly sustained on account of the alleged violation (see *Gorraiz Lizarraga and Others v. Spain*, no. 62543/00, § 35, ECHR 2004-III with further references). Moreover, an association cannot claim to be itself a victim of measures alleged to have interfered solely with the rights of its individual members if the contested measure did not affect the organisation as such (see *Association des Amis de Saint-Raphael et de Frejus and Others v. France*, no. 38192/97, Commission decision of 1 July 1998, Decisions and Reports (DR), no. 94-B, p. 124).

46. It is true that in the present case the applicant organisation's arguments at first sight appear to concern the protection of the authors' rights. However, given the status and role of the applicant organisation, the Court cannot share the Government's view that the only legitimate victims vis-à-vis the Court's proceedings were individual members of that organisation.

47. In so far as the applicant organisation raised its complaints in its function as a representative of the affiliated authors, the Court takes note of the following provisions of domestic law and documents regulating the functioning of the applicant organisation.

48. The Copyright Law provided that in relation to certain types of use of artistic work, such as the broadcasting of music, the economic rights of copyright holders were only to be administrated collectively (see paragraph 24 above). For that reason Latvian authors founded the applicant organisation and vested it with the powers to set royalty rates for the use of their works, to license broadcasters in Latvia and abroad to use those works, and to distribute to the authors the collected royalty payments (see paragraph 29 above). For the applicant organisation to be able to carry out the above functions, it had its own property which consisted primarily of deductions from the collected royalty payments (see paragraph 32 above). The Court observes in particular that the applicant organisation had broad powers in relation to the matters falling within the collective management of certain type of copyright. The authors have explicitly given up their rights to, *inter alia*, represent their interests in any court proceedings, and they

have vested these rights in the applicant organisation (see paragraph 33 above).

49. The Court considers that once the domestic legal order attributes the protection of authors' rights to an organisation founded by the authors for this purpose, and vests it with independent rights transferred from the authors, including the right to have its own property made up primarily of deduction from royalty payments, then that organisation must be regarded as the victim of measure affecting these rights. In the present case, as a result of the contested civil proceedings the applicant organisation was ordered to conclude written licence agreements with the defendant organisations. The domestic courts set the royalty rates in the licence agreements with broadcasters, and thus interfered with the functions and economic interests of the applicant organisation. In these circumstances the applicant organisation's rights were directly affected by the impugned civil proceedings.

50. In the light of the above, the Court dismisses the Government's objection as to the applicant organisation's victim status.

3. Overall conclusion

51. This complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Whether there was an interference with the applicant organisation's possessions

(a) Possessions

52. The Government submitted that the rights and obligations stemming from representation agreements concluded between the applicant organisation and authors had not created a separate right or asset that could be regarded as a possession for the purpose of Article 1 of Protocol No 1.

53. The applicant organisation referred to their previous arguments in relation to their victim status and contended that because the applicant organisation had collectively managed the authors' intellectual property rights, those property rights had been deemed its possessions within the meaning of Article 1 of Protocol No. 1 to the Convention.

54. The Court reiterates that the concept of "possessions" referred to in the first part of Article 1 of Protocol No. 1 has an autonomous meaning. In the case of non-physical assets, the Court has taken into consideration, in particular, whether the legal position in question gave rise to financial rights

and interests and thus had an economic value (see, for example, *Mullai and Others v. Albania*, no. 9074/07, § 97, 23 March 2010).

55. The Court refers to its findings that the applicant organisation held the rights transferred to it by its members, that is to say the authors of musical works (see paragraphs 48-49 above). Accordingly, in the light of Article 1 Protocol No. 1 to the Convention the applicant organisation's rights constituted "possessions" in the form of musical works and the economic interests deriving from them.

(b) Interference

56. The Government disagreed that the impugned domestic decisions amounted to an interference with the applicant organisation's right to peaceful enjoyment of its possession. It argued that even though the domestic courts had restricted the authors' freedom to conclude licence agreements by putting an end to the civil dispute between the parties, the domestic courts had carried out the State's positive obligation to ensure that authors could effectively enjoy the rights guaranteed to them under the Convention.

57. The applicant organisation contended that as a result of the domestic proceedings it had been ordered to conclude compulsory licence agreements with broadcasters on terms set by the courts. The above measure constituted control of its possessions and the respondent State had failed to comply with their negative obligation not to interfere disproportionately with the peaceful enjoyment of the authors' property rights.

58. According to the Court's case-law determination of the conditions in which another person can use one's property is one aspect of a property right (see *R & L, s.r.o. and Others v. the Czech Republic*, nos. 37926/05, 25784/09, 36002/09, 44410/09 and 65546/09, § 102, 3 July 2014), and a measure restricting the freedom to enter into contracts should be analysed in the light of Article 1 of Protocol No. 1. In the present case, as a result of two sets of civil proceedings the applicant organisation was ordered to conclude written licence agreements with defendant organisations. Certain terms and conditions were set by the domestic courts and thus attested to the limits imposed on the freedom to enter into contracts in relation to the broadcasting of music.

59. Accordingly, the Court considers that there has been interference with the applicant organisation's possessions in the form of a control of the use of property which will accordingly be examined under the third sentence of Article 1 of Protocol No. 1.

2. Whether the interference complied with the conditions set out by Article 1 of Protocol No. 1

60. In order to comply with Article 1 of Protocol No. 1 to the Convention, it must be shown that the measure constituting the interference

was lawful, that it was “in accordance with the general interest”, and that there existed a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, §§ 106 and 108, 25 October 2012). The Court will examine whether each of those three conditions has been fulfilled in the present case.

(a) Whether the interference was prescribed by law

61. The Government relied on the limits of the Court’s competence pertaining to the interpretation and application of the domestic law and contended that the domestic legal instruments, specifically the Copyright Law, as interpreted by the domestic courts, had served as a valid legal basis for the alleged interference.

62. The applicant organisation argued that the fact that in the contested proceedings the domestic courts had ordered it to enter into a licence agreement either lacking any legal basis in national law (in relation to the second set of proceedings) or on the basis of insufficiently accessible and unforeseeable law (the first set of proceedings). They considered that there was no legal basis for the domestic courts to conclude that the draft licence agreement could have had the same weight as a concluded agreement, and that in both proceedings the same norms had been applied differently, thus attesting to its insufficient clarity.

63. The Court reiterates that in the context of an alleged breach by a tribunal of domestic legal provisions relating to the competence of judicial organs, the Court will not question the interpretation of the domestic courts on the matter, unless there has been a flagrant violation of domestic law (see *Biagioli v. San Marino*, (dec.), no. 8162/13, §§ 71-75, 8 July 2014).

64. The Court observes that according to the domestic courts’ reasoning, its competence to order the parties to enter into a licence agreement and to set an equitable royalty rate in the particular cases was determined by virtue of sections 15, 41 and 65 of the Copyright Law, interpreted in the light of Article 11*bis* of the Berne Convention and section 5 of the Civil Law. In the first set of proceedings the domestic courts established that both parties had agreed on a draft licence agreement, except for the terms of remuneration (see paragraph 14 above), whereas in the second set of proceedings the parties had in principle agreed to conclude a licence agreement but they had not agreed on its terms (see paragraph 19 above). The Court sees no reason to call into question the domestic courts’ interpretation of the above provisions, for it is sufficient to conclude that the domestic courts’ competence to deal with the issue had some basis in the domestic law.

65. In so far as the applicant organisation complained that the basis in the domestic law had been too vague, the Court reiterates that in the particular circumstances where the parties had expressed their intent to enter into a licence agreement, the application of the relevant provisions of

Copyright Law could not be considered to have been arbitrary. The notion of “lawfulness” does not exclude judicial interpretation, for many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice (see *OAO Neftyanaya Kompaniya Yukos v. Russia*, no. 14902/04, § 568, 20 September 2011, and the case-law cited therein). In both sets of proceedings the domestic courts provided reasons as to the setting of royalty rates and the legal basis for conclusion of the licence agreements.

66. The Court therefore concludes that the interference was “prescribed by law”.

(b) Whether the interference pursued a legitimate aim

67. The Government contended that the adopted measure had been aimed to serve the interests of the community as end users of the musical works, as well as the interests of the rightsholders to enjoy public use of their works.

68. According to the applicant organisation, the interference with the authors’ rights to freely negotiate the use of their works served no general interest for the following reasons. Firstly, the contested measure had been aimed at solving a legal dispute between two private parties and furnishing commercial benefits for the broadcasters. Secondly, by exercising the freedom to enter into contracts granted to authors under domestic law, the applicant organisation had a right to negotiate with the users upon equitable terms for their works and even to prohibit the use of their works in order to motivate the radio stations to conclude equitable licence agreements. The domestic courts had restricted this freedom and therefore the contested measure had not been aimed at protecting the authors who had been bound by the activities of the applicant organisation as their representative.

69. On the question of a legitimate aim of the interference the Court refers to its case-law according to which it is for the national authorities to make the initial assessment as to the existence of a problem of public concern warranting measures to be applied in the sphere of the exercise of the right of property. Since the margin of appreciation available to the legislature in implementing social and economic policies is wide, the Court will respect the legislature’s judgment as to what is “in the public interest”, unless that judgment is manifestly without reasonable foundation (see *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], no. 60642/08, § 106, ECHR 2014).

70. It appears from the decisions adopted by the domestic courts that over an extended period of time protected works were being broadcast without a valid licence, and that this situation was to a certain extent due to the applicant organisation’s limited efficiency in carrying out negotiations with the defendants. These observations attest to the domestic court’s efforts

to maintain a balance between the rights of the applicant organisation to obtain equitable remuneration from the use of musical work, on the one hand, and the defendants' interest to obtain a licence allowing them to legally broadcast rights-protected work. In these circumstances the domestic courts' judgment on the question of public interest could not be considered as manifestly without reasonable foundation.

71. In the light of the above, the Court considers that the measures complained of pursued a legitimate aim within the meaning of Article 1 of Protocol No. 1.

(c) Whether a fair balance was struck

72. The Government argued that by adopting the contested decisions the domestic courts had balanced the interests of copyright holders and the public in general. Furthermore, the Government underlined that in reaching the decision the domestic courts had done their outmost to assist the parties in reaching a settlement. After the failed attempts to reach an agreement, the domestic court had had two alternatives: ordering the conclusion of a written licence agreement and setting the amount of remuneration, even if it had been lower than what the applicant organisation had requested; or upholding the applicant organisation's application to have the use of the musical work banned until the conclusion of a licence agreement. As the latter option would not have served the interests of the copyright holders and the general public, the domestic court had had to intervene and set an adequate royalty rate.

73. The applicant organisation maintained that by having been ordered to enter into a licence agreement with terms of remuneration which did not compensate the authors for the use of their works, the domestic courts had manifestly breached the balance between the right to receive remuneration for the use of musical works and the general interest. They also argued that the above restriction had not been justified by any public interest because the defendant in the first set of proceedings had been a commercial broadcaster and had transmitted authors' work to gain profit. They added that in any event any public interest to have access to musical works could have been satisfied by those broadcasters in Latvia which had concluded a licence agreement with the applicant organisation. In reply to the Government's argument that by the contested measures the domestic courts had solved a long-running dispute, the applicant organisation contended that the resolution of the case had not been in favour of the authors. In this connection they argued that before the contested proceedings the broadcasters had used the musical work without any licence and that the applicant organisation had done everything to reach an out-of-court settlement in the dispute with them.

74. The Court reiterates that whether a case is analysed in terms of the positive duty of the State or in terms of interference by a public authority

which needs to be justified under Article 1 of Protocol No. 1 of the Convention, the criteria to be applied do not differ in substance: in both contexts regard must be had to the fair balance to be struck between the competing interests of the individual and of the community as a whole. It also holds true that the aims mentioned in that provision may be of some relevance in assessing whether a balance between the demands of the public interest involved and the applicant's fundamental right of property has been struck. In both contexts the State enjoys a certain margin of appreciation in determining the steps to be taken to ensure compliance with the Convention (see *Broniowski v. Poland* [GC], no. 31443/96, § 144, ECHR 2004-V). The Court observes that the applicant organisation in substance considered that the State's actions, through the decision of the domestic courts, had constituted an unjustified interference, whereas the Government contended that by adopting the contested decisions the State had carried out its positive obligations as enshrined by international and domestic copyright agreements and legislation.

75. As observed before, by virtue of the Berne Convention and the domestic law as interpreted and applied by the domestic courts, where no agreement between the parties had been reached and where no other authority had decided on this issue, it was for the courts to set an equitable royalty rate (see paragraph 64 above).

76. In order to assess whether the above mechanism in the particular case provided safeguards so as to ensure that the functioning of the copyright protection system and its impact were neither arbitrary nor unforeseeable, the Court takes into account the following elements.

77. Firstly, before laying down the royalty rate, the domestic courts endeavored to provide the parties with time to reach an agreement during the court proceedings. Since it was not possible, the domestic court relied on the fact that in the first set of proceedings the parties had already reached an agreement on the method for calculation of the royalty rate (see paragraph 14 above). In the second set of proceedings the domestic court referred to the method used in other valid licence agreements concluded between the applicant organisation and other broadcasters, and the rate set by the courts was not considerably lower than the rate negotiated by the parties in their previous licence agreement (see paragraph 18 above).

78. Secondly, observing the interests of the copyright holders, the national courts had established that in the circumstances where the parties in principle were willing to enter into an agreement, banning the broadcast of the music would not suit the best interests of copyright holders, that is to say to receive the maximum benefit from the oeuvres.

79. Thirdly, as far as the courts' orders for the parties to enter into a licence agreement was concerned, the measure was limited in scope and time. In the first set of proceedings the royalty rate was set for a period of three years, which had already been agreed by the parties. Whereas in the

second set of proceedings the domestic court took note of the scope of the claim and the counterclaim and imposed on the parties merely a general obligation to conclude a licence agreement. Accordingly, the parties were not prevented from renegotiating the rate (contrary to, for example, *Anthony Aquilina v. Malta*, no. 3851/12, 11 December 2014, which concerned restrictions on fixing a rent over an extended period of time). It follows that the authorities had minimally restricted the right of the applicant organisation to renegotiate terms and conditions with the defendants and other broadcasting companies.

80. The foregoing considerations are sufficient to enable the Court to conclude that the Latvian authorities did strike a fair balance between the demands of the general interest and the rights of the applicant organisation.

81. There has accordingly been no violation of Article 1 of Protocol No. 1 to the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

82. The applicant organisation complained of a violation of a right to a fair hearing. In particular, the applicant organisation complained that the principle of equality of arms had not been respected as regards the extension of the limits of the counterclaim in the second set of proceedings. They relied on Article 6 of the Convention which, in its relevant parts, reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

83. The Government contested that argument and considered that the present application fell outside the Court’s jurisdiction *ratione materiae* because the contested proceedings had not concerned any particular civil rights of the applicant organisation. The Government, in the alternative, argued that the domestic courts had in no way extended the limits of the defendant’s counterclaim and that in both sets of civil proceedings the domestic courts had duly assessed the arguments of both parties.

84. The applicant organisation maintained that in the second set of proceedings the Supreme Court in its judgment of 26 November 2003 had unilaterally extended the limits of the defendant’s counterclaim, and that the Senate of the Supreme Court had not addressed the applicant organisation’s arguments on this matter brought in their appeal on points of law.

85. The Court notes that this claim is closely linked to the complaint examined above and must therefore likewise be declared admissible.

86. Having regard to the Court’s finding relating to Article 1 of Protocol No. 1 that in examining the defendant organisation’s counterclaims the national courts had acted in accordance with domestic law and that they had provided sufficient reasoning in their decisions, for the reasons that is

has given for finding no violation of Article 1 of Protocol No. 1 (see, in particular, paragraphs 64-65 and 77-79 above), the Court concludes that there has been no violation of Article 6 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

87. Lastly, the applicant organisation invoked other complaints under Articles 6, 13 and Article 1 of Protocol No. 1 to the Convention, in relation to other aspects of the contested civil proceedings.

88. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court considers that the remainder of the application does not disclose any appearance of a violation of any of the Articles of the Convention relied on. It follows that these complaints are inadmissible under Article 35 § 3 (a) as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning the alleged violations of Article 6 and Article 1 of Protocol No. 1 to the Convention admissible, and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 1 of Protocol No. 1 to the Convention;
3. *Holds* that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 12 July 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Angelika Nußberger
President