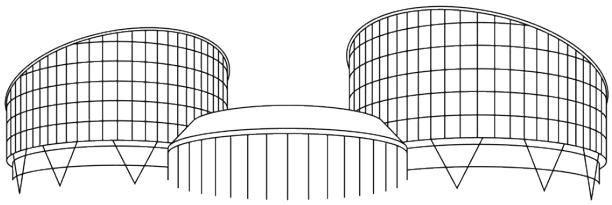

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Application no. 10601/09
Irene WILSON
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 23 October 2012 as a Chamber composed of:

Lech Garlicki, *President,*
Nicolas Bratza,
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Zdravka Kalaydjieva,
Vincent A. De Gaetano, *judges,*

and Lawrence Early, *Section Registrar,*

Having regard to the above application lodged on 2 February 2009,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Irene Wilson, is a British national, who was born in 1958 and lives in Londonderry. She was represented before the Court by Mr P. Bowles, a lawyer practising in Saintfield, County Down, with Peter Bowles & Company Solicitors.

2. The United Kingdom Government ("the Government") were represented by their Agents, Ms H. Moynihan and Ms L. Dauban of the Foreign and Commonwealth Office.

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. On 20 October 2007, the applicant was assaulted by her husband Scott Wilson at their home, after they had been out drinking. She suffered a severed artery on the right side of her head, which required eight stitches. She also suffered multiple bruising and sustained a blow to her head when she fell against a banister.

5. The applicant maintains that this was the last in a series of assaults which had been carried out by her husband in the course of their thirty-two year marriage. She made a statement to the police. The Government maintain that, in her statement, the applicant herself had accepted that, prior to 2006, she had only been subjected to emotional abuse and that it was only in 2006 that the abuse turned physical. They further maintain that the applicant had not complained to the police at any time prior to the offence of 20 October 2007.

6 Mr Wilson was arrested and charged with causing grievous bodily harm with intent to do grievous bodily harm contrary to section 18 of the Offences Against the Person Act 1861. He was granted bail on 22 October 2007 and required to reside at an alternative address to the matrimonial home.

7. There was a reconciliation between the applicant and her husband, further to which he successfully applied to have his bail conditions varied so that he could return home.

8. On 23 October 2007, the applicant told the police that she no longer wished Mr Wilson to be prosecuted. Nonetheless, the police file was sent to the Public Prosecution Service of Northern Ireland ("the PPS"), where it was allocated to a senior public prosecutor.

9. In light of the applicant's wish that Mr Wilson not be prosecuted, the senior public prosecutor considered the case. The prosecutor did so according to the PPS's policy for prosecuting cases of domestic violence, which provides that cases will not automatically be stopped because the victim does not want to proceed and that, as a general rule, the PPS will prosecute cases where there is sufficient evidence and no factors preventing them from doing so.

10. The prosecutor sought further information, including a transcript of the 999 emergency telephone call, medical reports, police notebook entries, the serious crime scene log, photographs of the scene and injuries, further statements to corroborate the applicant's account, information on the current status of the relationship, and a risk assessment. Following consultation with the regional prosecutor, it was decided that the prosecution should proceed, regardless of the applicant's statement withdrawing the complaint.

11. The reconciliation between the applicant and her husband proved to be only temporary and, when the applicant was informed of the PPS's decision, she reinstated her complaint.

12. On 21 March 2008, the PPS concluded that there was insufficient evidence of intention to do grievous bodily harm, as required for prosecution under section 18 of the 1861 Act. The charge was therefore reduced to one of grievous bodily harm contrary to section 20 of the same Act. The Government maintain that there was no discussion with Mr Wilson's representatives regarding this decision.

13. Mr Wilson appeared for arraignment before Londonderry Crown Court on 26 June 2008. He entered a plea of not guilty.

14. The case was then listed for mention in the Crown Court on 1 September 2008. The Government maintain that prosecuting counsel expressly requested a meeting with the applicant to explain the nature of the section 20 charge against Mr Wilson. On the same day Mr Wilson was re-arraigned and entered a plea of guilty.

15. He appeared for sentencing on 7 October 2008. The sentencing judge received *inter alia* a victim impact report on the applicant, photographs of her injuries and the transcript of the 999 telephone call. He also had before him a probation service report He also heard a plea in mitigation from Mr Wilson's counsel. Counsel accepted that, had there been a record of violence, an immediate custodial sentence would have been inevitable; however, he submitted that there was no such record in Mr Wilson's case.

16. The judge sentenced Mr Wilson to eighteen months' imprisonment, which was suspended for three years. The judge's sentencing remarks were as follows:

> "Now Mr Wilson I have looked carefully at this case. It is on the face of it and remains a serious matter. Conviction under section 20 carries a maximum sentence of several years' imprisonment. Your background is a surprising one to find for someone on such a serious charge of violence. You have no criminal record, you are a man who has lived now for 50 years of your life without getting into the slightest trouble; on the contrary, you have held down a number of very significant posts in your life and the reference provided to me shows me a side of your character which is very much to your credit. Sadly the events of this night betray a different side to your character, which perhaps only emerged with consumption of alcohol. It seems that, although I didn't choose to go into the detail too closely, so as not to cause distress to other persons in this case, in particular your wife, Irene, it would appear that you felt upset and angry at what you perceived to be your wife's conduct on the evening in question. Both of you had had something to drink but it is your drink that I am concentrating on. It seems that you reacted to this by behaving in a cowardly and very unworthy way by striking her, by knocking her down and it appears that during the course of that she sustained an injury.
>
> Now it is not for me to start to speculate on why precisely this happened. It seems, again without causing undue distress to her, that your relationship maybe was not what it might have been and what one might hope in a happy marriage although it is

right to say that there seems to be no previous incident of this type. Nevertheless, as a result of your behaviour and perhaps for various other reasons, your marriage has now been damaged apparently irreparably and your wife has suffered this great trauma and of course your own position is not an enviable one either. I have read the victim impact statement on Mrs Wilson, who I understand is in the court, and it clearly demonstrates ... that she has suffered considerably through your behaviour. She has now had to make major life changes. She has gained some assistance with support of the counselling into her own life. She will have to undergo what the doctor describes as a tortuous period of readjustment. Other matters are speculated upon which I don't propose to read out in open court but in essence this ghastly affair has caused chaos in its wake for her and indeed it is right to say for you and again it sadly demonstrates to the court how drink can cause such a Jekyll and Hyde change in some people's personality.

When I first read these papers it seemed to me inevitable that you would go to prison: the court will not and cannot tolerate violence perpetrated against women in particular and that was my first instinct. I have read carefully, however, what has been said about you, both from the reference which has been provided and which speaks very highly of your otherwise good character and your good nature. I also note carefully the report presented to the court by the highly experienced Probation Officer Ms [B] who has very considerable experience of this type of case and I am impressed by the fact that she says of you and I quote:

> 'The defendant presents as ashamed and embarrassed with regard to the violent nature of the assault he perpetrated on his wife. The complete loss of control evidenced by Mr Wilson on this date suggests some form of build up of pressure around the relationship and the trigger on this occasion is what is alleged to have occurred on the night of this incident.'

She says also:

> 'there is little doubt from my discussion with the defendant that his remorse for perpetrating this assault is genuine. There is evidence of some distorted thinking which supports controlling an aggressive behaviour in his psyche and this could be addressed through various appropriate programmes.'

Now I understand that you have actually even before coming to court engaged in counselling and have completed a number of counselling sessions. ... Well I have to concentrate in particular on the wrong done to your wife and it is for that wrong that you appear before the court today faced with the very real possibility of going to prison. I thought very carefully about a number of possible ways of disposing of the case. You pleaded guilty at the first reasonable opportunity and ... you will get full credit for that. Clearly that is something that should not be lightly brushed to one side. Very often in cases of this type the defendant will brazen it out and require the injured party to give evidence, which as we all know is a highly distressing matter for any witness but particularly when it is a crime committed within the family. You have spared your wife that and that maybe demonstrates to me in a better way than any written words can a different side to your character and supports the view of the experienced probation officer that you genuinely feel ashamed and remorseful.

So in the end of the day and not without some considerable thought I have decided that the best way to deal with your case is to impose a prison sentence but not to make it immediate. I had thought about a probation order but it seems to me that you have

completed a number of counselling sessions and whilst I am absolutely certain that further work with counselling might help, there is no reason why you couldn't undertake that voluntarily. I don't think it requires, in the particular circumstances that you are in, and the fact that you and your wife are now estranged, I don't think that it requires me to do that. ... [A]lthough I can see advantages to probation in this particular case I cannot see that it is the preferred course.

The sentence of the court therefore in this case is one of 18 months' imprisonment to mark the seriousness of this offence and I am going to suspend the operation of that sentence for a period of 3 years. That is a long period of time longer than usual but it is a mark of the seriousness of the offence and also to give you an opportunity to put this behind you. You have already apologised. You have already indicated that you feel remorseful and it will give you and your wife, I hope, an opportunity to draw a line under this sad affair. Clearly your relationship has been seriously damaged by what has happened and you and your wife will have to rebuild your lives from a different prospectus. It will also remind you, Mr Wilson, that if you get into any trouble in the next 3 years I am sure it won't be against your wife, but if you assault anyone else in such a serious manner you will go to prison, you understand that, and I have to warn you that if you do come back before the court within 3 years you may well receive this sentence together with any sentence that is thought appropriate for any future offence. I hope given your background that it is only an academic fear and with control of your drinking habits and addressing the aggression that seems to be latent with drink, which you have already started to do, that the court will not see you back again.

I am obliged by law to consider the making of a compensation order. I have thought about this carefully in this case. I don't think it is appropriate in this particular case I think it is a matter best left to be dealt with by the criminal injury legislation and therefore the court, as I say, imposes a sentence of 18 months suspended for 3 years. If you commit no offence within the next 3 years you will hear nothing more of this. You are now free to go."

17. On 16 October 2008, the applicant's solicitors wrote to the PPS seeking their views on the sentence. A meeting was then arranged for 31 October 2008 between the senior public prosecutor and the applicant; at the meeting the prosecutor explained the reasons for the prosecution decision in the case. According to the Government, the applicant indicated that she was content with the PPS's actions but remained unhappy with the sentence. A further letter was then sent on 19 March 2009 by different legal representatives, raising concerns as to the handling of the case and the information provided by the PPS. The senior public prosecutor replied on 27 March 2009, referring to the meeting of 31 October 2008.

18. The applicant then complained to various public bodies in Northern Ireland about the excessive leniency of the sentence but without success. In particular, by letter dated 10 March 2009, the Attorney-General stated he did not have the power to apply to have the sentence reviewed by the Court of Appeal (on the grounds that it was "unduly lenient") as that power was limited to the most serious offences (see relevant domestic law and practice at paragraph 23 below).

19. The applicant sought compensation for her injuries. This was initially refused by the Northern Ireland Compensation Agency, on the basis that the physical injury suffered by the applicant was not sufficiently serious to reach the minimum level of severity required and there was no evidence of a disabling mental illness. The applicant requested a review of that decision. This led the Agency to refer the applicant for examination and assessment by a psychiatrist. Following receipt of the psychiatrist's report, on 18 May 2010 the Agency offered the applicant compensation of GBP 2,800. The applicant accepted that offer.

B. Relevant domestic law and practice

1. The Offences Against the Person Act

20. The offences covered by sections 18 and 20 of the Offences Against the Person Act 1861 are two of the three principal offences against the person where bodily harm is caused (the other, less serious offence is actual bodily harm contrary to section 47 of the Act). Section 18 carries a maximum sentence of imprisonment for life. By virtue of the Criminal Justice (No. 2) (Northern Ireland) Order 2004, in Northern Ireland section 20 carries a maximum sentence of imprisonment for seven years.

21. For Northern Ireland, there are no sentencing guidelines for section 20 assaults in the context of domestic violence. The Court of Appeal in Northern Ireland has stated that, where guidelines promulgated by the Sentencing Guidelines Council of England and Wales accord with local experience, they may be followed (*Attorney-General's Reference (Number 1 of 2008) Gibbons and others* [2008] NICA 41). The Sentencing Guidelines Council of England and Wales has promulgated guidelines entitled "Overarching Principles: Domestic Violence". Aggravating factors set out in the guidelines include: abuse of trust and abuse of power, violence where the victim is particularly vulnerable, where there is an impact on children, the exploitation of contact arrangements with a child in order to commit an offence, a proven history of violence or threats by the offender in a domestic setting, a history of disobedience to court orders, and where the victim is forced to leave home as a consequence of the offence. Mitigating factors include positive good character (although good character in relation to conduct outside the home should generally be of no relevance where there is a proven pattern of behaviour) and provocation (although assertions of provocation should be treated with great care). Other factors influencing sentence include the wishes of the victim. Here, the guidelines state (at paragraphs 4.1–4.4):

> "As a matter of general principle, a sentence imposed for an offence of violence should be determined by the seriousness of the offence, not by the expressed wishes of the victim.

There are a number of reasons why it may be particularly important that this principle is observed in a case of domestic violence:

• it is undesirable that a victim should feel a responsibility for the sentence imposed;

• there is a risk that a plea for mercy made by a victim will be induced by threats made by, or by a fear of, the offender;

• the risk of such threats will be increased if it is generally believed that the severity of the sentence may be affected by the wishes of the victim.

Nonetheless, there may be circumstances in which the court can properly mitigate a sentence to give effect to the expressed wish of the victim that the relationship be permitted to continue. The court must, however, be confident that such a wish is genuine, and that giving effect to it will not expose the victim to a real risk of further violence. Critical conditions are likely to be the seriousness of the offence and the history of the relationship. It is vitally important that the court has up-to-date information in a pre-sentence report and victim personal statement.

Either the offender or the victim (or both) may ask the court to take into consideration the interests of any children and to impose a less severe sentence. The court will wish to have regard not only to the effect on the children if the relationship is disrupted but also to the likely effect on the children of any further incidents of domestic violence."

22. The Government have provided statistics on those convicted of section 20 offences in Northern Ireland for the years 2004-2006. The most common sentence was an immediate custodial sentence (with the average sentences for those years being between 12 and 19 months' imprisonment). However, a significant proportion of offenders received suspended custodial sentences instead. For instance, in 2006, of 126 offenders, 54 received immediate custodial sentences and 46 received suspended custodial sentences (the remainder were given community orders, fines or conditional discharges).

2. Reference to the Court of Appeal

23. Sections 35 and 36 of the Criminal Justice Act 1988 allow the Attorney-General to apply to have sentences for certain offences reviewed by the Court of Appeal. He or she may do so when a particular sentence appears to him or her to be unduly lenient. An offence under section 20 does not fall within the provisions of sections 35 and 36 and thus the Attorney-General cannot apply to have a sentence for that offence reviewed by the Court of Appeal.

3. Civil protection orders for victims of domestic violence

24. The Family Homes and Domestic Violence (Northern Ireland) Order 1998 provides civil protection for victims of domestic violence in Northern Ireland. Article 11 allows a court to make an "occupation order", which can

require a respondent to leave a house. Articles 20-24 provide for the making of non-molestation orders. Article 25 makes it an offence without a reasonable excuse to contravene a non-molestation order or, where a non-molestation order is also in force, an occupation order. The maximum penalty is a fine or six months' imprisonment (Article 15 of the Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2005).

4. "Tackling Violence at Home"

25. The Northern Ireland Office launched the above, five-year strategy in 2005. The foreword states that domestic violence is a crime and is not acceptable in any circumstances, and that the strategy focuses on preventative measures and on the provision of better protection, justice and support services for victims and their children. Initiatives include media advertising and the introduction of a free, 24 hour, domestic violence telephone helpline.

5. R v. Nunn [1996] 2 Cr.App.R.(S.) 136

26. In *Nunn* the defendant pleaded guilty to causing death by dangerous driving. He had been drinking. The victim was his friend, who had been in the car he was driving. He was sentenced to four years' imprisonment. When he appealed against his sentence, the victim's mother and sister supported his appeal, stating that the length of the sentence was adding to their grief. The Court of Appeal reduced the sentence to three years' imprisonment. In doing so, it observed:

> "We mean no disrespect to the mother and sister of the deceased, but the opinions of the victim, or the surviving members of the family, about the appropriate level of sentence do not provide any sound basis for reassessing a sentence. If the victim feels utterly merciful towards the criminal, and some do, the crime has still been committed and must be punished as it deserves. If the victim is obsessed with vengeance, which can in reality only be assuaged by a very long sentence, as also happens, the punishment cannot be made longer by the court than would otherwise be appropriate. Otherwise cases with identical features would be dealt with in widely differing ways leading to improper and unfair disparity, and even in this particular case, as the short judgment has already indicated, the views of the members of the family of the deceased are not absolutely identical.
>
> If carried to its logical conclusion the process would end up by imposing unfair pressures on the victims of crime or the survivors of a crime resulting in death, to play a part in the sentencing process which many of them would find painful and distasteful. This is very far removed from the court being kept properly informed of the anguish and suffering inflicted on the victims by the crime.
>
> In the present case, however, the Court is concerned not with the judgment of the deceased's mother and sister about the level of sentence imposed on the applicant, but with the clear evidence, which we accept, that by its very length the sentence on [the defendant] is adding to the grief and anxiety which they are suffering consequent on [the victim's] death. When the mother and sister of the deceased and the rest of the

family have already suffered so much, we do not think that these adverse consequences of this particular sentence should be disregarded.

In mercy to them we shall reduce the sentence as far as we can, consistent with our continuing public duty to impose appropriate sentences for those who cause death by driving dangerously under the influence of drink."

COMPLAINTS

27. The applicant complained under Articles 6, 8 and 10 of the Convention that the suspended sentence given to her husband was unduly lenient and was much lower than would have been delivered had the offence occurred outside marriage. The criminal proceedings were also conducted without sufficient regard for her rights as a victim. The applicant maintained that the decision to reduce the charge was made without any reference or explanation to her. The applicant further maintained that, before sentencing, the trial judge stated that he did not want to cause the applicant more distress by having the emergency call she had made or any pictures of her injuries adduced in evidence. However, she would have preferred the trial court and the public to have heard the full facts of the assault.

28. The applicant also complained under Article 13 of the Convention that she did not have an effective remedy in respect of the above complaints.

THE LAW

29. The Court considers that, since Article 6 does not guarantee the right to institute criminal proceedings or secure the conviction of a third party (see *M.T. and S.T. v. Slovakia* (dec.), no. 59968/09, § 83, 29 May 2012, with further references therein) and Article 10 has no application to this subject, the applicant's complaints ought to be considered under Articles 8 and 13 of the Convention. Those Articles provide as follows.

Article 8:

"Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 13:

"**Right to an effective remedy**

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. Article 8

1. The parties' submissions

a. The Government's initial submissions

30. The Government did not accept that there had been a breach of their positive obligations under Article 8. In the present case, there was a system of criminal law which had been enforced; there was no additional positive obligation to take into account a victim's views in the sentencing process.

31. The sentence imposed on Mr Wilson was not manifestly inadequate in relation to the gravity of the offence in question (cf. *Opuz v. Turkey*, no. 33401/02, §§ 169 and 170, ECHR 2009). Nor could it be said that the domestic decisions taken in the case revealed a lack of efficacy and a certain degree of tolerance, as the Court had found in *Opuz*. In this respect, the Government emphasised the following:

- Mr Wilson had no prior criminal record;
- the applicant had never previously complained to the police about her husband;
- the decision to prosecute under section 20 was taken following a careful consideration of all the evidence, and a meeting was held with the applicant to explain the decision to reduce the charge to a section 20 offence;
- the PPS decided to prosecute even though the applicant initially decided to withdraw her complaint;
- the judge carefully considered the overall circumstances of the case, including the remorse shown by Mr Wilson, the voluntary counselling he had undergone, and his decision to plead guilty at the first reasonable opportunity;
- a victim impact report had been prepared on the applicant by a qualified psychiatrist, which had been before the judge;
- there was no reason to infer that the judge regarded the case with leniency because it had taken place in the context of a marriage; on the contrary, he expressly stated that the court could not tolerate violence against woman (see paragraph 3 of the sentencing remarks, set out at paragraph 16 above); and

- from the statistics provided, there was no reason to consider that there was any pattern of leniency in sentencing for assaults in a domestic context.

32. Finally, the Government rejected the suggestion that the applicant's views on the appropriate sentence should have been taken into account. They endorsed the views expressed by the Court of Appeal in *Nunn* (see paragraph 26 above).

b The applicant's submissions

33. The applicant contested those submissions. She observed that, had her husband been charged under section 18 and the same sentence given, she would have had an effective remedy. This was because the Attorney-General had the power to apply to the Court of Appeal for review of section 18 sentences. She also submitted that, had her husband been sentenced in the Magistrates' Court, the prosecution would have been able to appeal against sentence to the Crown Court. She submitted that at no stage prior to the reduction of charge did the PPS discuss her evidence with her or test it. The decision to reduce the charge was taken before prosecuting counsel's meeting with her on 1 September 2008. She submitted that, instead, she should have been given advance notice of the decision to reduce the charge and she should have been able to request an internal PPS review of the decision. This review should have taken place before the charge was formally reduced. It was of no consequence that the PPS met with her after sentencing: by then, the violation of her Article 8 rights had already taken place.

34. There were also no sentencing guidelines for section 20 offences in the context of domestic violence, a fact which had been acknowledged in the course of the sentencing hearing. This lacuna was further evidence of the failure in Northern Irish law properly to protect the victims of domestic violence. The applicant also submitted a series of newspaper articles, reporting cases where cases similar to her own had resulted in custodial sentences for the perpetrators. This, in her submission, showed the lack of consistency and the need for guidelines to regularise sentencing policy.

c. The Government's final submissions

35. In reply to the applicant's submissions, the Government contended that the decision to reduce the charge was made by the PPS after carefully reviewing the evidence, including that taken from the applicant; further consultation with her would not have made any difference to that decision.

36. Although there were no specific guidelines on domestic violence, most domestic violence cases were, as a matter of domestic law, charged as generic offences of violence. Sentencing was within the statutory maxima set by Parliament. Judges in Northern Ireland could also refer to any available guidance produced in England and Wales. Crown Court judges were experienced lawyers who underwent induction and on-going training.

The judge in the present case had attended a training event dealing specifically with domestic violence in October 2006.

2. The Court's assessment

a. General principles

37. The Court has, on a number of occasions, been required to assess whether the response of domestic authorities to domestic violence has been compatible with their positive obligations under Article 8 of the Convention towards the applicant/victim of that violence. The relevant principles which guide that assessment were set out in *Hajduová v. Slovakia*, no. 2660/03, §§ 45-47, 30 November 2010 and most recently applied in *M.T. and S.T. v. Slovakia* (dec.), no. 59968/09, 29 May 2012. Those principles are:

- While the essential object of Article 8 of the Convention is to protect the individual against arbitrary action by public authorities, there may in addition be positive obligations inherent in effective "respect" for private and family life and these obligations may involve the adoption of measures in the sphere of the relations between individuals. Children and other vulnerable individuals, in particular, are entitled to effective protection.

- The concept of private life includes a person's physical and psychological integrity. Under Article 8 States have a duty to protect the physical and moral integrity of an individual from other persons. To that end they are to maintain and apply in practice an adequate legal framework affording protection against acts of violence by private individuals.

- Victims of domestic violence are of a particular vulnerability and the need for active State involvement in their protection has been emphasised in a number of international instruments (those instruments are set out in *Opuz*, cited above, §§ 72-86).

- The Court's task is not to substitute itself for the competent domestic authorities in determining the most appropriate methods for protecting individuals from attacks on their personal integrity, but rather to review under the Convention the decisions that those authorities have taken in the exercise of their power of appreciation.

b. Previous case-law

38. Before turning to the present case, it is appropriate to consider how those principles have been applied in previous cases.

39. In *Kontrová v. Slovakia*, no. 7510/04, 31 May 2007, the applicant's husband had shot himself and their two children dead. This had been preceded by previous acts of violence and threats to kill with a shotgun. The Court observed that, in the applicant's situation, the police had an array of specific statutory and administrative obligations but, as the domestic courts

had found, they had failed to ensure that these obligations were complied with. It found a violation of Article 2.

40. In *Bevacqua and S. v. Bulgaria*, no. 71127/01, 12 June 2008, there were at least four separate incidents of violence towards the applicant by her husband, in the course of custody and divorce proceedings. Her husband had only been given a police warning and the applicant had been told that she could bring a private prosecution or a civil claim. The Court did not accept that the applicant and her son's Convention rights could only be secured by State prosecution, or that the Convention required State-assisted prosecution, as opposed to prosecution by the victim, in all cases of domestic violence (paragraph 82). However the Court considered that specific administrative and policing measures would have been called for and, at the relevant time, these did not exist in Bulgarian law. The authorities' failure to impose sanctions or otherwise ensure that the applicant's estranged husband refrained from unlawful acts was critical, as it amounted to a refusal to provide the applicant and her son the immediate assistance they required (paragraph 83).

41. In *Opuz*, cited above, there was a series of serious assaults on and threats to kill directed at applicant and her mother by the applicant's husband, which culminated in the fatal shooting of the applicant's mother by the husband. He was sentenced to just over fifteen years' imprisonment for the murder (but released pending an appeal) and, for the previous incidents, had been given short custodial sentences or fines (including, in particular, a small fine for stabbing the applicant seven times). The Court, finding *inter alia* violations of Articles 2 and 3 of the Convention, considered that Turkey's criminal law system did not have an adequate deterrent effect capable of ensuring the prevention of the unlawful acts committed by the applicant's husband and that the domestic authorities' response, in particular the sentences imposed on the husband, was manifestly inadequate in relation to the gravity of his offences (see, in particular paragraphs 143-149 and 166-176 of the judgment).

42. *A v. Croatia*, no. 55164/08, 14 October 2010 concerned frequent episodes of violence over three years. The perpetrator of the violence, B, had been diagnosed as having several mental health disorders, which appeared to have been at the root of his violent behaviour. Various measures had been taken by the authorities, including, in the context of criminal proceedings, pre-trial detention as well as other protective measures such as restraining orders, which prohibited B from approaching the applicant. However, there had been other measures (including detention, psychiatric treatment and fines), which had been recommended or ordered but which had not been implemented. Although it was not for the Court to take the place of the national authorities in determining the most appropriate methods of protecting individuals from attacks on their personal integrity, the Court found that the Croatian authorities had failed to implement the

measures which had been considered adequate and necessary by the Croatian courts in order to address the violence directed against the applicant. They had thus failed to satisfy their positive obligations to her under Article 8.

43. In *Hajduová*, cited above, the applicant was attacked and threatened by her former husband, A. During the course of the criminal proceedings he was diagnosed as suffering from a serious personality disorder. In-patient psychiatric treatment was ordered. Two further incidents of threatening behaviour towards the applicant and her lawyer took place before A. was hospitalised. The Court, in finding a violation of Article 8, found that it was the domestic authorities' failure to ensure that A. was duly detained for psychiatric treatment which enabled him to continue to threaten the applicant and her lawyer. It was only after the applicant and her lawyer had made fresh criminal complaints against A. that the domestic authorities took it upon themselves to intervene.

44. In *Kalucza v. Hungary*, no. 57693/10, 24 April 2012 there were various criminal proceedings against both the applicant and her common law husband, each alleging assault and other offences against the other. There were also civil proceedings concerning the couple's flat, which appeared to be the root cause of their disputes. There was also a failure by the domestic courts promptly to decide on the applicant's request for a restraining order and, ultimately, they refused that request. The Court reached no conclusion as to the appropriate outcomes or sentences passed in the various criminal proceedings but did find it striking that the domestic courts had taken as long as they did to decide on the request for a restraining order, and that they had failed to give sufficient reasons for refusing it. There was also a lacuna in the law on restraining orders due to violence among relatives, in that it did not apply to common law spouses. Finally, the domestic courts had failed to bring the civil proceedings concerning the flat to an end. For those reasons, the Hungarian authorities had failed to fulfil their positive obligations to the applicant under Article 8.

45. In *M.T and S.T.*, cited above, there had been a history of violence between the first applicant and her former husband, A., but only one incident was prosecuted. That prosecution had resulted in A.'s acquittal. In declaring the Article 8 complaint inadmissible as manifestly ill-founded, the Court considered that, rather than imposing a strict requirement of a criminal conviction of A., the crucial issue raised by Article 8 was the overall effectiveness of the protection rendered by the State to the Convention rights of the applicant and her child, the second applicant in the case (paragraph 84 of the decision). The Court noted that the first applicant's husband, A., had, as a matter of law, been excluded from the family home. The criminal proceedings had been conducted with due expedition and the evidence had been thoroughly examined by two levels of ordinary jurisdictions, with the last decision having been scrutinised by the

Constitutional Court. The Court also considered that the criminal proceedings against A. must have had a general as well as individual deterrent effect and, in combination with the other interim measures taken by the authorities, resulted in no further violence by A. The authorities could not, therefore be reproached for any lack of diligence.

46. Finally, in *Kowal v. Poland* (dec.), no. 2912/11, 18 September 2012, the applicant's father was convicted of domestic violence directed towards him, his brother and their mother. The father was sentenced to one year and three months' imprisonment, suspended for four years. When he continued to be violent, he was ordered to leave the family home. The order was not enforced but the father eventually left the home voluntarily. The Court found that, in light of the sentence and the assignation of a probation officer to supervise the father's conduct, the allegations made by applicant had been examined speedily, and the substantive outcome of the proceedings had been intended to protect him and his family against domestic violence. Moreover, after the sentence had been imposed, and the father had continued to be violent, the domestic courts had examined in the detail his conduct and concluded that, while it was not necessary to make him serve the prison sentence, he should leave the family home. It could not therefore be said that the authorities had dealt with the case in a slow or inefficient manner, or that they did not have due regard to the victims' plight or that they minimised it. Their response was not manifestly inadequate with respect to the gravity of the offences in question and it could not be said that the decisions given in the case were incapable of having a preventive or deterrent effect on the father's conduct.

c. The present case

47. In turning to the present case, the Court finds as follows.

48. First, in contrast to all of the above-cited cases, there was no continuing situation of violence against the applicant. Although she states that she was subjected to abuse by her husband over many years, she only brought one incident to the attention of the authorities (the assault at the heart of the present case) and has not made any allegations of specific acts of violence in her submissions to this Court. When she made her complaint to the police the matter was promptly investigated and her husband was arrested and charged. The criminal proceedings thereafter were conducted with due expedition. This was not therefore a case where the domestic authorities did nothing in the face of repeated and credible complaints by the applicant of violence or threats of violence (cf. *Kontrová* and *Opuz*, both cited above). Nor were there any ancillary proceedings brought by the applicant, and thus no court orders which went unenforced (cf. *A. v. Croatia* and *Kalucza*, also cited above).

49. Second, despite the applicant's submission that she should have been notified sooner of the PPS's decision to reduce the charge from section 18

to section 20 (such that she could have sought an internal review of that decision), the Court does not consider that there is scope for criticism of the PPS's conduct of the case.

The decision to reduce the charge from a section 18 to a section 20 offence was made purely on the basis of the evidence the PPS had in its possession and, as the Government have confirmed, not as the result of any discussions between the PPS and Mr Wilson or his representatives. It was entirely a matter for the PPS to decide whether the intent element of section 18 could be proved and, when they concluded that it could not, to reduce the charge to the next most serious offence, section 20. Although obviously less serious than a section 18 offence, it is of some weight that the maximum sentence that can be passed for a section 20 offence in Northern Ireland is seven years' imprisonment.

Moreover, the PPS did everything in their power to keep the applicant informed of the progress of the case and to explain their actions to her. Counsel for the prosecution sought to explain the decision to reduce the charge to a section 20 offence to the applicant before the matter came to court. After sentence was passed, the PPS met with the applicant and it appears to be accepted that, in the course of that meeting, the applicant indicated that her discontent was not with the PPS's handling of the case, but with the leniency of the judge's sentence.

The PPS also took the decision to proceed with the prosecution at a time when the applicant wished to withdraw her complaint. This is of some importance, particularly when the Court has criticised provisions of domestic law which prevent prosecutors from proceeding with cases when the applicant/victim withdraws her complaint (see *Bevacqua and S*, § 82, *Opuz*, § 145, both cited above).

50. Third, although the applicant has focused her complaint on the inadequacy of the sentence passed for the section 20 offence, this must be seen in the context of the procedure which preceded it. Before sentencing, a victim impact report was prepared on the applicant and a probation service report on her husband. Contrary to her submissions, it appears that the sentencing judge also had before him the photographs of the applicant's injuries. Finally, he had the transcript of the applicant's 999 telephone call. That documentation would have enabled the judge to assess the seriousness of the offence and, through the probation service report, to identify the root cause of the incident, Mr Wilson's drinking. The transcript of the sentencing remarks shows that the judge, having considered that evidence, also carefully considered all of the sentencing options open to him, including an immediate custodial sentence. He was entitled, particularly on the basis of the probation service report, to conclude that a probation order would serve no purpose as Mr Wilson was already undergoing counselling to address his drinking and aggression. As concerns the sentencing judge's decision not to pass an immediate custodial sentence, as in *Kowal*, cited above, the Court

cannot conclude that this was a manifestly inadequate response to the gravity of Mr Wilson's offence. Of course, passing a suspended sentence was a much more lenient response than passing an immediate custodial sentence, but there was merit in the sentencing judge's approach. The virtue of passing an eighteen-month sentence and then suspending the sentence for three years was that it deterred the applicant's husband from any further violent behaviour towards her for three years, since any further incidents could have resulted in his being made to serve the eighteen month sentence. That arguably gave the applicant longer and better protection from her husband than imprisoning him immediately would have done. That approach appears to have worked: there have been no other incidents since the assault on 20 October 2007.

51. Fourth, regard must be had to the other measures in Northern Irish law which were available to the applicant. Mr Wilson's bail conditions prevented him from residing at the family home (as in *M.T. and S.T.* and *Kowal*, and in contrast to *Kalucza*, all cited above). If those conditions proved insufficient, it would have been open to the applicant to apply for either an occupation or a non-molestation order under the Family Homes and Domestic Violence (Northern Ireland) Order 1998. There is no evidence that the Northern Irish courts would have failed to give such an application prompt and proper consideration. It is also of some relevance that the applicant was able to avail herself of the compensation scheme which existed in Northern Ireland for criminal injuries. Admittedly she was only offered compensation after she had requested a review of the initial decision to refuse her compensation, but that review included the preparation of a psychiatric report and it was on the basis of that report that she was offered GBP 2,800. Implicit in that offer was the Northern Irish authorities' recognition that she had suffered psychological harm as a result of her injuries and deserved appropriate compensation.

52. Finally, although the Government have not provided statistics as to the sentences passed for offences involving domestic violence, it does not appear that perpetrators of domestic violence are given more lenient sentences than defendants who are convicted of other violent crimes; in fact, the applicant's submission is that the sentence passed in her case was more lenient than comparable cases of domestic violence in Northern Ireland. However, as the Court has found at paragraph 50 above, there were good reasons for that sentence.

53. For all of the above reasons, the Court concludes that the Northern Irish authorities did not fail in their positive obligation to secure the applicant her rights under Article 8 of the Convention. Accordingly, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Article 13

1. The parties' submissions

a. The Government's submissions

54. The Government submitted that, as the applicant did not have an arguable claim under Article 8, there could be no violation of Article 13 (*Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131; *Szula v. the United Kingdom* (dec.), no. 18727/06, 4 January 2007).

b. The applicant's submissions

55. The applicant relied on the same submission she had made under Article 8.

2. The Court's assessment

56. Leaving aside the question whether the applicant had any "arguable claim" of a violation of any other provision of the Convention for the purposes of Article 13, the Court finds that no issue arises under that provision because the applicant had at her disposal, and in part actually made use of, criminal law and civil law remedies referred to above (see *M.T. and S.T.*, cited above, § 88). There is no reason to alter that conclusion simply because, in the present case, those remedies did not include the power of the Attorney-General to refer the case to the Court of Appeal. It follows that this complaint is also manifestly ill-founded and must likewise be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Lawrence Early
Registrar

Lech Garlicki
President