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

SECOND SECTION

# DECISION

Application no. 23721/11
Gülsüm AYDIN and Others
against Türkiye

The European Court of Human Rights (Second Section), sitting on 16 May 2023 as a Chamber composed of:

Arnfinn Bårdsen*, President*,
Jovan Ilievski,
Pauliine Koskelo,
Saadet Yüksel,
Lorraine Schembri Orland,
Frédéric Krenc,
Davor Derenčinović*, judges*,

and Hasan Bakırcı, *Section Registrar,*

Having regard to the above application lodged on 2 February 2011,

Having regard to the observations submitted by the Turkish Government ("the Government") and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

## INTRODUCTION

1. The case concerns the applicants' copyright infringement claims in relation to two songs, the rights to which they claimed to have inherited from their respective husband and father, İ.A., who had allegedly composed them. The applicants complained that the domestic courts had disregarded a previous final judgment concerning one of the songs, in breach of their right to a fair hearing under Article 6 of the Convention and their right to peaceful enjoyment of their possessions under Article 1 of Protocol No. 1.

# THE FACTS

2. The applicants, whose details are set out in the appendix, were represented by Mr C. Tunçer, a lawyer practising in Ankara. They are the heirs of İ.A., who passed away in 1983.

3. The Government were represented by their Agent, Mr Hacı Ali Açıkgül, Head of the Department of Human Rights of the Ministry of Justice of the Republic of Türkiye.

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

## A. First set of proceedings

5. On 3 March 1998 the applicants lodged an action with the Ankara Commercial Court against a production company (B.M.Ü.T. Ltd. Şti.) and a singer (R.K.), alleging copyright infringement in relation to a song ("Dem Dem") which had featured on an album by R.K. They claimed that the disputed song had been listed as an anonymous musical work in R.K.'s album and had been used without their authorisation as heirs of İ.A., despite the latter being the "reference person" (*kaynak kişi*) for that song (see, for the definition of that term, paragraphs 18, 21 and 23 below).

6. In a report of 10 May 1999, a panel of court-appointed experts found that the disputed musical work had been registered in the Turkish folk music repertory of TRT (the Turkish Radio and Television Corporation, the national public broadcaster) since 1976, that it had already been published under the title "Ey Şahin Bakışlım" on an album of İ.A., and that its authorship had not been challenged since then. The experts added that the defendants had not presented any evidence to show that the disputed musical work was anonymous. Referring to the presumption of authorship as set out in section 11(1) of Law no. 5846 on Intellectual and Artistic Works (see paragraph 31 below), the experts concluded that İ.A.'s authorship of the musical work in question had been established.

7. On an unspecified date the defendants raised objections regarding the applicants' copyright claims, alleging that the lyrics of the disputed song belonged to K.H. (a Turkish folk poet) and that its music had been composed by N.T.

8. In an additional report of 6 March 2000 the experts addressed the defendants' objections. They noted that the case at hand concerned only the music of the song and not its lyrics. They further noted that according to the Turkish folk music repertory of TRT, N.T. had merely transcribed the music in question into a musical score, based on İ.A.'s already existing musical composition. They concluded that N.T. was not the composer of the disputed music.

9. On 18 July 2001 the case was transferred to the Ankara Civil Court of General Jurisdiction ("the Civil Court").

10. On 14 March 2002 the Civil Court allowed in part the applicants' claims and awarded them damages for the copyright infringement on account of the unauthorised use and distribution of the music in question. Relying on the experts' findings, the Civil Court noted that the disputed music had been registered in the Turkish folk music repertory of TRT since 1976, that it had already been published under the title "Ey Şahin Bakışlım" on an album of İ.A., and that its authorship had not been challenged since then. It further noted that the defendants had not presented any evidence to show that the disputed musical work was anonymous. It concluded that İ.A.'s authorship of the music in question had been established pursuant to section 11(1) of Law no. 5846.

11. On 16 April 2002 that judgment became final in the absence of an appeal.

## B. Second set of proceedings

12. On 20 May 2003 the applicants lodged an action with the Civil Court against a production company (M.M.Y. Ltd. Şti.) and a singer (H.S.B.), seeking compensation for an alleged copyright infringement in relation to two songs (entitled "Ey Şahin Bakışlım" and "Katipler Oturmuş"), which had been included on an album by H.S.B. They argued that despite İ.A. being the composer of the songs in question, the songs had been listed as anonymous musical works in H.S.B.'s album and had been used without their authorisation. They claimed that the disputed musical works had appeared on an album released by İ.A. more than thirty years previously and had also featured on an album by Y.T., where İ.A. had been listed as the "source" of the songs. Referring to the judgment of 14 March 2002 (see paragraph 10 above), they further argued that there was a final judgment regarding the song entitled "Ey Şahin Bakışlım".

13. In their written submissions of 9 July 2003 to the Civil Court, the defendants argued that İ.A. was not the composer of the musical works in question but was only the "reference person" who had brought them to light (*ortaya çıkaran*). They maintained that, according to the settled case-law of the domestic courts, the applicants could not therefore claim damages for copyright infringement. They also argued that the songs in question were anonymous musical works and referred in this respect to the Turkish folk music repertory of TRT.

14. On 22 August 2003, in response to a request from the Civil Court, TRT indicated that the musical composition entitled "Ey Şahin Bakışlım", also known as "Dem Dem Geldi Semahı", was an anonymous work and that its "reference person" was İ.A. TRT also provided, from its records, a copy of a music sheet on which N.T. had transcribed the disputed music, with İ.A. listed as the source in a section entitled "taken from" (*kimden alındığı*). TRT

further noted that the song entitled "Katipler Oturmuş" was not registered in its Turkish folk music repertory.

15. On 11 December 2003 the case was transferred to the then newly established Ankara Civil Court of Intellectual and Industrial Property Rights ("the Intellectual Property Court").

16. On 3 February 2005 the Intellectual Property Court requested the case file of the proceedings resulting in the judgment of 14 March 2002 from the Civil Court.

17. On 10 November 2005 the Intellectual Property Court ordered an expert examination to determine, *inter alia*, (i) whether the disputed musical pieces were anonymous works, (ii) whether they had been created by İ.A., (iii) whether he had performed the disputed pieces in their original form, and (iv) whether he had created an adaptation of the existing musical works. It accordingly appointed a panel of experts composed of a specialist in Turkish folk music, a sound artist and a lawyer.

18. On an unspecified date the experts submitted their report. They found that the disputed musical works were anonymous folk songs and stated that such songs were typically composed by the community, with music added to existing folk poems. They noted in that connection that the lyrics of the disputed songs belonged to the folk poets K.H and P.S.A. They also pointed out that only anonymous musical works could be registered in TRT's Turkish folk music repertory.

According to the report, İ.A. was the "reference person" of the musical works in question, but that term did not mean that he could be considered their author. The experts stated that reference persons simply passed on anonymous musical works to future generations, without creating an adaptation of the original work. They concluded that İ.A. had not created the disputed musical works and that he had only performed them in their already existing original forms.

19. On 26 January 2006 the applicants challenged the findings and composition of the first panel of experts. They argued that their claims concerned only the music and not the lyrics of the songs. They further maintained that two of the court-appointed experts were employed by TRT and therefore could not be considered impartial, as TRT would benefit from registering the disputed musical works as anonymous in its folk music repertory in order to avoid paying copyright royalties.

20. On 1 March 2007 the Intellectual Property Court ordered a new expert examination.

21. On 12 December 2007 a new panel of experts, composed of two professors from a university music conservatory and a lecturer in design law, submitted their report. The experts noted that the reference persons were not the creators or composers of folk songs but rather the ones who had introduced them to the wider public. The experts concurred with the findings of the previous report (see paragraph 18 above), but added that while

reference persons could not claim damages pursuant to Law no. 5846, they should be compensated for their efforts under the provisions applicable to unfair competition.

22. The applicants challenged the second expert report, claiming that İ.A. was the composer of the disputed musical works. They also referred to the judgment of 14 March 2002.

23. On 17 April 2008 the Intellectual Property Court dismissed the applicants' claims. At the outset the court took note of the defendants' arguments that the disputed musical works were anonymous and that İ.A. was the "reference person" of the songs. It further held that because the defendants in the dispute at hand had not been parties to the first set of proceedings, the judgment of 14 March 2002 did not constitute *res judicata* in respect of the dispute before it (see also paragraph 32 below). As regards the previous releases of the disputed songs, the court noted that while the songs had been featured on an album by İ.A., the relevant publications had only acknowledged his performance of the songs and had not mentioned him as the author. It also noted that the songs had been credited to İ.A. as the "reference person" in their release by a third party (Y.T.). Based on the findings of the expert reports, the court held that the disputed musical works were anonymous folk songs and that İ.A. had only performed them, with no evidence to suggest that he had composed the songs. The court further stated that performing a musical work could not grant the performer any ownership rights over the work itself. Accordingly, the court found that İ.A. was the "reference person" of the disputed musical works but considered that he was not their author within the meaning of Law no. 5846 and that therefore he (or in this case his heirs) could not claim the rights conferred on authors under that Law. The court also noted that while section 11 of Law no. 5846 provided for a presumption of authorship, that was always subject to rebuttal. The court found no presumption of authorship in the case before it and added that even if there had been such a presumption, it had been effectively disproved in view of the findings of the experts and TRT's records. The court further noted that the statements of the applicants' witnesses were not sufficient to suggest otherwise. Lastly, the court held that performing anonymous musical works could not be considered unfair competition, contrary to the findings of the second expert report.

24. On 30 June 2008 the applicants appealed against the judgment of 17 April 2008.

25. On 1 February 2010 the Court of Cassation upheld that judgment, holding that it was in accordance with the law and procedure.

26. On 6 July 2010 the Court of Cassation rejected a request made by the applicants for a rectification of its decision of 1 February 2010. It appears from another decision in the case file (see paragraph 28 below) that the decision of 6 July 2010 was notified to the applicants' lawyer on 5 August 2011.

### C. Request for the reopening of the proceedings

27. On 2 February 2011 the applicants made a request for the reopening of the second set of proceedings. They claimed that a letter addressed by TRT to one of them suggested that İ.A. was in fact the author of the musical composition entitled "Ey Şahin Bakışlım".

28. On 14 June 2012 the Intellectual Property Court dismissed the applicants' request. Based on an expert's report, it found that the song referenced in the letter was not the same as the one that had been the subject of its judgment of 17 April 2008.

29. According to the Government, the decision of 14 June 2012 has not been notified to the parties.

## RELEVANT LEGAL FRAMEWORK

30. Pursuant to sections 1/B and 3 of Law no. 5846, the term "work" within the meaning of that Law comprises, *inter alia*, musical compositions with or without lyrics.

31. Under section 11(1) of Law no. 5846, a person whose name or known pseudonym is listed as the author on published copies of a work is considered the author of that work until proven otherwise.

32. Under Article 237 of the former Code of Civil Procedure (Law no. 1086), in force at the material time and as interpreted by the domestic courts, a final judgment was considered *res judicata* in a subsequent suit (effectively precluding any new examination) only if the parties, the subject matter and the cause of the action were the same in both the original and subsequent proceedings (see, for example, a decision of the Joint Civil Chambers of the Court of Cassation dated 5 February 2003 (E. 2003/21-30, K. 2003/57)).

## COMPLAINTS

33. The applicants complained under Article 6 of the Convention that the dismissal of their copyright infringement claims had breached their right to a fair hearing. They maintained that the first panel of experts in the proceedings before the Intellectual Property Court had not been impartial, as two of its members had been employed by TRT. They also claimed that one of the experts on the second panel of experts had prior connections to TRT.

The applicants further complained that the Intellectual Property Court had failed to take account of İ.A.'s author's rights in respect of the musical work entitled "Ey Şahin Bakışlım" which had, in their view, been established by the judgment of 14 March 2002 of the Civil Court.

34. Without relying on any particular provision of the Convention, the applicants lastly complained of a violation of their property rights on the basis of the same facts.

# THE LAW

## A. Preliminary remarks

35. The Government informed the Court that the first two applicants, Ms Gülsüm Aydın and Mr Ali Naki Aydın, had died after the lodging of the application (see the appendix). Accordingly, they asked the Court to strike the application out of the list in so far as it concerned those two applicants.

36. The Court observes that no heir or close relative has expressed a wish to pursue the application on behalf of the first two applicants. It is the Court's usual practice to strike applications out of the list of cases if no heir or close relative has expressed a wish to pursue an application (see, among many other examples, *Savickis and Others v. Latvia* [GC], no. 49270/11, § 90, 9 June 2022). The Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols that would require the Court to continue the examination of that part of the application pursuant to Article 37 § 1 *in fine* of the Convention. It is therefore appropriate to strike the application out of the list of cases in so far as those two applicants are concerned.

37. Nevertheless, for practical reasons, the name of the case will not be changed (ibid., § 91). Furthermore, any mention of "the applicants" in the remainder of this decision must be understood as referring to the two remaining applicants (ibid.).

## B. Alleged violation of Article 6 of the Convention

38. The applicants claimed that the dismissal of their copyright infringement claims had breached their right to a fair hearing. They also complained of a lack of impartiality of the experts in the second set of proceedings. They lastly maintained that the domestic courts had disregarded the final judgment of 14 March 2002 of the Civil Court (see paragraph 10 above), which, in their view, had established İ.A.'s author's rights in respect of one of the disputed musical works.

39. The applicants relied on Article 6 of the Convention, which reads, in so far as relevant, as follows:

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

*1. The parties' submissions*

40. The Government submitted that the applicants' complaints had been introduced out of time. They further submitted that the applicants had failed to exhaust available domestic remedies, pointing out that the decision of 14 June 2012 concerning the applicants' request for the reopening of the proceedings (see paragraphs 27 and 28 above) had not yet become final. The Government also maintained that the applicants lacked victim status within the meaning of Article 34 of the Convention.

41. The Government further argued that the applicants' complaints were of a fourth-instance nature.

42. As regards the complaint concerning the domestic courts' alleged failure to take into account the judgment of 14 March 2002, the Government endorsed the reasoning of the Intellectual Property Court (see paragraph 23 above). In that connection, the Government also referred to the conditions outlined in section 237 of Law no. 1086 (see paragraph 32 above).

43. The Government maintained that while section 11(1) of Law no. 5846 provided for a presumption of authorship, this could always be challenged (see paragraph 31 above). They also argued that decisions regarding the authorship of a work were of a declaratory nature and were only valid until proven otherwise. The Government further argued that the conclusion reached in the judgment of 14 March 2002 of the Civil Court had constituted a presumption that the disputed musical work belonged to İ.A., but that that presumption had been rebutted in the proceedings before the Intellectual Property Court.

44. The applicants contested the Government's assertions that their complaints had been introduced outside of the six-month time-limit and that they had failed to exhaust domestic remedies. They did not comment on the Government's other arguments.

*2. The Court's assessment*

45. The Court does not consider it necessary to address the Government's preliminary objections because the applicants' complaints under this heading are in any event inadmissible for the following reasons.

**(a) Impartiality of the panel of experts**

46. As regards the alleged lack of impartiality of the court-appointed experts in the second set of proceedings, the Court notes that following the applicants' objections concerning the composition of the first panel of experts, the Intellectual Property Court obtained a new report from a different set of experts (see paragraphs 19-21 above).

47. Furthermore, the only difference between the findings of the two panels related to the issue of unfair competition, which was raised by the second panel and addressed by the Intellectual Property Court

(see paragraphs 21 and 23 above). In those circumstances, it is irrelevant whether the first expert report had any role in the assessment of the applicants' claims by the Intellectual Property Court (compare and contrast *Devinar v. Slovenia*, no. 28621/15, § 50, 22 May 2018).

48. As to the applicants' allegation regarding one of the experts on the second panel, there is nothing in the case file to indicate that the applicants raised any objections in this regard before the Intellectual Property Court (see paragraph 22 above; see also, *mutatis mutandis*, *Tabak v. Croatia*, no. 24315/13, § 77-79, 13 January 2022). In any event, the applicants failed to substantiate this allegation before the Court, as they only claimed that that expert had prior connections with TRT, without explaining the nature of those connections or how they had affected his impartiality (see paragraph 33 above).

49. In view of the above, the Court considers that the applicants' complaints regarding the alleged lack of impartiality of the experts must be rejected as manifestly ill-founded, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

**(b) Alleged failure to take into account the judgment of 14 March 2002**

50. The Court reiterates that the right to a fair hearing under Article 6 § 1 of the Convention, interpreted in the light of the principles of the rule of law and legal certainty, encompasses the requirement that where the courts have finally determined a dispute between given parties, their ruling should not be called into question (see *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII, and *Gražulevičiūtė v. Lithuania*, no. 53176/17, § 72, 14 December 2021). The principle of *res judicata* requires that no party is entitled to seek a review of a final and binding judgment merely for the purpose of obtaining a rehearing and a fresh determination of the case (see, among others, *Ryabykh v. Russia*, no. 52854/99, § 52, ECHR 2003-IX, and *Agro Frigo OOD v. Bulgaria*, no. 39814/12, § 35, 5 September 2019).

51. In the Court's view the principle according to which a final judgment is *res judicata* and resolves the dispute between the parties with final effect is a fundamental element of the rights guaranteed by Article 6 of the Convention in civil matters (see *Gražulevičiūtė*, cited above, § 74).

52. The Court also observes that in all legal systems the *res judicata* effects of judgments have limitations *ad personam* and as to material scope (see *Kehaya and Others v. Bulgaria*, nos. 47797/99 and 68698/01, § 66, 12 January 2006; *Esertas v. Lithuania*, no. 50208/06, § 22, 31 May 2012; and *Gražulevičiūtė*, cited above, § 74).

53. In the present case it is not disputed between the parties that the first set of proceedings before the Civil Court and the subsequent proceedings before the Intellectual Property Court both involved copyright claims regarding the same musical work, namely "Ey Şahin Bakışlım" (also known as "Dem Dem" or "Dem Dem Geldi Semahı"). In this regard, the applicants

did not argue that the final judgment of 14 March 2002 of the Civil Court had been quashed (compare and contrast *Brumărescu*, cited above, § 62), but rather that the domestic courts had disregarded that judgment in the second set of proceedings. Accordingly, to determine whether the judicial authorities infringed the principle of *res judicata* enshrined in Article 6 § 1 of the Convention, the Court will examine the two aspects of that principle as set out in paragraph 52 above (see *Karaivanova and Mileva v. Bulgaria*, no. 37857/05, § 48, 17 June 2014).

54. As regards the *ad personam* aspect, the Court notes that under domestic law at the relevant time, a final judgment by a civil court was considered *res judicata* for subsequent proceedings, provided that, *inter alia*, the parties in the later proceedings were identical to those in the original proceedings (see paragraph 32 above). In that connection, the Court observes that, as pointed out by the Intellectual Property Court, the defendants in the second set of proceedings were not parties to the dispute before the Civil Court (see paragraph 23 above). Therefore, the present case differs from cases where the parties involved in both sets of proceedings were the same, or where there were different emanations of the State on one side and the applicants on the other (see, for example, *Kehaya and Others*, cited above, § 67; *Esertas*, cited above, § 23; *Decheva and Others v. Bulgaria*, no. 43071/06, § 42, 26 June 2012; *Brletić v. Croatia*, no. 42009/10, § 47, 16 January 2014; and *Gražulevičiūtė*, cited above, § 75). In those circumstances, it cannot be said that the approach of the Intellectual Property Court had the effect of providing a "second chance" for the defendants in the proceedings before it to obtain a re-examination of a dispute that had already been determined between the same legal subjects (compare and contrast *Kehaya and Others*, § 69; *Decheva and Others*, § 43; *Brletić*, § 49; and *Gražulevičiūtė*, § 80, all cited above).

55. As to the material scope of the judgments of 14 March 2002 and 17 April 2008, the Court notes that the subject matter of the first and second sets of proceedings were not identical, as the alleged copyright infringements originated from different parties. However, leaving aside the song entitled "Katipler Oturmuş", which was not the subject of the proceedings before the Civil Court, the musical work whose copyright was allegedly infringed was the same in both proceedings (see paragraphs 10 and 12 above). Therefore, the Civil Court and the Intellectual Property Court examined the same preliminary question, namely whether İ.A. was the author of the disputed musical work.

56. In that regard, the Court notes that in the first set of proceedings, the Civil Court held that İ.A.'s authorship of the disputed music had been established pursuant to section 11(1) of Law no. 5846. The Civil Court based its ruling mainly on the fact that İ.A. had previously published the disputed musical work and that the defendants had failed to provide any evidence demonstrating the anonymous nature of the said musical work (see

paragraph 10 above). In that connection, the Court emphasises that the Civil Court specifically referred to section 11(1) of Law no. 5846, pursuant to which a person whose name is listed as the author on published copies of a work is considered the author of that work until proven otherwise. Accordingly, the Civil Court's judgment was based on two main grounds: (i) that there existed a presumption of authorship in favour of İ.A., and (ii) that the defendants failed to rebut that presumption. Therefore, even though the wording used by the Civil Court in its reasoning may suggest that İ.A. was the actual author of the disputed musical work (see paragraph 10 above), the Court considers that the Civil Court only confirmed that the presumption of authorship had not been rebutted in those proceedings.

57. The Court further notes that the defendants in the second set of proceedings argued that İ.A. was only the "reference person" of the disputed musical work and that the applicants could not therefore claim damages for copyright infringement (see paragraph 13 above). However, there is nothing to suggest that the other defendants in the first set of proceedings – who were required to rebut the presumption of authorship – raised this argument before the Civil Court (see paragraphs 6-8 above), even though that term was apparently used by the applicants (see paragraph 5 above). The Intellectual Property Court thus had to consider this argument. Consequently, the experts in the second set of proceedings conducted an analysis of the concept of "reference person" and İ.A.'s status in relation to the disputed musical work (see paragraphs 18 and 21 above). This analysis ultimately led to the dismissal of the applicants' claims by the Intellectual Property Court (compare and contrast *Siegle v. Romania*, no. 23456/04, § 37, 16 April 2013, where the Court highlighted the absence of any new evidence in the subsequent proceedings). Indeed, based on the experts' findings, the Intellectual Property Court considered that İ.A. was the "reference person" of the musical work in question. It found that he was not, however, its author within the meaning of Law no. 5846, and that therefore he could not claim the rights conferred on authors under that Law (see paragraph 23 above).

58. Moreover, the Court observes that as the Civil Court considered that there existed a presumption of authorship in favour of İ.A., it fell to the defendants in the first set of proceedings to rebut that presumption. They failed, however, to do so. In that regard, the Court reiterates that presumptions of fact or of law operate in every legal system and that the Convention does not prohibit such presumptions in principle; however, individuals must be afforded effective judicial safeguards (see *Lady S.R.L. v. the Republic of Moldova*, no. 39804/06, § 27, 23 October 2018). Accordingly, the Court considers that the principle of legal certainty cannot be interpreted to mean that third parties who were not involved in the original proceedings should be denied the opportunity to raise new arguments in subsequent proceedings in order to challenge presumptions which may well affect their interests.

59. Admittedly, the Civil Court and the Intellectual Property Court held different views on the significance of İ.A.'s previous publication of the disputed musical work. While the former court deemed it sufficient to create a presumption of authorship under the applicable law, the latter court held that no such presumption existed, as the relevant publications had not listed him as the author (see paragraphs 10, 23 and 31 above). That being said, the Court reiterates that Article 6 § 1 of the Convention does not lay down any rules on the admissibility or probative value of evidence or on the burden of proof, which are essentially matters for domestic law (see *Lady S.R.L.*, cited above § 27, and *Evers v. Germany*, no. 17895/14, § 80, 28 May 2020). Moreover, the Court's power to review compliance with domestic law is limited and it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 149, 20 March 2018). Unless the interpretation is arbitrary or manifestly unreasonable, the Court's role is confined to ascertaining whether the effects of that interpretation are compatible with the Convention (ibid.). In any event, the Court considers that the difference of interpretations in this case cannot be considered in itself to infringe the principle of legal certainty in the circumstances of the case, as the Intellectual Property Court found that even if there had been such a presumption, it had been effectively disproved in the proceedings before it (see paragraph 23 above).

60. In view of the above, the Court concludes that there was no failure to respect the principle of legal certainty enshrined in Article 6 § 1 of the Convention.

61. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

**(c) Musical work entitled "Katipler Oturmuş"**

62. In so far as the applicants' complaints can be understood to concern the musical work entitled "Katipler Oturmuş" (see paragraph 33 above), the Court observes that the work was not the subject of the first set of proceedings (see paragraphs 10 and 12 above). Therefore, this part of the application essentially relates to the assessment of the evidence and the outcome of the proceedings before the Intellectual Property Court regarding that musical work.

63. In that connection, the Court reiterates that Article 6 of the Convention does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see, among many other authorities, *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I, and, more recently, *Zayidov v. Azerbaijan (no. 2)*, no. 5386/10, § 86, 24 March 2022).

64. The Court finds that, in so far as the musical work entitled "Katipler Oturmuş" is concerned, there is nothing to indicate that the assessment of the

evidence by the Intellectual Property Court was arbitrary or that the proceedings in question were otherwise unfair within the meaning of Article 6 of the Convention.

65. It follows that this part of the application is also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

## C. Alleged violation of Article 1 of Protocol No. 1 to the Convention

66. Without relying on any particular provision of the Convention, the applicants complained of a violation of their right to the peaceful enjoyment of their possessions on the basis of the same facts.

67. Being the master of the characterisation to be given in law to the facts of a case (see *Radomilja and Others*, cited above, § 126), the Court finds that this complaint falls to be examined under Article 1 of Protocol No. 1 to the Convention (see *Safarov v. Azerbaijan*, no. 885/12, § 26, 1 September 2022). This provision 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."

### *1. The parties' submissions*

68. The Government reiterated the objections they had already raised under Article 6 of the Convention (see paragraphs 40 and 41 above). They further submitted that the applicants' complaint was incompatible *ratione materiae* with the provisions of the Convention. They also maintained that the applicants had failed to exhaust domestic remedies, as they had not raised before the domestic courts any arguments regarding the procedural guarantees under Article 1 of Protocol No. 1. The Government lastly invited the Court to declare the complaint inadmissible as being manifestly ill-founded.

69. The applicants did not submit observations in respect of this complaint other than reiterating their arguments as to the Government's preliminary objections in relation to the six-month time-limit and exhaustion of domestic remedies (see paragraph 44 above).

### *2. The Court's assessment*

70. The Court observes that it is disputed between the parties whether İ.A. (the applicants being his heirs) was the author of the musical works in question. At the same time, the Court takes note of the Civil Court's judgment

of 14 March 2002 and the Intellectual Property Court's judgment of 17 April 2008 (see paragraphs 10 and 23 above respectively). That being said, the Court does not deem it necessary to determine, in the specific circumstances of the present case, whether the applicants had an "existing possession" or a claim in respect of which they had at least a "legitimate expectation" within the meaning of Article 1 of Protocol No. 1, since it considers that their complaint is in any event manifestly ill-founded for the following reasons (see, *mutatis mutandis*, *Taşkaya v. Turkey* (dec.), no. 14004/06, § 41, 13 February 2018; see also, conversely, *SIA AKKA/LAA v. Latvia*, no. 562/05, §§ 39-42 and 52-55, 12 July 2016).

71. The Court reiterates that proceedings concerning civil-law disputes between private parties do not in and of themselves engage the responsibility of the State under Article 1 of Protocol No. 1 to the Convention (see *Theo National Construct S.R.L. v. the Republic of Moldova*, no. 72783/11, § 69, 11 October 2022, and the references therein). It is, however, part of the States' duties under Article 1 of Protocol No. 1 at least to set up a minimum legislative framework including a proper forum allowing those who claim that their rights have been infringed to assert them effectively and have them enforced (see *Kotov v. Russia* [GC], no. 54522/00, § 117, 3 April 2012, and *Theo National Construct S.R.L.*, cited above, § 69).

72. The Court notes that present case involves a dispute between private parties. Accordingly, the role of the State was limited to providing, through its judicial system, a mechanism for the determination of the applicants' civil rights (see *Theo National Construct S.R.L.*, cited above, § 68). The applicants availed themselves of such a mechanism, but their claims were dismissed by the domestic courts.

73. In this regard, the applicants did not argue that the rights of authors were not sufficiently protected by Turkish law, but rather complained about the determination made by the domestic courts regarding their claims. The Court notes in that connection that the State may be held responsible for losses caused by such determinations if court decisions are not given in accordance with domestic law or if they are flawed owing to arbitrariness or manifest unreasonableness contrary to Article 1 of Protocol No. 1 (see *Zagrebačka banka d.d. v. Croatia*, no. 39544/05, § 250, 12 December 2013). However, in the present case the Intellectual Property Court provided adequate reasoning in dismissing the applicants' claims (see paragraph 23 above). Furthermore, the Court refers to its conclusions under Article 6 of the Convention (see paragraphs 54-65 above) and reiterates that it finds no evidence to suggest that the decisions of the domestic courts in the second set of proceedings were affected by any element of arbitrariness or were otherwise manifestly unreasonable. It cannot therefore be said that the respondent State failed to discharge its positive obligations under Article 1 of Protocol No. 1 due to a lack of effective remedial measures (compare and contrast *Safarov*, cited above, §§ 32-36).

74. Accordingly, this complaint is manifestly ill-founded and must, as such, be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

*Decides* to strike the application out of its list of cases in so far as Ms Gülsüm Aydın and Mr Ali Naki Aydın are concerned;

*Declares* the remainder of the application inadmissible.

Done in English and notified in writing on 8 June 2023.

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| Hasan Bakırcı<br>Section Registrar | Arnfinn Bårdsen<br>President |

# Appendix

List of applicants:

| No. | Applicant's name | Year of birth<br>Date of death (if applicable) | Nationality | Place of residence |
|---|---|---|---|---|
| 1. | Gülsüm AYDIN | 1929<br>(died on 20 January 2019) | Turkish | N/A |
| 2. | Ali Naki AYDIN | 1955<br>(died on 1 March 2019) | Turkish | N/A |
| 3. | Yadigar ORHAN (AYDIN) | 1951 | Turkish | Ankara |
| 4. | Uğurcan ŞAHİN (AYDIN) | 1966 | Turkish | Ludwigshafen, Germany |