

## **\*47 RA v United Kingdom**

Application No.73521/12

European Court of Human Rights

3 May 2016

**(2016) 63 E.H.R.R. SE5**

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### **ADMISSIBILITY DECISION**

#### **THE FACTS**

1 The applicant, Ms RA, is a British national, who was born in 1982 and lives in Telford. The President granted the applicant's request for her identity not to be disclosed to the public (r.47(4)).

#### **I. The circumstances of the case**

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

#### **A. The background facts**

3 On 28 November 2009 the applicant reported to the police that she had been raped by her husband. Her husband was immediately arrested. He denied the offence and was subsequently charged with six counts of rape. On 10 December 2009 he was released on conditional bail, with a specific condition that he should not contact any prosecution witness, including the applicant.

4 On 7 January 2010 the applicant contacted the police to withdraw her complaint against her husband. She indicated that she wanted to put everything behind her and move forward for her own sake and the sake of her children. The police explained that the case might still proceed and that, if it did, she might be required to give evidence.

5 On 14 January 2010 the applicant was informed that the prosecution would proceed. On 18 January 2010 the applicant's husband pleaded not guilty and the trial date was fixed.

6 On 7 February 2010 the applicant told the police that she had lied about having ever being raped by her husband. A police officer explained that she needed to think

very carefully about what she was saying and be sure that what she was saying was in fact the truth. The applicant said that she was not bothered about what happened to her and did not care if she was charged or dealt with for "whatever offence". She was told that the Crown Prosecution Service would have to be consulted and that when a decision had been made she would be informed. \*48

7 On 11 February 2010 the applicant attended the police station voluntarily. She said that the rape allegations were lies. The police warned her of the potential seriousness of having made false allegations of rape. She was given legal advice and cautioned. A solicitor attended the police station to represent and advise her. The applicant provided a written statement to the police and maintained that her allegations were false.

8 On 12 February 2010 the applicant's husband appeared at the Crown Court. In light of the applicant's retraction of her complaint, the prosecution had no alternative but to offer no evidence against him. Not guilty verdicts were accordingly entered. He was released from custody.

## **B. The police investigation and criminal trial**

9 A criminal investigation subsequently commenced into the applicant's admission that she had made a false allegation of rape against her husband. On 16 April 2010 she was arrested. A tape-recorded interview in the presence of her solicitor took place. The police discussed with her whether her husband had put emotional pressure on her to withdraw the allegation, whether she was concerned about the position of her children and whether her support network was limited. The police told her that if the allegations were true and the retraction was in fact a lie, she could tell them about it. She insisted that the allegations were untrue.

10 On 23 June 2010 the applicant was charged with perverting the course of justice by making a false allegation against her husband.

11 On 5 August 2010 the applicant contacted the police. She said that she had come to her senses and that she had in fact been raped.

12 On 31 August 2010 the applicant was arrested and, with her solicitor present, interviewed. She said that the significance of lying about the rape had become clear when her counsel had told her that she would receive a sentence of 12-18 months' imprisonment.

13 On 16 September 2010 the applicant was charged with an additional offence of perverting the course of justice by falsely retracting a true allegation of rape.

14 On 15 October 2010 at the Crown Court, the applicant pleaded guilty to the charge of having falsely retracted a true allegation of rape. She pleaded not guilty to the charge of making a false allegation of rape and, the prosecution having offered no further evidence, a not guilty verdict was entered in respect of this charge.

15 On 5 November 2010 the applicant was sentenced to eight months' imprisonment. She was taken into custody.

### **C. The appeal against sentence**

16 The applicant lodged an immediate appeal against sentence. Her appeal was granted by the Court of Appeal on 23 November 2010. In its judgment, the court emphasised the public interest in the investigation and, if appropriate, the prosecution and conviction of those who had committed crime. For this reason, perverting the course of justice was not confined to making false allegations or giving false evidence but also extended to the retraction of truthful allegations or the retraction of truthful evidence. However, the court recognised that the difference between the culpability of an individual who had instigated a false complaint against an innocent man and a complainant who had retracted a truthful allegation against \*49 a guilty man would often be very marked. It referred to pressures resulting from relationships and, in particular, the vulnerability of women who had been ill-treated by their partners. In such cases, it said, the sentencing court should recognise and allow for the pressures to which the truthful complainant in such a relationship had been exposed and should be guided by a broad measure of compassion for a woman who had already been victimised. It concluded:

“23. This is an exceptional case. We hope that it will be very exceptional for cases of this kind to be prosecuted to conviction in the Crown Court. The sentence for perverting the course of justice normally is, and will normally continue to be, a custodial sentence. That is a requirement of the administration of justice and, where possible, the reduction of crime. But this was not such a case. We have come to the conclusion that the appropriate sentence in this case is a community sentence with a supervision order for a period of two years.”

17 The applicant was immediately released.

### **D. The reporting of the conviction and subsequent developments**

18 The applicant's conviction was widely reported. On 16 December 2010 The Guardian newspaper published an article about the conviction. The article explained that the Director of Public Prosecutions (DPP) had ordered a change in the way Government lawyers dealt with cases against women who withdrew rape claims, acknowledging “failings” in the handling of the applicant's case. In future, similar cases would require his personal approval.

19 On 7 July 2011 the Crown Prosecution Service published revised policy guidance in relation to prosecutions concerning rape and domestic violence. The revised guidance applies to cases where a complainant of rape or domestic violence makes a false allegation, retracts an allegation or withdraws a retraction.

### **E. The appeal against conviction**

## 1. Counsel's advice and grounds of appeal

20 Meanwhile, the applicant instructed new solicitors and obtained advice on appeal against conviction dated 15 June 2011. Counsel expressed the view that she had a complete defence to the indictment which ought to have been considered and pursued on her behalf in the exceptional circumstances of her case. The advice stated that her guilty plea had been equivocal and should not be a bar to an appeal; and that the guilty plea had ignored the defences of duress and coercion and had ignored "human rights and international law, the experience of the courts, the experience of those experts in the field, the experience of victims and plain common sense". Counsel suggested that the original prosecution should have been stayed as an abuse of process for, inter alia, the following reasons:

"It would have been untenable for the Crown to argue that the [applicant] ... was not a victim of rape and domestic violence ...

We contend that the [applicant's] behaviour was arguably both normal and understandable for a victim of such abuse. \*50

We would have called the Crown's own acknowledged expert in this field ... [who] is able to comment on the dynamics and effects of domestic violence. This will show that far from having an intent to pervert the course of justice the [applicant] was behaving normally for a victim of such extreme abuse.

The prosecution was in breach of its own policy, the European Convention on Human Rights and International Law."

21 The grounds of appeal against conviction were as follows:

- "1. The conviction is unsafe.
2. The appellant's plea was equivocal and ignored her defences in law of duress, coercion and those human rights and international law arguments outlined in counsel's advice.
3. The original criminal proceedings should have been stayed as an abuse of process.
4. This is a conviction in a case where the DPP is on public record as saying justice was not done or seen to be done when offering an unreserved apology to the appellant.
5. The Lord Chief Justice, in the appeal against sentence, commented that 'This is an exceptional case. We hope that it will be very exceptional for cases of this kind to be prosecuted to conviction in the Crown Court'."

22 In their response to her grounds of appeal, the prosecution did not seek to raise any positive argument in support of the safety of the applicant's conviction. They explained that the acceptance of the guilty plea in respect of the false retraction implied acceptance that the rape allegation had been truthful, and conceded that the applicant would in all likelihood not have been prosecuted had her case been considered at the time of the response, applying the criteria now contained in the revised guidance (see [19] above).

23 Leave to appeal conviction out of time was granted.

## 2. The applicant's written submissions

24 In the applicant's subsequent written submissions to the Court of Appeal dated January 2012, she referred extensively to the DPP's comments and the revised guidance (see [18]–[19] above). She made, first, further arguments in respect of her first ground of appeal and the part of her second ground of appeal related to the defences of duress and coercion (see [21] above). There was reference to development of the abuse of process and human rights arguments "at paragraph 68 below" and, later, to the arguments regarding human rights issues "in paragraph 68 below".

25 Paragraph 68 simply repeated the second part of her second ground of appeal and her third to fifth grounds of appeal (see [21] above). Further arguments in respect of these matters followed in subsequent paragraphs. There was a section on recent domestic case-law on prosecuting victims, a section on the revised guidance and a section on the Code for Crown Prosecutors. The latter section contended that the applicant's prosecution was unfair for a number of reasons, including because "the case was brought in circumstances that breached the applicant's human rights". It went on to explain that the applicant met none of the criteria tending in favour of prosecution, while her situation fell under some of the factors tending against prosecution. **\*51**

26 Finally, there was a section in the written submissions headed "Human Rights", in which it was submitted that the applicant's treatment had breached her human rights. The written submissions referred to a number of judgments of this Court concerning domestic violence against women which, it said, clarified that states had positive obligations in this area, including an obligation to protect victims from violent behaviour, by reference to arts 2, 3 and 8 (citing [Kontrová v Slovakia \(7510/04\) 31 May 2007](#) ; [Bevacqua and S v Bulgaria \(71127/01\) 12 June 2008](#) ; [Opuz v Turkey \(2010\) 50 E.H.R.R. 28](#) ; [ES v Slovakia \(8227/04\) 15 September 2009](#) ; [A v Croatia \(2015\) 60 E.H.R.R. 26](#) ; and [Hajduová v Slovakia \(2011\) 53 E.H.R.R. 8](#) ). It continued:

"It is clear from this line of authority that domestic violence can potentially engage Articles 2, 3, 8 and 14 of the ... Convention ... States have a positive obligation to protect the rights of victims. It is when a State becomes aware of a domestic violence situation that they have the obligation to take steps to protect people."

27 The submissions explained that the applicant had suffered years of domestic abuse which had been exacerbated by her subsequent dealings with the police. It should have been abundantly clear to the officers that the applicant was under extreme duress when she retracted her rape complaint. However, rather than make proper investigations they had accepted her story and charged her. To treat her as a criminal while releasing the perpetrator indicated "degrading treatment", as defined in the Court's art.3 case-law.

28 In their response of February 2012, the prosecution acknowledged the applicant's argument that her Convention rights were engaged and that her prosecution amounted to a breach of those rights. Much of the response was devoted to addressing the submissions concerning the defences of duress and marital coercion and the safety of the conviction in light of the revised guidance. In the context of their response to the abuse of process submission, the prosecution accepted that the Convention attached special significance to the protection of vulnerable groups and argued that what it required was that the decision to prosecute be taken following careful analysis of the circumstances and characteristics of the individual and the case against her. The prosecution pointed out that the cases cited did "not reflect the position in this case" and were of "little if any assistance". They emphasised the important distinction to be made between the role of those who investigated crime and those who prosecuted, noting that in many of the cited cases the impugned failure was a failure to investigate.

### **3. The Court of Appeal's judgment**

29 The applicant's appeal against conviction was dismissed on 13 March 2012. The Court referred to the remarks made by the Court of Appeal in the sentencing appeal and to the publicity that the applicant's conviction had received in the press, in particular the reporting of the DPP's comments (see [16] and [18] above). It pointed to the revised guidance (see [19] above) and accepted that, had the guidance been in force at the date of the applicant's conviction, she would in all likelihood not have been prosecuted. However, it considered that while the applicant had plainly been under pressure, the pressures were far removed from constituent elements of the defence of duress. It was also satisfied that there had been no abuse \*52 of process. Guidance issued by the DPP did not, and as a matter of law could not, create any immunity or defence. It merely publicly reflected the considerations which, in an individual case, were considered to be relevant to the exercise of the prosecutorial discretion not to bring the case to trial notwithstanding admissible evidence which would otherwise justify a prosecution. The court concluded that the final submission came down to the proposition that it was somehow not fair for the applicant to remain convicted. However, the principles relating to abuse of process had not extended to enabling the court to quash a conviction on a broad, somewhat nebulous basis of unfairness where the conviction, following due process, was in every respect safe.

#### 4. The application for leave to appeal to the Supreme Court

30 The applicant applied for certification of a point of law of general public importance and permission to appeal to the Supreme Court. In her application for leave, she identified two points of law of general public importance, namely:

"i. Whether or not an individual subject to an accepted background of rape and/or domestic violence, as in the current case, can raise in law a defence of duress to a criminal charge, which is capable of being left to a jury?

ii. Whether or not the prosecution of a victim of rape and domestic violence, as per the circumstances of the current case, amounted to an abuse of process by the Crown and/or was a breach of fundamental human rights?"

31 In respect of ground (ii), the application referred to the DPP's comments and to the revised prosecution guidance (see [18]–[19] above). It explained that a senior lawyer from the Equality and Human Rights Commission had expressed an interest in the case and continued:

"This case clearly raises important issues of equality and human rights and we would welcome any intervention by the Commission into this appeal ... That ... perhaps serves to further demonstrate the public importance of this proposed appeal."

32 The prosecution lodged submissions dated April 2012. As to whether there had been a breach of fundamental human rights, they noted that, as previously submitted, the applicant could not reasonably argue that her Convention rights had not been protected. They contended that where an individual had conducted herself so as to deliberately and knowingly place herself beyond the state's protective reach and in jeopardy of a prosecution by denying her status as a victim, she had no arguable complaint when she found herself charged with a criminal offence. They maintained that the applicant's submissions continued to confuse the role of investigators and prosecutors, and that the Convention required the decision to prosecute to be taken in application of the Code for Crown Prosecutors on a case-by-case basis. As the decision to prosecute had arisen from a correct application of the Code, there had been no failure to protect the applicant's Convention rights.

33 On 22 May 2012 the Court of Appeal refused to certify a question for the Supreme Court. \*53

## II. Relevant domestic law and practice

34 At the relevant time, the Code for Crown Prosecutors provided that a prosecution would usually take place unless the prosecutor was sure that there were public

interest factors tending against prosecution which outweighed those tending in favour.

35 On 7 July 2011 the Crown Prosecution Service published revised policy guidance in relation to prosecutions concerning rape and domestic violence. It stated that when applying the public interest stage of the Code test, prosecutors should bear in mind the comments of the Lord Chief Justice in the applicant's appeal against sentence. The revised guidance sets out the relevant factors in favour of and against prosecution.

36 The [Human Rights Act 1998](#) (the Human Rights Act) incorporates the Convention into UK law. Under [s.7\(1\)](#) of the Act, a person who claims that a public authority has acted in a way which is incompatible with Convention rights may rely on the Convention rights concerned in any legal proceedings. [Section 2](#) of the Act requires a court determining a question which has arisen in connection with a Convention right to take into account the case-law of this Court.

37 The case of [G v R \[2008\] UKHL 37](#) concerned an appeal against conviction by a defendant convicted of raping a girl under the age of 13. At the time of the offence the applicant had been 15 years old and had believed that the girl was the same age. He argued that his prosecution for rape, instead of a less serious offence, and his subsequent conviction were disproportionate in the circumstances of his case and thus violated his right to respect for private life protected by art.8 of the Convention. The Court of Appeal dismissed the appeal in April 2006, although it accepted that the prosecution of a minor for rape in the circumstances of the applicant's case might in certain cases give rise to a violation of art.8. In June 2008 the Supreme Court dismissed the appeal, holding by three judges to two that there had been no violation of art.8. The majority found that even if the defendant's art.8 rights had been engaged, his prosecution and conviction were proportionate in the pursuit of the legitimate aims of the protection of health and morals and of the rights and freedoms of others.

38 The claimant in [SHX v Crown Prosecution Service \[2014\] EWCA Civ 90](#), had arrived in the United Kingdom and had claimed asylum. In December 2009 she was charged with possession of a false identity document which she had presented to the immigration officer. At the subsequent criminal trial in June 2010 the prosecution offered no evidence and a formal acquittal verdict was entered. In December 2010 the claimant brought civil proceedings under the [Human Rights Act](#) claiming that the decision to prosecute her constituted an unlawful interference with her right to respect for her private life. Her claim was dismissed by the High Court in February 2013. In its judgment, the High Court identified three questions for its consideration: first, whether art.8 was capable of being engaged by a decision to prosecute; second, if yes, whether art.8 was engaged on the facts of this case; and third, if yes, whether prosecution was justified in terms of art.8(2). The court did not consider art.8 to be engaged but said that, even if it had been, the interference was justified in the circumstances of the case. Leave to appeal to the Court of Appeal was granted. There was extensive argument as to the scope and content of "private life", by reference to the case-law of this Court. In February 2014 the Court of Appeal dismissed the appeal. It accepted that in certain circumstances a **\*54** decision to



prosecute could engage art.8 but held that art.8 had not been engaged in the circumstances of this case. Like the High Court, it further found that even if art.8 had been engaged, the prosecution was proportionate and justified under art.8(2) . The Supreme Court granted leave to appeal in December 2014 and the case is currently pending before it.

## **COMPLAINT**

39 The applicant complained under art.8 of the Convention that, as a victim of domestic violence, her prosecution and conviction violated her right to respect for her private and family life.

## **THE LAW**

40 Article 35(1) provides:

“The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law ....”

### **I. The parties’ submissions**

#### **A. The Government**

41 The Government argued that the applicant had failed to exhaust all effective domestic remedies in respect of her complaint. They pointed out that no request was made at the time of the original trial to stay the proceedings as an abuse of process and that no issues relating to her human rights were raised at that stage.

42 Further, at no stage during her appeal against conviction had she properly articulated an art.8 claim concerning the decision to prosecute her. Neither the advice on appeal nor the grounds made any express or implied reference to art.8 of the Convention and referred only to “human rights and international law”, with no further argument or explanation (see [20]–[21] above). In the section of her written submissions headed “Human Rights”, the basis of the alleged violation had not been clearly set out (see [26] above). However, it appeared that the principal submission was that there had been a violation of the applicant’s art.3 , and possibly art.6 , rights. In the only substantive reference to art.8 of the Convention in any of the domestic proceedings, the applicant’s written submissions went on to set out the facts of cases of this Court in which it found a violation of that article. Each of the cases, however, involved a situation where the state had not taken sufficient

measures against the perpetrators of domestic violence to fulfil its positive obligations under art.8 of the Convention. None touched upon the question whether the prosecution of a person in the applicant's position amounted to an interference with art.8 rights or whether such interference was justified.

43 The Court of Appeal had given a detailed judgment but had not separately addressed any argument based on an alleged violation of art.8 of the Convention. This absence reflected the fact that, in view of the written submissions advanced by the applicant, no arguable issue based on art.8 had been raised by her lawyers. Finally, although the applicant had referred in her application for leave to appeal \*55 to the Supreme Court to an alleged "breach of fundamental human rights", the application did not identify the right in question or articulate any basis for an alleged breach (see [30]–[31] above).

44 In summary, the Government submitted that the applicant had failed to raise, even in substance, the art.8 issues in the present case. The question whether the decision to prosecute the applicant interfered with her art.8 rights raised novel issues of far-reaching significance in the United Kingdom and elsewhere. It would be difficult for the Court to contemplate the possibility of developing its case-law to such an extent in the absence of any judgment on the issues raised by the domestic courts.

## **B. The applicant**

45 The applicant rejected the Government's assertion that she had not properly argued before the Court of Appeal and in her application to the Supreme Court that her prosecution and conviction violated her rights under art.8 . She contended that the parties had addressed human rights arguments in comprehensive written submissions now before the Court. Counsel for the applicant had also made oral submissions on the decision to prosecute before the Court of Appeal. The question whether the decision to prosecute was a violation of the applicant's human rights was at the very heart of her appeal before the Court of Appeal. This is why she had attempted to certify a human rights question in her application for leave to appeal to the Supreme Court. The point of law identified could not have been clearer (see [30] above). It was the decision to refuse certification that was being challenged before this Court. Accordingly, the decision to prosecute was also at the heart of the application before the Court. It was simply wrong to suggest that the issue had not been raised before this Court or the domestic courts.

46 The applicant relied on the response to her written submissions before the Court of Appeal in which it had been acknowledged by the prosecution that human rights arguments concerning the decision to prosecute had been raised (see [28] above). She also referred to her human rights arguments in the advice on appeal, grounds of appeal and her written submissions (see [20]–[21] and [24]–[26] above).

47 As regards specific reference to art.8 , the applicant noted that the Government accepted that the case raised novel, far-reaching issues (see [32] above). She argued that there was therefore no precedent that she could have cited in

submissions before the domestic courts: she had cited what precedent was then available. That said, she had made it plain that the decision to prosecute was central to the appeal and was a violation of her human rights. The judgment of the Court of Appeal acknowledged that her counsel had challenged the decision to prosecute.

48 In conclusion, she argued that the case had been comprehensively litigated before the Court of Appeal. She emphasised that art.35(1) had to be applied with some degree of flexibility and without excessive formalism. She therefore invited the Court to declare her complaint admissible.

## II. The Court's assessment

49 The Court refers to its well-established case law concerning the obligation to exhaust domestic remedies, as summarised, for instance, in [Vučković v Serbia \(preliminary objection\) \(2014\) 59 E.H.R.R. 19](#) at [69]–[77]. \*56

50 According to that case-law, states are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system, and those who wish to invoke the supervisory jurisdiction of the Court as concerns complaints against a state are thus obliged to use first the remedies provided by the national legal system. The obligation to exhaust domestic remedies therefore requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances and to raise complaints intended to be made subsequently in Strasbourg to the appropriate domestic body, at least in substance, in compliance with the formal requirements and time-limits laid down in domestic law.

51 It is not sufficient that the applicant may have unsuccessfully exercised another remedy which could have overturned the impugned measure on other grounds not connected with the complaint of a violation of a Convention right. It is the Convention complaint which must have been aired at national level for there to have been exhaustion of "effective remedies". It would be contrary to the subsidiary character of the Convention machinery if an applicant, ignoring a possible Convention argument, could rely on some other ground before the national authorities for challenging an impugned measure, but then lodge an application before the Court on the basis of the Convention argument ( [Peacock v United Kingdom \(2016\) 62 E.H.R.R. SE14](#) at [33]).

52 In her application to this Court, the applicant emphasised that she was a victim of domestic violence and complained that her prosecution and conviction were incompatible with her art.8 rights. She did not clearly develop this argument and largely focused her submissions on complaints under other articles of the Convention, which were subsequently declared inadmissible pursuant to r.54(3). The Court must determine whether she has properly raised, before the domestic courts, an art.8 grievance concerning the decision to prosecute.

53 The applicant challenged her conviction on several grounds. Of relevance in the present proceedings, her grounds of appeal stated that her guilty plea had ignored

“those human rights and international law arguments outlined in counsel’s advice” (see [21] above). However, it is noteworthy that counsel’s advice did not outline any human rights or international law arguments. Like the grounds themselves, the advice merely asserted, without any further explanation, that her prosecution had been in breach of the Convention and international law (see [20] above).

54 In her subsequent written submissions, there was a section headed “Human Rights”. That section summarised a number of cases decided by this Court (see [26] above). The argument concluded from the case-law cited that domestic violence could potentially engage arts 2, 3 and 8 of the Convention and that states had positive obligations to protect the rights of victims when the authorities became aware of a domestic violence situation. Closer examination of the authorities invoked reveals that, in some of the cases cited, the Court examined whether the failure of the authorities to take steps to prevent murders of family members by the applicant’s abusive partner had resulted in a violation of the state’s positive obligations under art.2 of the Convention (see [Kontrová \(7510/04\) 31 May 2007](#) and [Opuz \(2010\) 50 E.H.R.R. 28](#) ). In some, the Court considered whether the failure by the authorities to take steps to protect the family from acts of domestic violence perpetrated by the applicant’s husband had resulted in a violation of the state’s positive obligations under art.3 of the Convention (see [Opuz \(2010\) 50 E.H.R.R. 28](#) , ES (8227/04) 15 September 2009 and [A v Croatia \(2015\) 60 E.H.R.R. 26](#) ). \*57 Finally, in some of the cases, the Court considered whether the failure by the authorities to take steps to protect the family from acts of domestic violence perpetrated by the applicant’s husband had resulted in a violation of the state’s positive obligations under art.8 of the Convention (see ES (8227/04) 15 September 2009 , [A v Croatia \(2015\) 60 E.H.R.R. 26](#) , [Bevacqua and S \(71127/01\) 12 June 2008](#) and [Hajduová \(2011\) 53 E.H.R.R. 8](#) ).

55 The Court notes that the facts of the applicant’s case and the nature of the violation alleged are far removed from the facts of these cases or the legal issue addressed by the Court in these judgments. The cases cited all concerned an alleged failure on the part of the domestic authorities to protect families from violence perpetrated by an abusive partner. The legal issue at stake was whether the state’s positive obligations under arts 2, 3 and 8 required the authorities, principally the authorities responsible for conducting criminal investigations, to take action to protect victims in the context of domestic violence allegations. By contrast, the present applicant does not complain about a failure of the investigative authorities to protect her from acts of violence perpetrated by her husband. She complains instead about the actions of the prosecution and the courts, in that she alleges that, as a victim of domestic violence, her prosecution and conviction for retracting a true allegation of rape violated her art.8 rights.

56 The Court is satisfied that the applicant could have done far more to put her complaint of an alleged violation of art.8 squarely before the Court of Appeal. The human rights and fundamental freedoms defined in the Convention are now part of the law of the United Kingdom. Pursuant to [s.7 of the Human Rights Act](#) , Convention rights can be relied upon in any proceedings where it is alleged that a public authority, which includes domestic courts and prosecutors, have acted in a manner incompatible with Convention rights (see [36] above). There is therefore no

doubt that it was open to the applicant to challenge her prosecution and conviction on the ground that it constituted an unlawful interference with her rights under art.8 of the Convention. She could have cited relevant case-law of this Court which, pursuant to [s.2](#) of the Act, the Court of Appeal would have had to take into account. It is noteworthy that in both [G v R](#) (which was later the subject of the Court's decision in [G v United Kingdom \(2011\) 53 E.H.R.R. SE25](#) at [35]) and [SHX](#), clear arguments were advanced as to the compatibility of prosecution with art.8 of the Convention in the context of the facts of those cases, by reference to the Court's case-law on applicability of art.8 and proportionality under art.8(2) (see [37]–[38] above). The fact that the case of [SHX](#) is now pending before the Supreme Court demonstrates that such arguments, when properly made, will be carefully examined by the domestic courts.

57 However, the applicant failed to advance any such arguments before the Court of Appeal or the Supreme Court. Her references to case-law concerning the protection of victims of domestic violence and their families from abusive partners were not relevant to her otherwise undeveloped argument that her prosecution breached her human rights, which also explains the absence of any separate comments on the alleged violation of art.8 in the Court of Appeal's judgment. While a reference to human rights appeared in her application for certification of a question for the Supreme Court, again it was formulated in a superficial and general manner (see [30]–[31] above).

58 The failure of the applicant to articulate and develop the argument that her prosecution and conviction violated her rights under art.8 of the Convention denied **\*58** the domestic courts with the opportunity which is in principle intended to be afforded to a Contracting State by art.35(1), namely the opportunity of addressing, and thereby preventing or putting right, the particular Convention violation alleged against it.

59 In light of the foregoing, the application must be rejected as inadmissible in accordance with art.35(1) and (4) of the Convention.

**Held:** First Section, unanimously, inadmissible. **\*59**