



Latvian courts struck a fair balance in their decisions on musical copyright case

In today's **Chamber judgment**¹ in the case of **SIA AKKA/LAA v. Latvia** (application no. 562/05) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights, and

no violation of Article 6 § 1 (right to fair hearing) of the European Convention.

The case concerned a complaint about the restriction on the copyright of authors' musical work. **SIA AKKA/LAA**, an organisation responsible for managing the copyright of the musical works of a large number of Latvian and international authors, complained about decisions by the national courts ordering the applicant organisation and two radio companies to enter into a licence agreement and to set an equitable royalty rate. The applicant organisation notably alleged that those decisions had restricted the exclusive rights of the authors they represented to freely conclude licence agreements for the use of their musical works.

The Court found in particular that the Latvian authorities had struck a fair balance between the demands of the public interest (namely, the radio companies' interest in obtaining a licence allowing them to legally broadcast work as well as the general public's interest in having access to musical works), on the one hand, and the rights of the applicant organisation to obtain equitable remuneration from the use of musical work, on the other. Indeed, the effort to maintain a balance between the competing interests could be seen in their decisions, which had observed that protected works were being broadcast without a valid licence over an extended period of time and that that situation had to a certain extent been due to the applicant organisation's limited efficiency in carrying out negotiations with the radio companies.

Principal facts

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 the Latvian Authors Association, whose members are various Latvian artists.

In the late 1990s **SIA AKKA/LAA**, an organisation responsible for managing the copyright of the musical works of a large number of Latvian and international authors, failed to conclude new license agreements with several broadcasting companies in Latvia. Despite this, some of the broadcasters continued to use the protected musical works.

In 2002, the applicant organisation thus issued civil proceedings against several of the broadcasting parties. In particular, the organisation lodged a claim against a private radio station for copyright infringement. The radio station in turn lodged a counterclaim arguing that the applicant organisation had abused its dominant position, fixing an unreasonably high royalty rate. In January 2003, the radio station was held to have infringed the author's rights and the applicant organisation ordered

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.

to conclude a licence agreement for the next three-year period with a royalty rate set at 2% of the radio station's monthly net turnover. The appellate court upheld this judgment in October 2003, noting that it was partly due to the applicant organisation's inconsistent negotiating that a licence agreement could not be concluded. An appeal on points of law was subsequently dismissed.

A similar claim was lodged in 2003 against a state-owned radio company. The radio company also lodged a counter-claim contending that the parties had in fact established a *de facto* contractual relationship. In April 2003 the applicant organisation's claim was dismissed, the counter-claim upheld and a general obligation to conclude a licence agreement imposed. This first-instance decision was later partly upheld by the Senate.

Complaints, procedure and composition of the Court

Relying on Article 1 of Protocol No. 1 (protection of property), the applicant organisation complained that the decisions of the national courts had restricted the exclusive rights of the authors they represented to freely conclude licence agreements for the use of their musical works. Further relying on Article 6 § 1 (right to a fair hearing), the organisation also complained about the extension of the limits of the counterclaim in the second set of proceedings.

The application was lodged with the European Court of Human Rights on 6 August 2004.

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

Angelika **Nußberger** (Germany), *President*,
Khanlar **Hajiyev** (Azerbaijan),
Erik **Møse** (Norway),
Faris **Vehabović** (Bosnia and Herzegovina),
Yonko **Grozev** (Bulgaria),
Carlo **Ranzoni** (Liechtenstein),
Mārtiņš **Mits** (Latvia),

and also Claudia **Westerdiek**, *Section Registrar*.

Decision of the Court

First, the Court dismissed the Government's argument that only the applicant organisation's individual members could be legitimate victims vis-à-vis the Court's proceedings and that therefore the applicant organisation itself could not be considered a victim of a violation of the Convention. It considered that once the domestic legal order attributed the protection of authors' rights to an organisation founded by the authors for that purpose, and vested it with independent rights transferred from the authors, then that organisation had to be regarded as the victim of measures affecting those rights.

The Court then found that the national courts' decisions ordering the applicant organisation and the two radio companies to enter into a licence agreement and to set an equitable royalty rate had had a basis in domestic law, namely the Copyright Law. Notably, under that law, it was for the courts to set an equitable royalty rate, where no agreement between the parties had been reached and where no other authority had decided on the issue.

It also accepted that those decisions had aimed to serve the public interest, in particular the radio companies' interest in obtaining a licence allowing them to legally broadcast work as well as the general public's interest in having access to musical works.

Moreover, the Court concluded that the Latvian authorities had struck a fair balance between those demands of the public interest, on the one hand, and the rights of the applicant organisation to

obtain equitable remuneration from the use of musical work, on the other. Firstly, before laying down the royalty rate, the courts had endeavoured to provide the parties with time to reach an agreement during the court proceedings. Secondly, the courts had established that, where the parties were in principle willing to enter into an agreement, banning the broadcast would not suit the best interests of the copyright holders, that is to say to receive the maximum benefit from their work. Thirdly, as far as the courts' orders for the parties to enter into a licence agreement had been concerned, the measure had been limited in time and scope (in the first set of proceedings the royalty rate had been set for a period of three years, which had already been agreed by the parties; and, in the second set of proceedings, the parties had merely been imposed with a general obligation to conclude a licence agreement and had not been prevented from renegotiating the rate).

Indeed, the national courts' efforts to maintain a balance between the competing rights at stake had been attested to by the fact that they had observed in their decisions that protected works were being broadcast without a valid licence over an extended period of time and that that situation had to a certain extent been due to the applicant organisation's limited efficiency in carrying out negotiations with the defendants.

It followed that there had been no violation of Article 1 of Protocol No. 1 to the Convention.

Given the finding under Article 1 of Protocol No. 1 that the national courts had acted in accordance with national law and had provided sufficient reasoning in their decisions, the Court concluded that there had been no violation of Article 6 of the Convention.

The judgment is available only in English.

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Press contacts

echrpess@echr.coe.int | tel.: +33 3 90 21 42 08

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Denis Lambert (tel: + 33 3 90 21 41 09)

Inci Ertekin (tel: + 33 3 90 21 55 30)

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.