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

THIRD SECTION

CASE OF BLUMBERGA v. LATVIA

(Application no. 70930/01)

JUDGMENT

STRASBOURG

14 October 2008

FINAL

14/01/2009

This judgment may be subject to editorial revision.

In the case of Blumberga v. Latvia,

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

Josep Casadevall, *President*,
Elisabet Fura-Sandström,
Corneliu Bîrsan,
Alvina Gyulumyan,
Egbert Myjer,
Ineta Ziemele,
Ann Power, *judges*,
and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 23 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 70930/01) 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 a Latvian national, Ms Ināra Blumberga ("the applicant"), on 19 April 2001.

2. Although the applicant was granted legal aid, she submitted her observations on the admissibility and merits of the application by herself.

3. The Latvian Government ("the Government") were represented by their Agent, Mrs I. Reine.

4. The applicant alleged that she had lost some property as a result of the failure of the police to carry out their duty and that she could not obtain redress for the damage sustained because of the lengthy and ineffective pre-trial investigation of the criminal cases and the refusal of the civil courts to adjudicate her claim. She relied on Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention.

5. On 14 December 2005 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. On 19 April 1995 the applicant, who was born in 1939 and lives in Ventspils, was arrested by the Jelgava police and remanded in custody until 13 June 1995. During this period of time some of the applicant's property stored in her house in Jelgava, where a café belonging to her was also located, and in her second house in Dobele, was stolen. Criminal proceedings were initiated in this connection.

1. Proceedings in respect of the burglary in Jelgava

7. On 23 May 1995 criminal proceedings in case no. 22546495 were initiated regarding the burglary in Jelgava.

8. On 25 May 1995 the Jelgava police decided to acknowledge the applicant as a civil claimant in criminal case no. 22546495, with a claim for 763 Latvian lati (LVL) (approximately EUR 1,090).

9. On 11 July 1995 another set of criminal proceedings, allocated case number no. 22564195, was initiated regarding the burglary in Jelgava. On the same date the Jelgava police decided to acknowledge the applicant as a civil claimant in criminal case no. 22564195, with a claim for LVL 6725.60 (approximately EUR 9,607). According to a copy of that decision, submitted by the applicant, the police investigator crossed out the above amount, putting LVL 12,103 (approximately EUR 17,290) instead. The applicant requested to be acknowledged as a civil claimant with a claim for that amount when she was questioned on 11 September 1995.

10. On 28 February 1997 the Jelgava police joined the two sets of criminal proceedings into one case, no. 22564195.

11. On 17 September 1997 a public prosecutor attached to the Zemgale District Court ("the Zemgale public prosecutor") informed the applicant that, following her complaint to the Prosecutor General's Office, an examination of the investigation in the criminal proceedings relating to the burglary of her property had been carried out. During the examination, serious infringements of the provisions of the Criminal Procedure Code had been detected. In that regard, according to the Zemgale public prosecutor, she had on 27 January 1997 requested the head of the Jelgava police to rectify the deficiencies indicated to him and to identify the police officers who had failed to protect the applicant's property upon her detention, as required by Article 80 of the Criminal Procedure Code. An official investigation had been carried out into the failure to protect the applicant's property and the criminal proceedings in respect of the burglary of the property. As a result, two police officers had been identified as responsible for the failure to protect the applicant's property. One of them had been

disciplined and the other's professional conduct had been assessed by the professional attestation commission.

12. On 20 August 2000 the applicant wrote to the Zemgale public prosecutor, inquiring about the progress in the criminal proceedings.

13. On 26 September 2000 the Zemgale public prosecutor informed the applicant that her complaint in respect of lack of progress in the criminal proceedings was well-founded, since the Jelgava police had not carried out any investigative measures and the investigation in the criminal proceedings had been unlawfully delayed. According to the prosecutor, the head of the police at the Ministry of the Interior had been informed thereof on 25 September 2000.

14. On 20 January 2001 the applicant complained to the Prosecutor General about the inefficiency of the Zemgale public prosecutor, which had hindered the restitution of her stolen property. On 5 February 2001 the Prosecutor General informed the applicant that her complaint had been transferred to the Zemgale public prosecutor for examination.

15. On 13 February 2001, the Zemgale public prosecutor informed the applicant that the investigation in the criminal proceedings in case no. 22564195 was still in progress. She had requested the head of the Jelgava police to speed up the investigation and to carry out the instructions she had given the Jelgava police on 27 January 1997 by 25 February 2001. Thereafter, an additional examination of the conduct of the investigation was to be carried out.

16. On 12 May 2001 the applicant complained to the Prosecutor General about the lack of progress in the investigation in the criminal proceedings.

17. On 20 June 2001 the Zemgale public prosecutor confirmed that the applicant had been declared a civil claimant in the criminal proceedings in case no. 22564195, which were still ongoing.

18. On 19 July 2001 the Prosecutor General informed the applicant that her application of 12 May 2001 had been transferred for examination to the Zemgale public prosecutor on 21 May 2001.

19. On 23 July 2001 the Zemgale public prosecutor sent the applicant the decision of 20 June 2001, without answering in substance the applicant's questions about the progress in the criminal proceedings.

20. On 24 July 2001 the Zemgale public prosecutor informed the applicant that both decisions declaring her a civil claimant had been sent to her.

21. On 11 December 2001 the Jelgava police, pursuant to Article 139 § 5 of the Criminal Code, decided to acknowledge the applicant as a civil claimant in criminal proceedings no. 22564195, with a claim for LVL 32,789.10 (approximately EUR 46,840).

22. On 5 May 2005 the applicant wrote to the Zemgale public prosecutor, inquiring about the progress in the criminal proceedings.

23. On 13 May 2005 the Zemgale public prosecutor informed the applicant that her inquiries concerning criminal proceedings no. 22564195 had been transferred to the Jelgava City public prosecutor, and those concerning criminal proceedings nos. 20517495 and 2503000802 (paragraph 33, below) to the Dobele District public prosecutor.

24. On 7 June 2005 the Jelgava City public prosecutor informed the applicant that criminal proceedings no. 22564195 were still ongoing. The Jelgava Police Department had been instructed to speed up the investigation.

25. On 30 June 2005 a police officer of the Jelgava police decided to transfer the criminal case to the public prosecutor of the City of Jelgava for prosecution. It had been established by the pre-trial investigation that between 19 April and 13 June 1995, during the applicant's detention, R.Z., E.R., V.I. and I.B. had stolen and consumed food and alcoholic beverages, and stolen money, clothes, kitchen equipment and other items, which amounted to a total loss of LVL 32,798.10 (approximately EUR 46,841) to the applicant. R.Z., E.R., V.I. and I.B. had thus committed a crime under Article 139 § 5 of the Criminal Code. This decision was sent to the applicant on 1 July 2005.

26. On 8 July 2005 a prosecutor of the Prosecutor's Office of the City of Jelgava brought a charge against I.B. for burglary in the amount of LVL 2,642 (approximately EUR 3,774). A preventive measure – prohibition on changing her place of residence – was imposed on her.

27. On 17 August 2005 a prosecutor of the Prosecutor's Office of the City of Jelgava brought a charge against E.R. for burglary in the amount of LVL 2,622 (approximately EUR 3,746).

28. On 8 September 2005 a prosecutor of the Prosecutor's Office of the City of Jelgava decided to terminate the criminal proceedings in case no. 22564195 because of a lack of sufficient evidence. It was stated, *inter alia*, that since during questioning the applicant had constantly increased the amount of the loss she had allegedly suffered, her statements in this respect should be treated with caution. It was established that during questioning I.B., E.R., R.Z. and V.I. had denied having burgled the applicant's property and that it was impossible, on the basis of an assessment of the evidence, to discover what had been stolen from the applicant's property, and in what circumstances. Besides, since the instigation of the criminal proceedings in 1995 no evidence had been obtained as to the persons responsible for the loss or theft of the applicant's property. The prosecutor considered that the case should be terminated on the grounds that it was impossible to obtain further evidence and to prove any charges against named individuals. According to the information provided by the Government, the decision was sent to the applicant on 14 September 2005, and she was informed that it could be appealed against to the Zemgale Regional Public Prosecutor's

Office. The applicant contested that claim, stating that she had not received the decision.

2. The proceedings in respect of the burglary in Dobele

29. On 28 June 1995 the Dobele police instituted criminal proceedings in case no. 20517495 in respect of the burglary of the applicant's house in Dobele.

30. On 8 August 1995 the Dobele police acknowledged the applicant as a civil claimant for an amount of LVL 9,439 (approximately EUR 13,484).

31. On 28 February 1996 a public prosecutor of the Dobele District decided to terminate the criminal proceedings in part and to reject the applicant's civil claim in part. It was established that the accused E.R. had confessed to having stolen a few of the items declared by the applicant as stolen and was thus liable for the amount of LVL 1,005 (approximately EUR 1,436). Taking into account that the applicant could not give details of all the stolen items and their value, the prosecutor decided that the loss suffered by her should be considered approximate and, pursuant to Article 208 § 2 of the Criminal Procedure Code, decided to terminate the criminal case against E.R. in part because of the lack of evidence and to reject the applicant's civil claim in the amount of LVL 8,434 (approximately EUR 12,049) as unsubstantiated.

32. On 16 December 1996 a public prosecutor of the Dobele District decided to terminate the remainder of the criminal proceedings. She established that during the pre-trial investigation no evidence had been obtained to justify charging I.B. with the burglary. As to E.R., considering that he was serving a sentence imposed on him in another set of criminal proceedings on 25 November 1996, and was thus unable to commit new offences, the prosecutor decided to terminate the criminal proceedings against him in the remaining part.

33. On 10 December 2002 the head of the Zemgale Region Public Prosecutor's Office quashed the decision of the public prosecutor of the Dobele District to reject the applicant's civil claim in the amount of LVL 8,434 (approximately EUR 12,049) as unsubstantiated. The head prosecutor instructed that, at the pre-trial stage, it had to be checked whether the burglary could have been carried out by another person, and that the applicant herself should be questioned in detail as regards the allegedly stolen items, their description and value. The prosecutor ordered the initiation of a new criminal case, no. 2503000802, in respect of the theft of the applicant's property in the amount of LVL 8,434 (approximately EUR 12,049).

34. On 31 May 2005 the Dobele District public prosecutor informed the applicant that criminal proceedings no. 20517495 had been terminated on 16 December 1996, pursuant to Article 208 § 4 of the Criminal Procedure Code; criminal proceedings no. 2503000802 (concerning the stolen property

in the amount of LVL 8,434 (approximately EUR 12,049)) were still ongoing at the Dobele Police Department, and the perpetrator had not been identified.

35. According to a letter of the Prosecutor's Office of the Dobele District, criminal case no. 2503000802 was transferred to the Dobele District police for pre-trial investigation on 7 January 2003. The prosecutor responsible for the supervision of the investigation examined the case on 1 July 2005.

36. According to the submissions of the Government, the investigation of the criminal case is still ongoing.

3. The court proceedings instigated by the applicant

37. On 10 June 2001 the applicant filed a civil claim for damages against the State Police Authorities with the Rīga Regional Court, and asked to be exempted from court taxes because of her poor financial situation. According to the documents she submitted to the Court, she attached a copy of her pensioner's certificate of 15 May 1996, stating that she received an old-age pension in the amount of LVL 35.91 (approximately EUR 50), and the replies of the Zemgale public prosecutor of 13 February 2001, 26 September 2000 and 17 September 1997 to her complaints. She requested the court to award her compensation in the amount of LVL 250,000 (approximately EUR 357,143) for her stolen property and for the non-pecuniary damage she had suffered because the Jelgava police had acted contrary to the requirements of Article 80 of the Criminal Procedure Code.

38. On 14 June 2001 a judge of the Civil Chamber of the Rīga Regional Court informed the applicant that she had requested exemption from paying court taxes without submitting any evidence that she was financially unable to do so. The judge further noted that she had not submitted any documents confirming the circumstances on which her claim was based. The judge set a deadline of 23 July 2001 for rectification of those deficiencies.

39. On 27 June 2001 the applicant amended her claim, stating that because the police had acted contrary to the requirements of Article 80 of the Criminal Procedure Code her rights guaranteed by Article 13 of the Convention and Article 1 of Protocol No. 1 to the Convention had been violated. She again requested exemption from court taxes, attaching a copy of her pensioner's certificate and copies of the replies of the Zemgale public prosecutor of 26 September 2000 and 17 September 1997 to substantiate the claim.

40. On 29 June 2001 the judge of the Rīga Regional Court replied to the applicant that her amendments of 27 June 2001 were insufficient and that she should rectify the deficiencies by 23 July 2001.

41. On 15 July 2001 the applicant amended her claim by submitting a copy of the decision of the Jelgava police of 11 July 1995, which

acknowledged her as a civil claimant and stated that in order to assess the value of the remainder of the stolen property she was to invite witnesses to give evidence.

42. On 13 August 2001 the judge of the Rīga Regional Court considered that the deficiencies indicated by him had not been rectified and, finding that the claim had not been properly submitted, returned it to the applicant without examination.

43. On 4 October 2001 the Civil Chamber of the Supreme Court, in response to the applicant's ancillary complaint of 21 August 2001, upheld the decision of the Rīga Regional Court. The court considered that the applicant had failed to submit evidence as to her financial situation and to attach documents establishing the circumstances her claim was based on. The decision was final and not subject to appeal.

II. RELEVANT DOMESTIC LAW

1. *The Criminal Procedure Code* (Latvijas Kriminālprocesa Kodekss), *as in force until 1 October 2005*

44. Article 80 stated that "if an arrested person had property or an apartment which was left unattended, the police, a public prosecutor or a court had to ensure its protection".

45. Article 101 stipulated that a civil claim could be submitted by a person who had suffered damage as a result of a crime. The civil claim could be brought against the accused or a person who was vicariously liable for the acts of the accused (paragraph 1). The civil claim could be lodged upon initiation of a criminal case, during the pre-trial investigation, or with the court before the adjudication of the case (paragraph 2). If the court stayed the adjudication, the civil claim could also be lodged before the beginning of the adjudication at the subsequent court hearing (paragraph 3). A person had the right to lodge a civil claim by way of civil proceedings if the claim had not been brought in criminal proceedings or if the claim was not adjudicated due to the termination of the criminal case or a not guilty verdict (paragraph 7).

46. Pursuant to Article 102, a person who had suffered pecuniary damage as a result of a criminal offence could bring a civil claim against an accused or a person who was vicariously liable for the acts of the accused, which would be examined by a court in conjunction with the criminal case. Further, a person who had been acknowledged as a civil claimant by a decision of the police, a public prosecutor or a court was entitled to submit a complaint in respect of acts of the aforementioned authorities.

47. Article 140 provided that a person who had suffered damage as a result of a crime could be declared a civil party during the pre-trial investigation.

48. Pursuant to Article 208 §§ 2 and 4, a criminal case or a part of it was to be terminated if a charge had not been proved and it was impossible to obtain additional evidence, and if it had been acknowledged, because of changed circumstances during the investigation of the case, that an offence committed by a person had lost its element of public danger or that that person no longer posed a danger to the public.

49. A civil claimant could submit a complaint about acts of the police to a public prosecutor. The complaint could be submitted to the prosecutor directly or through the intermediary of the person against whom the complaint was brought. A complaint submitted to a police officer had to be forwarded together with his explanations to the prosecutor within twenty-four hours (Article 220). The prosecutor had to decide on the complaint within three days from its receipt and notify the complainant of the outcome. If the complaint was rejected, reasons therefore had to be stated. Decisions and acts of a public prosecutor could be appealed against to a higher prosecutor, who had to deal with that appeal in accordance with the aforementioned procedures (Articles 221 and 222).

50. Pursuant to Article 308, if a civil claim had been left without examination upon adjudication of a criminal case, it could be lodged *de novo* within civil proceedings.

2. The Criminal Code (Latvijas Kriminālkodekss), *as in force until 1 April 1999*

51. Article 139 § 5 stated that aggravated robbery carried a sentence of imprisonment of from six to fifteen years, with confiscation of property.

3. The Law on Civil Procedure (Civilprocesa likums), *in force from 1 March 1999*

52. According to Article 7 § 1, civil claims for compensation for pecuniary or non-pecuniary damage in criminal matters may be brought in accordance with the procedures prescribed by the criminal procedure law.

53. Article 96 § 3 states that a judgment in criminal proceedings is binding in civil proceedings to the extent that it concerns the determination of the offence for which a defendant has been sentenced, and the liability of the defendant.

54. The court shall stay court proceedings if adjudication of the case is not possible prior to the deciding of another matter which is required to be adjudicated in accordance with criminal procedure (the relevant part of Article 214).

4. The Civil Law (Civillikums)

55. Article 1635 stipulates that every wrongful act or failure to act *per se* shall give the person who has suffered damage the right to claim

compensation from the wrongdoer, insofar as he or she may be held liable for such act or failure.

56. Everyone has a duty to compensate for losses he has caused through his acts or failure to act (Article 1779). A loss shall be understood to mean any deprivation which can be assessed financially (Article 1770). Losses may be either losses that have already been incurred, or losses that are expected to be incurred; they give rise to a right to compensation (Article 1771). A loss which has already been incurred may be a diminution of the value of the victim's existing property or a decrease in his or her anticipated profits (Article 1772).

5. The Constitution of Latvia (Latvijas Republikas Satversme)

57. Every person has the right to defend his rights and lawful interests in a court and, in the event of unlawful interference with his rights, everyone has the right to adequate compensation (Article 92).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

58. The applicant complained that she had lost some property as a result of the failure of the police to fulfil their duty and complained that she could not obtain redress for the damage sustained because of the lengthy and ineffective pre-trial investigation of the criminal cases and the refusal of the civil courts to adjudicate her claim against the police. She alleged a violation of Article 1 of Protocol No. 1, which, in its relevant part, 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."

A. Admissibility

59. The Government contended that there were no "possessions" within the meaning of Article 1 of Protocol No. 1 during the pre-trial investigation in the criminal cases which the applicant joined as a civil party. According to the Government, the mere fact that the applicant joined the criminal proceedings as a civil claimant did not create an "enforceable claim" which could constitute a "possession" within the meaning of Article 1 of Protocol

No. 1. In addition, the applicant did not have a "legitimate expectation" of obtaining effective enjoyment of a particular pecuniary asset for the purposes of Article 1 of Protocol No. 1, since the admissibility and the final amount of the civil claims had not been established by the national courts either within the criminal proceedings or in separate civil proceedings. In this respect, the Government pointed out that a claim only became enforceable once a court had accepted it in whole or in part. Moreover, they stressed that the domestic courts alone were in a position to assess the value of the applicant's claim and in particular to examine why it had been increased from LVL 763 to 32,798.10 (approximately from EUR 1,090 to 46,854) during the pre-trial investigation. The Government thus submitted that the applicant's property rights had never been established by a court judgment and that her right to compensation had never become enforceable for the purposes of Article 1 of Protocol No. 1 which, accordingly, was not applicable in the instant case. They therefore concluded that the applicant's complaint should be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention. The Government also submitted that the applicant had neither lodged appeals against the decisions of 16 December 1996 and 8 September 2005 nor lodged a civil action pursuant to Article 308 of the Criminal Procedure Code.

60. The applicant stated that the existence of her property rights had been proved by the documents relating to the pre-trial investigation of the criminal cases. As to the Government's argument that she had considerably increased the amount of her civil claim during the pre-trial investigation, the applicant submitted that on 25 May 1995, when she had been acknowledged as a civil claimant for the first time, she had been in detention and could not have known the exact amount of the loss at that time. Moreover, as her property had been left without surveillance until her release, she had sustained further damage. The applicant attached written statements by her daughter and three acquaintances, stating that she had lost property to a value of between LVL 50,000 and 100,000 (approximately between EUR 71,429 and 142,857). The applicant also submitted that she had not received the decision of 8 September 2005 to terminate the criminal investigations in respect to the burglary in Jelgava. In any event, appeals to the same authorities, to whom she had addressed her numerous complaints before without reaching any results, did not provide her with reasonable prospects of success.

61. The Court dismisses the Government's submission that the applicant did not appeal against the decision of 16 December 1996, since the head of the Zemgale Region Public Prosecutor's Office in any event ordered the initiation of a new criminal case on 10 December 2002 in that respect and those proceedings are still continuing. The Court considers that the remainder of the Government's objections are closely linked to the substance of the applicant's complaint and that their examination should

therefore be joined to the merits. The Court further notes that the complaint is not inadmissible on any other grounds and therefore declares it admissible.

B. Merits

1. The parties' submissions

62. The Government submitted that even if the Court were to find Article 1 of Protocol No. 1 applicable to the present case, the State could not be held liable for the alleged interference with the applicant's rights in this connection. The Government stated that Latvia could not be held responsible for acts of individuals, in this case the alleged perpetrators of the burglaries, against whom the applicant had filed civil claims during the pre-trial investigation. The Government further reiterated their view that the applicant's alleged property rights had never been established by a court judgment and that the applicant's right to compensation had never become enforceable, so that Article 1 of Protocol No. 1 was not applicable in the instant case. Finally, the Government pointed out that although criminal case no. 225641955 had been terminated, the applicant could still lodge a civil action in order to claim damages.

63. The applicant maintained that there had been a violation of her right to peaceful enjoyment of her possessions.

2. The Court's assessment

64. The Court reiterates that the concept of "possessions" in Article 1 of Protocol No. 1 has an autonomous meaning and that Article 1 of Protocol No. 1 in substance guarantees the right of property (see *Marckx v. Belgium*, judgment of 13 June 1979, , § 63, Series A no. 31). "Possessions" within the meaning of the above provision may be either "existing possessions" or assets, including claims, in respect of which the applicant can argue that he has at least a "legitimate expectation" of obtaining effective enjoyment of a property right (see *Pine Valley Developments v. Ireland*, judgment of 29 November 1991, § 51, Series A no. 222, and *Kopecký v. Slovakia* [GC], no. 44912/98, § 35, ECHR 2004-IX). The Court has held that its case-law does not contemplate the existence of a "genuine dispute" or "an arguable claim" as a criterion for determining whether there is a "legitimate expectation" protected by Article 1 of Protocol No. 1 (see *Kopecký*, cited above, § 52). For a claim to be capable of being considered as an "asset" falling within scope of Article 1 Protocol No. 1, it must have a sufficient basis in national law (see *Draon v. France* [GC], no. 1513/03, 6 October 2005, § 65 and *Kopecký*, cited above, § 52). Where that has been established, the concept of "legitimate expectation" can come into play,

which must be of a nature more concrete than a mere hope and be based on a legal provision or a legal act such as a judicial decision (see *Draon*, cited above, § 65, and *Gratzinger and Gratzingerova v. the Czech Republic* (dec.), no. 39794/98, § 73, ECHR 2002-VII).

65. The Court further reiterates that the genuine, effective exercise of the right protected by Article 1 of Protocol No. 1 does not depend merely on the State's duty not to interfere, but may require positive measures of protection, particularly where there is a direct link between the measures an applicant may legitimately expect from the authorities and his effective enjoyment of his possessions (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 134, ECHR 2004-XII, and *Broniowski v. Poland* [GC], no. 31443/96, § 143, ECHR 2004-V).

66. The Court notes at the outset that it has no reason to question the fact that property belonging to the applicant was stolen from her two houses in Jelgava and Dobele after she had been placed in detention. In that respect, it observes that criminal proceedings were instigated in connection with both burglaries and that it was established in the course of the criminal proceedings that property belonging to the applicant had indeed been stolen (paragraphs 25 and 31, above). Moreover, it was not disputed by the Government that the burglaries at the applicant's properties had taken place. The Court therefore considers that there has indisputably been an interference with the applicant's right to the peaceful enjoyment of her possessions. It is true, as the Government maintained, that the interference involved the acts of private individuals for whom the State bore no direct responsibility. Nonetheless, the Court notes that the authorities were under a specific statutory obligation to protect (*nodrošināt aizsardzību*) the applicant's premises during her detention, pursuant to Article 80 of the Criminal Procedure Code (paragraphs 6, 11 and 44, above), and that the failure of the police to comply with that obligation was recognised at the domestic level in the imposition of disciplinary measures on the police officers involved (see paragraph 11, above). However, the Court does not find it necessary to decide whether there is a sufficiently close link between that failure and the theft of the applicant's property to engage the responsibility of the State with regard to the interference with the applicant's property rights as such.

67. The Court considers that in the context of Article 1 of Protocol No. 1, when an interference with the right to peaceful enjoyment of possessions is perpetrated by a private individual, a positive obligation arises for the State to ensure in its domestic legal system that property rights are sufficiently protected by law and that adequate remedies are provided whereby the victim of an interference can seek to vindicate his rights, including, where appropriate, by claiming damages in respect of any loss sustained. Furthermore, where the interference is of a criminal nature, this obligation will in addition require that the authorities conduct an effective

criminal investigation and, if appropriate, prosecution (see, *mutatis mutandis*, *M.C. v. Bulgaria*, no. 39272/98, §§ 151-153, ECHR 2003-XII). In that respect, it is clear that the obligation, like the obligation under Articles 2 and 3 of the Convention to conduct an effective investigation into loss of life or allegations of ill-treatment, is one of means and not one of result; in other words, the obligation on the authorities to investigate and prosecute such acts cannot be absolute, as it is evident that many crimes remain unresolved or unpunished notwithstanding the reasonable efforts of the State authorities. Rather, the obligation incumbent on the State is to ensure that a proper and adequate criminal investigation is carried out and that the authorities involved act in a competent and efficient manner. Moreover, the 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 (cf. *ibid.*, §§ 167-168).

68. The Court considers, furthermore, that the possibility of bringing civil proceedings against the alleged perpetrators of a crime against property may provide the victim with a viable alternative means of securing the protection of his rights, even if criminal proceedings have not been brought to a successful conclusion, provided that a civil action has reasonable prospects of success (cf. *Plotiņa v. Latvia* (dec.), no. 16825/02, 3 June 2008). While the outcome of criminal proceedings may have a significant or even decisive effect on the prospects of a civil claim, whether lodged in the context of the criminal proceedings or brought in separate civil proceedings, the State cannot be held responsible for the lack of prospects of such a claim simply because a criminal investigation has not ultimately led to a conviction. Rather, 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, as outlined in the preceding paragraph.

69. The positive obligation incumbent on the State under Article 1 of Protocol No. 1 arises in relation to the original interference by third parties with the right to peaceful enjoyment of possessions; it does not in itself create any new property rights vis-à-vis the State and it arises independently of any claims which may exist against either the perpetrators of the interference or the State (where the authorities have allegedly failed to

comply with a specific obligation, as in the present case). Thus, it is true, as the Government maintained that the civil claims which the applicant lodged in the respective criminal proceedings have never been adjudicated upon by the courts, and the merits of her claim against the police have never been adjudicated upon either. Therefore these claims did not constitute "possessions" within the meaning of Article 1 of Protocol No. 1. As the Court established, however, the right to a peaceful possession of property was interfered with in the circumstances of the case (see § 68). Consequently, the Court rejects the Government's objection to the effect that the applicant's complaint is incompatible *ratione materiae*.

70. Having established that certain positive obligations arise with respect to the interference with the property right, the Court will now proceed to consider whether the criminal proceedings, the possibility of a civil action and the applicant's action against the police provided her with sufficient protection of her property rights.

71. Turning to the circumstances of the present case, the Court notes that the investigation into the burglary in Dobele, which was begun more than thirteen years ago, is still ongoing (paragraph 36, above), while the proceedings concerning the burglary in Jelgava were terminated after more than ten years' investigation without any results (paragraph 28, above). It is true that on several occasions deficiencies in the investigation of the criminal case relating to the burglary in Jelgava were acknowledged by the domestic authorities and relevant orders were given to the investigating authorities (see, in particular, paragraphs 11, 13, 15, 24 and 33 above) and that it appears that the instructions were not carried out and that the investigation was not speeded up. Moreover, in the proceedings relating to the burglary in Dobele the head prosecutor ordered a new criminal investigation six years after the initial investigation had been terminated, due to failings in the conduct of that investigation (paragraph 33, above). Nevertheless, the Court cannot find that the deficiencies in the conduct of the criminal investigations were of such a nature and degree that the State can be considered to have failed to fulfil its obligation under Article 1 of Protocol No. 1 as far as it related to the investigation and prosecution of the crimes. In that connection, it notes in particular that the proceedings relating to the burglary in Jelgava were terminated because it had proved impossible to obtain sufficient evidence to prove charges against specific individuals, whereas in the proceedings relating to the burglary in Dobele it does not appear to have been possible to identify the perpetrators. In these 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 their conduct.

72. As far as the possibility of instituting civil proceedings is concerned, the Government submitted that although the criminal case no. 225641955 in relation to the burglary in Jelgava was terminated, the applicant could still

have lodged a civil action in order to claim damages. The Court observes furthermore that, according to domestic law, a final decision in criminal proceedings is not necessary in order to lodge a claim for damages by way of civil proceedings (see *Plotiņa v. Latvia*, cited above). Consequently, it was open to the applicant, if she considered that the criminal proceedings were ineffective and that her civil claims lodged in those proceedings were not being properly dealt with, to institute separate civil proceedings. In the light of its conclusion in respect of the conduct of the criminal investigations, the Court cannot find that civil proceedings would not have had any reasonable prospects of success. Indeed, it observes that while the criminal proceedings in relation to the burglary in Jelgava were terminated on account of lack of sufficient evidence for the purposes of a criminal conviction, certain suspects had been identified (albeit ten years later), while in the criminal proceedings in relation to the burglary in Dobele suspects were identified at an early stage. It is undisputed that the applicant could have brought separate civil proceedings against these suspects, in the context of which the burden of proof would have been less demanding. The Court considers that such proceedings would in principle have provided the applicant with appropriate protection of her interests. Moreover, the Court observes that it was open to the applicant at every stage of the criminal proceedings to opt for the possibility of instituting civil proceedings and that it was incumbent on her, if she considered the criminal investigations to be inadequate or deficient, to lodge civil actions against the suspects. Since the applicant failed to do so, the Court finds that it cannot be established that such proceedings did not constitute an appropriate means whereby the State could fulfil its positive obligations under Article 1 of Protocol No. 1.

73. In the light of the foregoing, the Court concludes that there has been no violation of Article 1 of Protocol No. 1. In these circumstances, it considers that it is unnecessary to examine further the Government's objections in so far as they relate to the applicant's failure to appeal against the decision of 8 September 2005 and to institute civil proceedings.

II. ALLEGED VIOLATION OF ARTICLES 6 AND 13 OF THE CONVENTION

74. The applicant complained under Article 6 of the Convention that she had been denied access to a court on account of the unjustified refusal of the civil courts to examine her civil claim and the lengthy and ineffective pre-trial proceedings in the criminal cases. With reference to the above deficiencies, the applicant complained under Article 13 of the Convention that the domestic remedies available to protect her rights guaranteed by Article 1 of Protocol No. 1 had proved to be ineffective in her case. The respective Articles in their relevant parts read as follows:

Article 6

"1. In the determination of his civil rights ..., everyone is entitled to a fair... hearing within a reasonable time by [a] ... tribunal established by law...."

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

75. The Government did not submit any comments as to the applicant's complaint under Article 6 and submitted that the complaint under Article 13 was inadmissible as the relevant complaint under Article 1 of Protocol No. 1 was manifestly ill-founded.

76. The Court finds that the applicant's complaints under Articles 6 § 1 and 13 are not manifestly ill-founded within the meaning of Article 35 §§ 3 and 4. Moreover, they are not inadmissible on any other grounds and must therefore be declared admissible.

B. Merits

77. The Court notes at the outset that the claim which the applicant lodged with the Rīga Regional Court against the State police in connection with the failure of the authorities to fulfil their statutory obligation to protect her property while she was in detention (paragraph 37, above) was of a pecuniary nature and indisputably concerned a right which had a basis in national law and was a civil right within the meaning of Article 6 § 1 of the Convention (paragraphs 57-59, above).

78. The Court observes that the domestic courts declined to examine the merits of the claim, on the ground that it had not been properly submitted. The Court observes in that connection that the applicant attached the documents proving her financial situation and the relevant replies of the Zemgale public prosecutor, which, in its opinion, provided a reasonable and sufficient basis for her claim (paragraphs 39 and 41, above). It further observes that the domestic courts did not indicate to the applicant what additional documents it was necessary to submit in order to prove her financial situation and the circumstances on which her claim was based (paragraphs 38 and 40, above). It cannot accept the finding of the domestic courts (paragraphs 42 and 43, above) that the applicant did not submit sufficient evidence as regards her financial situation and the basis for her claim. The Court is thus of the opinion that the refusal of the domestic

courts to examine the applicant's claim on its merits was manifestly unwarranted. Consequently, while she had formal access to a court, the refusal of the court to examine the merits of her claims deprived that access of any substance.

79. The Court concludes that there has been a violation of Article 6 § 1 of the Convention. Recalling furthermore that the guarantees of Article 13 are absorbed by those of Article 6, the Court finds that no separate issue arises under Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

80. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

1. The parties' submissions

81. In respect of pecuniary damage, the applicant claimed 50,000 Latvian lati (LVL) (approximately EUR 71,429) in compensation for the stolen property. According to her, this represented an approximate assessment of the amount of the loss. The applicant attached written statements by her daughter and three acquaintances, stating that she had lost property in an amount between LVL 50,000 and 100,000 (approximately between EUR 71,429 and 142,857). These statements did not contain any detailed list of items but general statements to the effect that the applicant had had a luxurious living environment.

82. She further claimed LVL 60,000 (approximately EUR 85,714) in respect of non-pecuniary damage for the psychological suffering she endured because of the violation of her rights guaranteed by the Constitution.

83. The Government did not provide any comments in this connection.

2. The Court's assessment

84. The Court does not discern any causal link between the violation found and the pecuniary damage alleged by the applicant. It therefore makes no award in this respect. However, it considers that the applicant may be considered to have suffered some non-pecuniary damage as a result of the breach of her right of access to a court which cannot be compensated by the Court's finding of a violation. The amount claimed is, however, excessive.

Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of 8,000 euros, plus any tax that may be chargeable on that amount.

B. Costs and expenses

1. The parties' submissions

85. The applicant claimed LVL 2,600 (approximately EUR 3,714) for the costs and expenses she had incurred at the domestic level in connection with her case and in the proceedings before the Court. Those included travel expenses for her trips to Jelgava, where she had allegedly visited local authorities. The applicant submitted confirmation that she had paid for fuel and some postal expenses. The applicant also sought LVL 2,000 (approximately EUR 2,857) in respect of costs and expenses relating to her legal representation in the proceedings before the Court as well as fees for the legal advice she sought during the examination of her case by the domestic authorities. The applicant attached a copy of a contract concluded on 10 June 1997 between her and a private person, E.E., who is not a lawyer, for legal assistance in the proceedings before the domestic authorities and the Court.

86. The Government did not provide any comments in this connection.

2. The Court's assessment

87. According to the Court's case-law, an applicant is entitled to reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and the proceedings before the Court.

C. Default interest

88. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Joins to the merits* the Government's preliminary objection concerning the alleged lack of any possessions and *dismisses* it;

2. *Joins to the merits* the Government's preliminary objections concerning the failure to appeal against the decision of 8 September 2005 and the failure to lodge a civil action pursuant to Article 308 of the Criminal Procedure Code;

3. *Declares* the application admissible;

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

5. *Holds* that there has been a violation of Article 6 § 1 of the Convention and that no separate issue arises under Article 13 of the Convention;

6. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following concurring opinion of Judge Ziemele is annexed to this judgment.

J.C.M.
S.Q.

CONCURRING OPINION OF JUDGE ZIEMELE

I voted with the majority that in the circumstances of the case there was no violation of Article 1 of Protocol No.1. Indeed, where the applicant did not try to bring separate civil proceedings against the suspects identified in both burglaries it is difficult for the Court to speculate on the character of this remedy and the compliance of the State with its obligations under the Convention (see also *Diāna Plotiņa v. Latvia* (dec.), no. 16825/02, 3 June 2008).

Nevertheless, it has to be underlined that the Court pointed out that Article 1 of Protocol No.1 entails the responsibility of the State to ensure that a proper and adequate criminal investigation of burglaries is carried out and that the authorities involved act in a competent and efficient manner (see paragraph 69 of the judgment). However, the State will only fail to fulfil this positive obligation if the lack of prospects of success of civil proceedings, as the case may be, is the direct consequence of exceptionally serious and flagrant deficiencies in the conduct of criminal proceedings (see paragraphs 69 and 70). Because civil proceedings were not initiated we do not know whether the prospects of success in civil proceedings had been frustrated by the length of and deficiencies in the criminal proceedings.

However, it is to be noted that in this case the investigation into the burglary in Dobele, which began more than thirteen years ago, is still ongoing, while the proceedings concerning the burglary in Jelgava were terminated more than ten years later. This indicates some serious problems that the police and the prosecution office in Latvia have to address, even if they may not always lead to finding a violation under the Convention. This is even more so as concerns property rights, since both the old Criminal Procedure Code and the new 2005 Criminal Procedure Law place important obligations on the relevant institutions concerning the protection of the property of individuals where the need arises while their liberty is restricted.