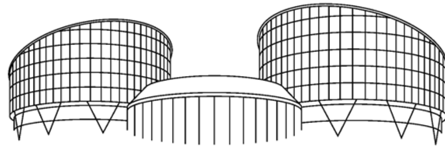

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF ABUKAUSKAI v. LITHUANIA

(Application no. 72065/17)

JUDGMENT

Art 1 P1 • Positive obligations • Inconclusive criminal investigation into arson of applicants' house, without "flagrant and serious" deficiencies • Applicants not complaining to domestic courts about risk to life or health • Absence of "flagrant and serious" deficiencies sufficient to comply with obligation to investigate crimes against property • Latter principle not applicable to interferences with property rights carried out in a manner potentially dangerous to life or health

STRASBOURG

25 February 2020

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Abukauskai v. Lithuania,

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

Robert Spano, *President,*
Marko Bošnjak,
Valeriu Griţco,
Egidijus Kūris,
Arnfinn Bårdsen,
Darian Pavli,
Saadet Yüksel, *judges,*
and Stanley Naismith, *Section Registrar,*

Having regard to:

the application (no. 72065/17) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three Lithuanian nationals, Mr Feliksas Augėnius Abukauskas ("the first applicant"), Ms Vladislava Abukauskienė ("the second applicant") and Mr Gintaras Abukauskas ("the third applicant"), on 28 September 2017;

the decision to give notice to the Lithuanian Government ("the Government") of the complaint concerning the State's positive obligations under Article 1 of Protocol No. 1 to the Convention and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 28 January 2020,

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

INTRODUCTION

The applicants complained under Article 1 of Protocol No. 1 to the Convention that the authorities had failed to conduct an effective investigation into an arson attack on their house.

THE FACTS

1. The first and second applicants were born in 1952 and 1948, respectively, and live in the Panevėžys Region. The third applicant was born in 1978 and lives in Panevėžys. The first and second applicants are husband and wife, and the third applicant is their son. The applicants were represented by Mr D. Staškevičius, a lawyer practising in Panevėžys.

2. The Government were represented by their Agent, Ms L. Urbaitė.

3. In the early morning of 30 May 2013 the first and second applicants' house caught fire. The firefighters who extinguished the fire established that it had been started intentionally.

A. Pre-trial investigation

4. On 30 May 2013 the Panevėžys district police office (hereinafter "the police") opened a pre-trial investigation into the destruction of or infliction of damage to another person's property in a dangerous manner, under Article 187 § 2 of the Criminal Code (see paragraph 41 below). The decision to open the investigation stated:

> "On 30 May 2013, around 3.15 a.m., ... while at home, [the first applicant] noticed a sudden outbreak of fire ... [H]e suspected an arson attack. The pecuniary damage sustained will be specified later."

The first and second applicants explained that after the fire had broken out, they had escaped from the house through a window. They suspected that the house had been set on fire by their neighbour, P.K., with whom they had been having an ongoing conflict.

5. On the same day the police inspected the applicants' house and took a sample of the fire debris. Some footprints were found in front of the house, but they did not contain any specific characteristics that would have made it possible to identify the person who had left them.

6. On the same day a police dog handler was called to the applicants' house. With the help of a police dog, he began tracking (by scent) a trail leading away from footprints that had been found at the back of the house. The dog followed the scent to P.K.'s house, but stopped at the yard in front of the house; the circumstances under which it stopped were subsequently disputed (see paragraphs 21 and 28 below). The dog handler took the dog around to the back of P.K.'s house, but the dog did not react to any footprints that may have been left there.

7. On the same day P.K. was arrested, taken to the police station and served with an official notice that he was a suspect. The police took swab samples from his hands. P.K. denied his guilt and stated that he had been asleep when the fire had broken out. He submitted that he often walked by the applicants' house in order to get to the pasture where he kept his cattle.

8. On the same day, approximately ten hours after the fire, the police carried out a search of P.K.'s house but did not find any flammable liquids, clothes bearing traces of such liquids, or any other objects that might have been related to the fire.

9. On 31 May 2013 the police asked P.K. to provide the clothes that he had worn on the day of the fire. P.K. provided a pair of trousers, a shirt and a pair of shoes.

10. On 5 June 2013 the police took soil samples near the applicants' and P.K.'s houses and ordered that they be forensically examined by an expert. The expert report, delivered on 23 July 2013, found that the soil that had been found on P.K.'s shoes had not corresponded to the soil sample taken near the applicants' house.

11. On 6 June 2013 the police ordered a forensic examination of the above-mentioned sample of fire debris, of the clothes and shoes that P.K. had provided to the police, and of his hand swabs (see paragraphs 5, 7 and 9 above). The expert report, delivered on 30 October 2013, stated that the sample of fire debris had been presented to the expert in special plastic packaging, but that P.K.'s clothes, shoes and hand swabs had been wrapped in paper and had not been hermetically sealed (*rankų nuoplovų, kelnių, marškinių ir batų pakuotės yra nehermetiškos*). The report found traces of machine oil on P.K.'s clothes and shoes but no traces of any flammable liquid on the fire debris or the hand swabs. It also stated that most flammable liquids were very volatile; therefore – depending on the type and amount of the liquid, the circumstances of the fire and whether the packaging of the samples had been hermetically sealed – the liquid could have burned completely away during the fire or been washed away in the course of the fire being extinguished, or traces of the liquid on the samples could have evaporated before they were examined.

12. On various dates in June and July 2013 the police inspected the record of telephone calls made and received by P.K. but did not obtain any useful information.

13. In August 2013 some of the applicants' neighbours were questioned as witnesses, but they were unable to provide any information about the fire.

14. On various dates the police questioned the applicants, P.K. and the dog handler.

15. On various dates the applicants were granted the status of victims and civil claimants.

16. On 7 January 2014 the Panevėžys district prosecutor (hereinafter "the prosecutor") discontinued the part of the pre-trial investigation relating to P.K. The prosecutor's decision stated that all the necessary investigative measures had been carried out but there was no direct and indisputable evidence that P.K. might have set fire to the applicants' house. There was no forensic evidence linking him to the crime and no direct witnesses, and P.K. had denied his guilt. The suspicion against him had been essentially based on the applicants' statements, but in view of the ongoing conflict between them and P.K., those statements could not be considered credible.

17. On 8 January 2014 the prosecutor suspended the pre-trial investigation on the grounds that, after all the necessary investigative measures had been carried out, it had not been possible to identify the perpetrator.

18. The applicants were informed of the aforementioned decisions and of their right to appeal against them to a senior prosecutor. They did not appeal against either decision.

B. Disciplinary inquiry

19. In March 2014 the applicants lodged a complaint with the prosecutor against the police. They submitted that the pre-trial investigation into the arson attack had been carried out incompetently and that certain investigative measures had been taken too late, as a result of which important evidence might have been lost. They stated that the fire had destroyed their property, causing damage to the value of 500,000 Lithuanian litai (LTL, approximately 144,810 euros (EUR)).

20. The prosecutor conducted a disciplinary inquiry and, by a decision dated 27 June 2014, found that some of the investigative measures had not been carried out properly, as presented below.

21. Firstly, the dog handler had not acted in accordance with the relevant regulations when following the trail from the applicants' house (see paragraph 6 above). In particular, when he and the police dog had arrived at the yard of P.K.'s house, the dog had stopped and the dog handler had ceased following the trail because there had been some cattle loose in the yard. The prosecutor considered that the tracking had not been carried out properly, because the dog handler should have had the cattle removed from the yard and continued the tracking to the front of P.K.'s house.

22. Secondly, the search of P.K.'s house had been carried out approximately ten hours after the fire (see paragraph 8 above). Before starting the search, the police officers had not taken any measures to verify what clothes P.K. had been wearing on the day of the fire, and they had not seized the clothes that he had been wearing when he had been arrested (see paragraph 7 above). Moreover, during the search they had not seized any clothes or other items that might have been linked to the fire. Furthermore, during the search P.K. had not been in the house, as required by law, but he had been outside milking cows. The prosecutor therefore considered that the search had not been carried out properly and had not complied with the law.

23. Thirdly, according to the expert report (see paragraph 11 above), P.K.'s clothes, shoes and hand swabs had been wrapped in paper and had not been hermetically sealed. During the disciplinary inquiry the police officers had submitted that airtight plastic packaging might have caused the deterioration of non-volatile materials on the hand swabs, and that was why they had been wrapped in paper. Furthermore, the clothes and shoes had been dirty and damp and they would have become stale if packaged in plastic. However, the prosecutor held that the police officers had breached the relevant regulations, which required that objects that might include traces of flammable liquids be placed in special plastic, glass or metal containers and hermetically sealed.

24. At the same time, the prosecutor observed that the mistakes made by the police officers "had not necessarily affected" the outcome of the pre-trial investigation. He did not impose disciplinary penalties on any officers

because such penalties could not be imposed more than one year after the commission of the disciplinary violation in question.

25. The applicants were informed of the prosecutor’s decision and of their right to appeal against it to a senior prosecutor. They did not appeal.

C. Civil proceedings for damages

26. In March 2015 the applicants, represented by a lawyer, lodged a civil claim against the State (see paragraph 42 below). They submitted that the pre-trial investigation concerning the arson attack on their house had been carried out improperly and in violation of the relevant law. They argued that the mistakes made by the police officers (see paragraphs 20-23 above) had led to the loss of important evidence, and that as a result it was no longer possible to identify the perpetrator of the arson. Accordingly, the applicants submitted that the State had to compensate them for the damage that they had sustained. The first and second applicants claimed approximately EUR 31,400 jointly in respect of pecuniary damage, amounting to the value of their property, which had been destroyed or damaged during the fire; the third applicant claimed approximately EUR 2,600 under that head. They also claimed EUR 3,000 each in respect of non-pecuniary damage caused by the allegedly unprofessional actions of the police officers.

1. Decision of the Panevėžys District Court

27. On 16 March 2016 the Panevėžys District Court dismissed the applicants’ claim.

28. The court firstly found that, according to the official report submitted by the dog handler (see paragraph 6 above), the police dog had followed the trail from the back of the applicants’ house to the yard of P.K.’s house, but that it had stopped in the yard because it had lost the trail. Since there had been cattle loose in the yard, the dog handler and the dog had walked around the house, but the dog had not picked up any fresh trail. According to the dog handler, if the dog had sensed the presence of the person who had left the footprints, it would have barked. However, it had not barked either in the yard or near P.K.’s house, which indicated that the person who had left the footprints had not been there. Furthermore, when the dog handler and the dog had returned to the applicants’ house, he had been informed that the suspect, P.K., had already been arrested; thus, he had not had any further reason to continue the tracking. In the court’s view, the dog handler had carried out his duties properly and there were no grounds to find that any important evidence had been lost because of his actions.

29. The court further noted that the expert who had examined the fire debris had not found any traces of flammable liquids on that debris (see paragraph 11 above); accordingly, it had not been possible to identify what flammable material had been used to start the fire. In such circumstances,

the court considered that it was immaterial whether P.K.'s clothes, shoes and hand swabs had been properly packaged or not, because even if any flammable liquids had been found on them, that could not have proved that P.K. had had any link to the fire. Therefore, the court ruled that the officers who had taken P.K.'s clothes, shoes and hand swabs had not lost any important evidence.

30. It also stated that, according to the testimony given at the hearing by the police officers and P.K., on the day of the fire P.K. had been wearing the same clothes that he had been wearing when he had been arrested, and he had afterwards provided those clothes to the police (see paragraph 9 above). Furthermore, during the search P.K. had been present inside the house and not milking cows (see paragraphs 8 and 20 above). The officers had searched the house but had not detected the smell of any flammable liquids and had not found any relevant objects. The court considered that there was no reason to doubt the officers' and P.K.'s testimony. It also noted that P.K. lived alone and that he had been arrested soon after the fire; therefore, even though the search of his house had not been carried out immediately after the fire, there was no indication that somebody could have entered the house and hidden or destroyed any relevant items.

31. The court lastly observed that many other investigative measures had been carried out promptly after the fire (see paragraphs 10 and 12-14 above), and the fact that it had not been possible to identify the perpetrator did not suffice for it to find that the police officers had failed to act with due diligence and in accordance with the law.

2. Panevėžys Regional Court

32. The applicants lodged an appeal against the aforementioned decision. They presented essentially the same arguments as in their initial claim (see paragraph 26 above), and submitted that the arson attack and the ensuing ineffective investigation had caused them great psychological and moral suffering.

33. On 7 September 2016 the Panevėžys Regional Court allowed the appeal in part. The court reached essentially the same conclusions as those reached by the prosecutor during the disciplinary inquiry (see paragraphs 20-23 above), and held that the officers had failed to fulfil their duties with the requisite degree of diligence. In the court's view, it could not be denied that if the officers had acted properly, more of the circumstances surrounding the arson would have been determined.

34. The court awarded EUR 900 to each of the first and second applicants and EUR 200 to the third applicant in respect of non-pecuniary damage that they had suffered as a result of the ineffective investigation. However, it considered that there had been no direct causal link between the mistakes made by the police officers and the pecuniary damage sustained by

the applicants because of the fire, and dismissed their claims under that head.

3. *Supreme Court*

35. The State, represented by the Panevėžys district police office, lodged an appeal on points of law against the aforementioned decision. The applicants also lodged an appeal on points of law, submitting that their claims in respect of pecuniary and non-pecuniary damage (see paragraph 26 above) should have been allowed in full, in view of the fact that their only home had been severely damaged in the fire, and also taking into account their age, financial situation and other relevant circumstances.

36. On 6 April 2017 the Supreme Court dismissed the appeal lodged by the applicants and allowed that lodged by the State. It quashed the decision of the Panevėžys Regional Court (see paragraphs 33 and 34 above) and upheld that of the Panevėžys District Court (see paragraphs 27-31 above).

37. The Supreme Court referred to the judgment of the European Court of Human Rights in the case of *Blumberga v. Latvia* (no. 70930/01, 14 October 2008) and emphasised that the State had a positive obligation to ensure that property rights were sufficiently protected by law and that adequate remedies were provided to the victim of an interference. However, the obligation to investigate was less exacting with regard to crimes involving property than with regard to more serious ones, such as violent crimes. In the former cases, the State would only fail to fulfil its positive obligation in the event that flagrant and serious deficiencies in the criminal investigation or prosecution could be identified.

38. The Supreme Court considered that the investigation at hand had not contained flagrant and serious deficiencies, and that any mistakes or shortcomings alleged by the applicants had not been significant or decisive (see paragraph 44 below).

39. Firstly, it held that the appellate court had not examined whether the dog handler had had any realistic possibility of removing the loose cattle from P.K.'s yard and continuing to follow the trail to the front of P.K.'s house (see paragraphs 21, 28 and 33 above). In the view of the Supreme Court, the dog handler – faced with an obstacle (the cattle) – had made a rational decision to take the dog to the back of P.K.'s house and to continue tracking there. It further observed that even if the footprints followed by the police dog had been identified as belonging to P.K., that would have only proved that P.K. had walked by the applicants' house, but not that he had set their house on fire. The Supreme Court thus concluded that the dog handler's actions had not led to the loss of any essential evidence.

40. The Supreme Court also noted that it had not been possible to identify the flammable liquid that had been used to start the fire (see paragraph 11 above). In such circumstances, even if the search of P.K.'s house had been carried out properly and if his clothes, shoes and hand

swabs had been hermetically sealed (see paragraphs 22, 23, 29, 30 and 33 above), it would have nonetheless been impossible to establish a link between him and the fire. Thus, there had not been a causal link between the mistakes made during the investigation and the fact that the perpetrator of the arson had not been identified (see paragraph 43 below).

RELEVANT LEGAL FRAMEWORK AND PRACTICE

41. At the material time, Article 187 § 2 of the Criminal Code provided, *inter alia*, that the destruction of or infliction of damage to another person's property in a dangerous manner that could have caused harm to people (*jeigu dėl to galėjo nukentėti žmonės*) was punishable by detention or imprisonment of up to five years.

42. Article 6.272 § 1 of the Civil Code allows a civil claim to be lodged against the State in respect of pecuniary and non-pecuniary damage caused by unlawful actions on the part of investigating authorities or courts, irrespective of whether any individual officers were at fault.

43. By a decision of 3 May 2010 in civil case no. 3K-3-200 the Supreme Court, referring to its established case-law, held that the civil liability of the State under Article 6.272 § 1 of the Civil Code (see paragraph 42 above) arose under three conditions: (1) State officers had acted unlawfully; (2) an individual or individuals had sustained damage; and (3) there had been a causal link between those unlawful actions or omissions and that damage. The Supreme Court emphasised that the State was under a general duty of care and thus had to ensure that its officers and institutions were properly qualified and acted lawfully. Furthermore, officers in criminal proceedings were also under an obligation to act responsibly and diligently, and the civil liability of the State could arise not only because of unlawful actions or omissions, but also because of officers' failure to act with the requisite diligence.

44. In a decision of 3 October 2012 in civil case no. 3K-3-414/2012 and a decision of 25 September 2015 in civil case no. 3K-3-487-915/2015 the Supreme Court held that the civil liability of the State for unlawful actions undertaken by investigating officers arose only when it was established that those officers had committed mistakes that had been significant and decisive for the violation of the claimant's rights in criminal proceedings.

THE LAW

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

45. The applicants complained that the State had failed to fulfil its positive obligations under Article 1 of Protocol No. 1 to the Convention. That 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."

A. Admissibility

1. *The parties' submissions*

(a) The Government

46. The Government submitted that the applicants had failed to exhaust domestic remedies. In particular, they had not appealed against the prosecutor's decisions to discontinue the pre-trial investigation in respect of P.K. and to suspend the investigation, or against the decision not to impose disciplinary penalties on any of the police officers (see paragraphs 16-18 and 25 above). Furthermore, they could have instituted civil proceedings against P.K. and claimed from him compensation in respect of pecuniary and non-pecuniary damage, since the establishment of P.K.'s criminal responsibility had not been necessary in order to hold him liable in civil proceedings.

(b) The applicants

47. The applicants firstly submitted that they were not asserting that some necessary investigative measures had not been carried out or that the possibilities to identify the perpetrator had not been exhausted. Instead, they argued that those investigative measures had been carried out incompetently and not in accordance with the law. Accordingly, the applicants contended that no further investigative measures could have influenced the outcome of the proceedings, and that an appeal against the prosecutor's decisions to discontinue the investigation against P.K. and to suspend the investigation would thus have served no purpose. Furthermore, the prosecutor had declined to impose any disciplinary penalties because such a measure had become time-barred after the expiry of the statutory limitation period

regarding such penalties; an appeal against that decision would thus not have had any prospects of success. Lastly, the applicants submitted that civil proceedings against P.K. would have been futile because, as a result of the mistakes made during the pre-trial investigation, sufficient evidence linking him to the fire had not been collected.

2. The Court's assessment

48. The Court considers that the Government's objection regarding the domestic remedies that were allegedly available to the applicants is closely related to the merits of the complaint concerning the State's positive obligations under Article 1 of Protocol No. 1 to the Convention. It should therefore be joined to the merits.

49. The Court further notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, and nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

50. The applicants submitted that, under Article 1 of Protocol No. 1 to the Convention, the State had been under a positive obligation to carry out an effective criminal investigation concerning the arson attack on their house. However, the investigation had been marred by officers' mistakes and by procedural shortcomings – in particular: the dog handler had failed to properly follow the trail through P.K.'s yard; the search of P.K.'s house had been conducted too late, and nothing had been seized during that search; the officers had not made any effort to find out what clothes and shoes P.K. had worn on the day of the fire; and P.K.'s shoes, clothes and hand swabs had not been properly packaged and hermetically sealed (see paragraphs 21-23 above).

51. The applicants argued that, because of the aforementioned shortcomings, essential evidence had been lost and it had become impossible to find out who had set their house on fire and destroyed their property. They also submitted that, even though the present case concerned interference with property rights, their property had been destroyed in a dangerous manner and that the first and second applicants had been inside the house when the fire had broken out, which had put their life and health at risk. Accordingly, by failing to carry out an effective criminal investigation, the State had failed to fulfil its positive obligation under Article 1 of Protocol No. 1.

(b) The Government

52. The Government acknowledged that the arson attack on the applicants' house had constituted an interference with their rights under Article 1 of Protocol No. 1, and that the State had had a positive obligation to conduct an effective investigation. However, they argued that the proceedings under consideration had complied with the requirements of the Convention. The pre-trial investigation had been initiated promptly, all necessary investigative measures had been carried out without undue delay, and the applicants had been granted the status of victims and civil claimants.

53. Even if there had been certain shortcomings in the investigation, the Government submitted that those shortcomings had not amounted to "flagrant and serious deficiencies" (see paragraph 37 above). The authorities had not succeeded in identifying the perpetrator of the arson attack mainly because there had not been any direct witnesses and because it had not been possible to detect any traces of flammable liquids on the debris left by the fire at the applicants' house (see paragraph 11 above), not because of any mistakes that might have been made during the investigation.

2. *The Court's assessment*

(a) Principles to be applied in the present case

54. The Court observes at the outset that it has not been alleged that the State was responsible for the arson attack on the applicants' house, which constituted an interference with their property rights. Nonetheless, it has repeatedly held that Article 1 of Protocol No. 1 to the Convention also establishes certain positive obligations, the nature and extent of which vary depending on the circumstances (see *Kotov v. Russia* [GC], no. 54522/00, §§ 109-15, 3 April 2012, and the cases cited therein).

55. In the present case the interference with the applicants' property rights was caused by intentional unlawful acts undertaken by an unknown individual or individuals (see paragraph 3 above), and the parties are in agreement that the State was under a positive obligation to carry out an effective criminal investigation (see paragraphs 50 and 52 above). The Court shares this view.

56. The Court examined the nature and extent of the State's positive obligation to investigate crimes against property in *Blumberga v. Latvia* (no. 70930/01, 14 October 2008), a case concerning burglary. It held:

> "67. ... [T]he Court is sensitive to the practical difficulties which the authorities may face in investigating crime and to the need to make operational choices and prioritise the investigation of the most serious crimes. Consequently, the obligation to investigate is less exacting with regard to less serious crimes, such as those involving property, than with regard to more serious ones, such as violent crimes, and in particular those which would fall within the scope of Articles 2 and 3 of the Convention. The Court thus considers that in cases involving less serious crimes the

> State will only fail to fulfil its positive obligation in that respect where flagrant and serious deficiencies in the criminal investigation or prosecution can be identified ...”

57. The principles laid down in *Blumberga* were subsequently referred to in another case concerning burglary (see *Keipenvardecas v. Latvia* (dec.), no. 38979/03, § 64, 2 March 2010), as well as in a case concerning alleged financial crimes (see *Zagrebačka banka d.d. v. Croatia*, no. 39544/05, §§ 276-77, 12 December 2013). Furthermore, the Court made a similar distinction between the State’s positive obligations with regard to destroyed property, on the one hand, and loss of life, on the other hand, in the context of natural disasters (see *Budayeva and Others v. Russia*, nos. 15339/02 and 4 others, §§ 174-75, ECHR 2008 (extracts)) and dangerous industrial activities (see *Kurşun v. Turkey*, no. 22677/10, § 121, 30 October 2018).

58. Turning to the circumstances of the present case, the Court observes that the applicants’ house was intentionally set on fire at night, while the first and second applicants were inside; they escaped through a window (see paragraphs 3 and 4 above). The domestic authorities considered that the damage to the applicants’ property had been undertaken “in a dangerous manner” (see paragraph 4 above), and in their submissions to the Court the applicants stated that their life and health had been at risk (see paragraph 51 above). That distinguishes the present case from *Blumberga* (cited above), in which the interference with the applicant’s property rights was not carried out in a manner that could have put her life or health in danger (ibid., § 6). The Court is of the view that the principles laid down in *Blumberga* (see paragraph 56 above) cannot be readily applied in cases where the interference with property rights was carried out in a manner that was potentially dangerous to the applicants’ life or health.

59. However, the Court notes that in the present case the applicants did not allege, throughout the domestic proceedings, that they had suffered any injuries, or that their life or health had been at risk because of the dangerous nature of the arson attack. According to the documents in the Court’s possession, they did not raise such arguments in their interviews with or complaints to the authorities (see paragraphs 4 and 19 above). There is no indication that the applicants required medical attention as a result of the arson attack. Furthermore, when claiming pecuniary and non-pecuniary damages in the domestic proceedings, they referred only to the damage caused to their property and the suffering that they claimed to have sustained because of the ineffective investigation, but not because of any personal injuries or risk of such injuries resulting from the dangerous nature of the crime in question (see paragraphs 26, 32 and 35 above). Nor did the applicants make any complaints under Articles 2 or 3 of the Convention in their initial application to the Court. Indeed, they claimed that their life and health had been in danger for the first time only in their final submissions to the Court (see paragraph 51 above).

60. The Court reiterates that in cases concerning life-threatening attacks on individuals, the State authorities have an obligation to act of their own motion once the matter has come to their attention (see, among other authorities, *Angelova and Iliev v. Bulgaria*, no. 55523/00, §§ 96 and 98, 26 July 2007). However, in the present case, taking into account the absence of any such complaints made by the applicants (see paragraph 59 above), as well as any other circumstances which would require the Court to assess the complaints as focused on the lack of an effective investigation into a life-threatening attack on the applicants themselves, the Court's examination will be limited to establishing whether there were flagrant and serious deficiencies in the criminal investigation, in accordance with its case-law under Article 1 of Protocol No. 1 to the Convention concerning the State's positive obligation to investigate (see paragraph 56 above).

61. In this connection, the Court also reiterates that, in cases concerning crimes against property, the possibility of bringing civil proceedings against the alleged perpetrators may provide the victim with a viable alternative means of securing the protection of his or her rights. The State will only fail to fulfil its positive obligations under Article 1 of Protocol No. 1 if the lack of prospects of success of civil proceedings is the direct consequence of exceptionally serious and flagrant deficiencies in the conduct of criminal proceedings arising out of the same set of facts (see *Blumberga*, cited above, § 68).

(b) Application of the above principles

62. The applicants argued that the pre-trial investigation carried out by the domestic authorities had not been effective because it had contained a series of shortcomings that had precluded the authorities from obtaining essential evidence and identifying the perpetrator of the arson (see paragraphs 50 and 51 above).

63. In this connection, the Court reiterates that the obligation to conduct an effective investigation is one of means and not one of result (see, among many other authorities, *Blumberga*, cited above, § 67). Furthermore, the Convention does not confer any right, as such, to have third parties prosecuted or sentenced for a criminal offence (see *Perez v. France* [GC], no. 47287/99, § 70, ECHR 2004-I). Therefore, the fact that the pre-trial investigation did not identify the perpetrator of the arson is not sufficient for the Court to find that it was ineffective.

64. The Court further notes that in the course of the domestic proceedings it was disputed whether the shortcomings alleged by the applicants had actually arisen (see paragraphs 23, 28 and 30 above). However, it considers that, in the circumstances of the present case, it is not required to rule on that issue, for the reasons presented below.

65. The courts that dismissed the applicants' civil claim against the State held that one of the main reasons why it had not been possible to identify

the perpetrator of the arson had been the lack of any traces of flammable liquids on the fire debris taken from the house (see paragraphs 29 and 40 above). They ruled that, without identifying the flammable material that had been used to set the house on fire, other investigative measures – even if they had been carried out properly – would not have yielded any information that would have helped the identification of the perpetrator (see paragraphs 29, 39 and 40 above).

66. The Court reiterates that both the admissibility of evidence and its assessment are primarily a matter for regulation by national law and that as a general rule it is for the national courts to assess the evidence before them (see *Lhermitte v. Belgium* [GC], no. 34238/09, § 83, 29 November 2016, and the cases cited therein). It sees no reasons to substitute its own assessment for that of the domestic courts with regard to the importance of specific evidence.

67. It was not disputed before any of the domestic authorities that the sample of fire debris had been presented for expert examination in special plastic packaging that had been hermetically sealed (see paragraph 11 above). The applicants did not raise any complaints in that respect before the Court either. Therefore, the Court is satisfied that the evidence which the domestic courts considered to be of key importance had been taken and preserved properly, and that identifying the flammable material had been impossible, through no fault of the authorities.

68. The Court further points out that during the domestic proceedings the applicants did not ask the authorities to carry out any additional investigative measures, such as obtaining or examining any other objects or questioning any more witnesses. Nor did they appeal against the prosecutor's decisions to discontinue the investigation against P.K. and to suspend the investigation (see paragraph 18 above). Indeed, the applicants explicitly acknowledged that, in their view, all the necessary investigative measures had been carried out (see paragraph 47 above). The Court, having regard to the measures taken by the authorities (see paragraphs 5-15 above), has no reason to hold otherwise.

69. The Court also notes that the pre-trial investigation was opened immediately after the arson attack and lasted approximately seven months before being suspended (see paragraphs 4 and 17 above). The applicants did not complain about the length of that investigation, nor did they allege that there had been any periods of inactivity.

70. In such circumstances, the Court does not find it established that the failure to bring the criminal proceedings to a successful conclusion was the result of flagrant and serious deficiencies in the conduct of the authorities (see *Blumberga*, cited above, § 71).

71. Furthermore, although the Court agrees with the applicants that instituting civil proceedings against P.K. would have been futile because of insufficient evidence linking him to the fire (see paragraph 47 above), it is

unable to find that the lack of prospects of success of civil proceedings in the present case was the direct consequence of exceptionally serious and flagrant deficiencies in the conduct of the criminal proceedings (ibid., § 68).

72. In view of its findings in paragraphs 68 and 71 above, the Court dismisses the Government's objection that the applicants failed to exhaust the available domestic remedies (see paragraph 46 above).

73. Taking all the foregoing considerations into account, the Court holds that the State complied with its positive obligations under Article 1 of Protocol No. 1 to the Convention. There has therefore been no violation of that provision.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* to the merits the Government's objection relating to exhaustion of domestic remedies and *dismisses* it;

2. *Declares* the application admissible;

3. *Holds* that there has been no violation of Article 1 of Protocol No. 1 to the Convention.

Done in English, and notified in writing on 25 February 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith — Registrar

Robert Spano — President