



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

FIRST SECTION

CASE OF HASANI v. SWEDEN

(Application no. 35950/20)

JUDGMENT

Art 2 (substantive) • Positive obligations • Life • Suicide of applicant's brother, suffering from mental health problems and visual impairment, after the refusal of their asylum requests, when living in accommodation provided by the authorities for people in need of assistance • Lack of signs of mental distress or suicidal tendencies in days prior to his suicide • Not established that authorities knew or ought to have known there was a real and immediate risk to his life

Prepared by the Registry. Does not bind the Court.

STRASBOURG

6 March 2025

FINAL

15/09/2025

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

In the case of Hasani v. Sweden,

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

Ivana Jelić, *President*,

Erik Wennerström,

Krzysztof Wojtyczek,

Raffaele Sabato,

Frédéric Krenç,

Alain Chablais,

Artūrs Kučs, *judges*,

and Liv Tigerstedt, *Deputy Section Registrar*,

Having regard to:

the application (no. 35950/20) against the Kingdom of Sweden lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Afghan national, Mr Esmat Hasani (“the applicant”), on 12 August 2020;

the decision to give notice to the Swedish Government (“the Government”) of the complaint under Article 2 of the Convention concerning the respondent State’s alleged failure to prevent the applicant’s brother from committing suicide, and to declare the remainder of the application inadmissible;

the parties’ observations;

the joint comments submitted by the AIRE Centre and the European Council on Refugees and Exiles (ECRE), which were granted leave to intervene by the President of the Section,

Having deliberated in private on 26 November 2024 and 28 January 2025,

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

INTRODUCTION

1. The applicant and his brother, both Afghan nationals, applied for asylum in Sweden. After their asylum requests had been refused the applicant’s brother, who had a visual impairment and mental health problems, committed suicide. The applicant complained that the Swedish authorities had failed to fulfil their obligation to protect his brother’s life, as required by Article 2 of the Convention, by failing to take measures to prevent his brother from committing suicide.

THE FACTS

2. The applicant was born in 2001 and lives in Gothenburg. He had been granted legal aid and was represented by Ms A. Rogalska Hedlund, a lawyer practising in Stockholm.

3. The Government were represented by their Agents, Ms H. Lindquist and Mr D. Gillgren, both of the Ministry for Foreign Affairs.

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

I. BACKGROUND

5. The applicant and his late brother, A.H., born in 1999, were the two oldest children in their family. Their parents died in a car crash in Afghanistan in 2012. Subsequently, the applicant and A.H. left Afghanistan and eventually came to Sweden, unaccompanied by any other family members. A.H. had a visual impairment since birth, which made him dependent on assistance in his daily life. Since the death of their parents the applicant had provided such assistance.

II. ASYLUM PROCEEDINGS AND RECEPTION CONDITIONS

6. The applicant arrived in Sweden on 31 October 2015 and applied for asylum on 1 November 2015. A.H. arrived in Sweden shortly after, on 4 November 2015, and applied for asylum on the same day. Both the applicant and A.H. were registered as unaccompanied minors. The Migration Agency (*Migrationsverket*) assigned a municipality to be responsible for their housing and they were placed together in a family home (*familjehem*) where the family home parent (*familjehemsförälder*) was an experienced assistant nurse specialised in psychiatry. A special representative for unaccompanied minors (*god man för ensamkommande barn*) was appointed for them. Subsequently, public counsel (*offentligt biträde*) was also appointed for each of them, to represent them in the asylum proceedings.

7. On 16 November 2015 the Migration Agency held an introductory interview with A.H., in the presence of an interpreter. During this interview A.H., *inter alia*, explained that he suffered from poor eyesight and that he wanted to live near his brother.

8. A.H.'s poor eyesight was diagnosed in the spring of 2016 as a degenerative retinal disease called Retinitis Pigmentosa and he was informed that there was no chance of improvement but rather a risk of further deterioration. A.H.'s visual impairment entailed a very severe reduction in visual acuity, a greatly reduced field of vision, poor night vision and glare problems.

9. On 16 December 2016 the Migration Agency held a meeting with A.H. in the presence of his special representative and an interpreter. The overall purpose of the meeting was for A.H. to understand the implications of his turning 18 and thus no longer being regarded as a minor. He was, *inter alia*, informed that the municipality where he lived would decide how long he could stay at the family home, but that this would no longer be possible when he turned 21. He was also informed that, as an adult, he would be responsible

for his own financial support when the assignment of his special representative came to an end. Lastly, he was informed about his right to study and work in Sweden and his right to health care.

10. On 21 December 2016 the municipality decided that A.H.'s placement in the family home would end on 5 January 2017, when he turned 18 years old. The municipality found that he did not have such an extensive need for care and treatment that continued placement in the family home was necessary. Thus, responsibility for him would be transferred to the Migration Agency from that date.

11. A.H. appealed against this decision, also requesting to be allowed to remain in the family home as an interim measure. He submitted, *inter alia*, the following. Due to his visual impairment and mental ill-health, he was completely dependent on the support and care of the family home and his brother in his daily life. He suffered from anxiety, depression, sleeping problems, problems with concentration and with handling his anger. He had repeatedly attempted to harm himself. His mental state had deteriorated after he had been informed that his visual impairment would not improve and after the municipality's decision. People around him were concerned that there was a risk of more serious self-harming behaviour.

12. In support of his claims, he submitted certificates and written statements from his doctors, a school nurse, a family home consultant (*familjehemskonsulent*), his family home parent and his special representative. The doctors' certificates described A.H.'s visual impairment and the limitations and needs that this entailed. One of the certificates also stated that A.H. had been dependent on his brother for physical and psychological support, that his mental health had deteriorated and that the doctor considered that A.H. needed to stay in the family home. The other certificates and written statements expanded on this and further described A.H.'s mental ill-health. They stated, *inter alia*, that A.H. had been dependent upon the family home and his younger brother for both practical and psychological support, that his mental health was very fragile and that he had on several occasions attempted to harm himself. Moreover, they stated that A.H.'s mental state had deteriorated and that there was a concern about continued, and more serious, self-harming behaviour. The family home parent explained that, due to his professional experience as an assistant nurse specialised in psychiatry, he had been able to handle A.H.'s mental state and thereby on several occasions been able to avoid seeking emergency psychiatric care.

13. On 13 January 2017 the Administrative Court in Gothenburg (*Förvaltningsrätten i Göteborg*) dismissed A.H.'s request for an interim measure and on 10 March 2017 dismissed his appeal.

14. On 8 February 2017 A.H. arrived at the Migration Agency's reception unit in Gothenburg accompanied by a family home consultant, a contact person and the applicant, stating that on that day he had been informed that

the placement in the family home had been terminated and that he must immediately contact the Migration Agency. With the assistance of an interpreter A.H. was given the opportunity to give an account of his situation. During the meeting A.H.'s visual impairment and mental ill-health were emphasised. The family home consultant stated that the decision had come as a shock to A.H. and that he had tried to take his own life by running out in front of a truck. A.H. showed signs of resignation and expressed his worries about how he would be able to cope with his situation. He stated that he did not have any established contact with psychiatric care services. A.H. agreed to stay at the reception unit as proposed by the Migration Agency, but expressed concern and requested that they find accommodation for him that was suited to his visual impairment as soon as possible. The Migration Agency deemed A.H. to be in need of appropriate accommodation due to his visual impairment and that until this was found he was in need of home care service (*hemtjänst*). It was also deemed necessary to hasten this process, since A.H.'s mental condition at the time did not appear optimal. However, it was noted that he seemed calmer at the end of the meeting.

15. On the following day, 9 February 2017, the Migration Agency held a social investigation interview with A.H., to assess further his need for support. A.H. was assisted by an interpreter and accompanied by the applicant and the family home parent. During the interview it was emphasised that A.H. had a visual impairment and that he suffered from mental health problems, including self-harming behaviour. The family home parent emphasised that A.H. was very prone to harming himself and had done so in the past, for example by burning himself with cigarettes and cutting his wrists. The Migration Agency noted that A.H.'s statements were supported by medical certificates which had been submitted. The Migration Agency concluded that A.H. was in need of suitable institutional accommodation and that this needed to be expedited since his mental health was affected by his living situation. Until such a placement was found he had an immediate need of home care service to assist him in his daily life and for supervision on account of his mental ill-health. A.H. thus remained at the reception unit and the home care service was instructed to visit him five times a day to ensure that he was well, assist him with his hygiene and toilet visits, accompany him to the dining room and on walks outdoors and assist him with purchasing necessary items and doing laundry.

16. On 20 March 2017 A.H. moved to institutional accommodation in Vimmerby (approximately 270 km from Gothenburg, where the applicant lived) which was considered to be able to meet his cited need for care. Prior to moving there, A.H. had participated in a telephone interview during which he had been provided with information about the accommodation and had described his personal situation including his visual impairment, his self-harming behaviour and his suicide attempt. A.H. had accepted the

placement in institutional accommodation and the Migration Agency noted that he seemed to have a positive attitude regarding the move.

17. On 20 April 2017 the Migration Agency held an asylum interview with A.H., in the presence of his public counsel and an interpreter. During the interview A.H., in addition to describing the grounds for his asylum request, made statements regarding suicide and self-harm. He stated that it did not matter whether he was granted asylum or not since he would commit suicide within a year. Moreover, he stated that if he were expelled after one or two years, he would commit suicide. He also stated that he had previously harmed himself. Furthermore, he stated that he would not return to Afghanistan and that for him it would be better to step in front of a train.

18. On 28 June 2017 the Migration Agency held a supplementary asylum interview with A.H., in the presence of his public counsel and an interpreter. During this interview A.H., among other things, made statements regarding suicide. He stated that he might as well take his life in Sweden and that he could not return to Afghanistan. He also said that his vision was deteriorating and that he might become blind in a few years. Since life would have no meaning for him if he could not see he would kill himself, regardless of whether he was in Afghanistan or Sweden. He furthermore stated that life had no meaning, that he had chosen death already and thus he was not afraid of anything.

19. The minutes from the asylum interviews were sent to A.H.'s public counsel who, on 3 August 2017, submitted clarifications and comments. Regarding A.H.'s state of health, reference was made to some of the certificates described above (see paragraph 12).

20. During this time A.H. continued to live in the institutional accommodation in Vimmerby. While staying there he received assistance with meals, cleaning, laundry, purchasing necessary items and walks outdoors. He also participated in activities. Nurses and treatment staff were available every day and a doctor was available on site once a week. A.H. had at least one appointment with a doctor during his stay, but no medical records or medical reports from his stay have been submitted to the Court. The staff at the accommodation sent reports to the Migration Agency regarding A.H.'s stay. In these reports the staff, *inter alia*, recounted that A.H. repeatedly became upset and frustrated and displayed aggressive and threatening behaviour. Moreover, according to these reports, in May-June 2017 A.H. expressed suicidal thoughts and asked to see a psychologist. An appointment was made for him with a psychologist on 14 June 2017. He subsequently stated that he felt a bit better and no longer had suicidal thoughts. Later, there was an incident in July 2017 where he became upset, made his way to a balcony and tried to throw himself over the railing. A member of staff prevented this and held him until he calmed down. A.H. repeatedly stated that he was going to break things and that he was going to jump in front of a train or a car. After several staff members had talked to him, the assessment was

made that he was not suicidal but should be given increased supervision and care while awaiting a decision from the Migration Agency to be transferred to other accommodation. The reports stated that it had been deemed impossible for him to remain in the accommodation due to his poor mental health and that he had expressed the wish to be closer to his brother. The reports also included overall descriptions of A.H.'s mental health. In these it was noted that he suffered from anxiety, felt powerless and frustrated about his situation and wanted to be closer to his brother. It was further noted that he was probably mildly traumatised by having to flee his home country and on account of how he had been treated there and during his flight.

21. On 14 August 2017 A.H. moved to new accommodation in Mölndal (close to Gothenburg). The reports from the accommodation in Vimmerby stated that A.H. was perceived to be pleased with the decision to move and happy to be closer to his brother and his former family home. The agreement between the Migration Agency and the company who ran the accommodation in Mölndal stated that it concerned protected housing (*skyddat boende*) for an asylum-seeking man who was in need of protection and support. According to the information provided by the parties and the Chancellor of Justice's description (see paragraph 30 below), around-the-clock care and assistance was available at the accommodation, but there were no staff with psychiatric expertise. The parties have not submitted any further information regarding the nature of the care and assistance available at this accommodation, nor any reports or other materials describing A.H.'s stay there.

22. On 23 August 2017 the Migration Agency dismissed the applicant's and A.H.'s asylum applications and ordered their deportation to Afghanistan. The Migration Agency found that A.H. was not in need of protection. As concerned the applicant, the Migration Agency considered that he could be in need of protection as a minor without a social network in Afghanistan. However, since A.H. was going to be expelled to Afghanistan, he would provide such a network for the applicant. The parties have not provided any information regarding whether, and if so when, these decisions were sent to the applicant and A.H. or their respective public counsel.

23. On 7 September 2017 the applicant was given notice of the Migration Agency's decision concerning him, during a personal meeting at the Migration Agency in the presence of his special representative, his public counsel and an interpreter. He contacted A.H. and explained the content of the decision to him.

24. On 18 September 2017 A.H. was given notice of the Migration Agency's decision concerning him, during a personal meeting with a case handler from the Migration Agency, assisted by an interpreter. A.H.'s public counsel was not present at the meeting. The overall purpose of the meeting was to explain the decision and the continued asylum process. According to the Government, the Migration Agency's case file demonstrated that A.H. had confirmed that he had understood the interpreter throughout the meeting

and that he had stated that he intended to appeal. Moreover, he had received a factsheet describing what would happen after the Migration Agency's decision. According to the applicant, it was not certain that A.H. had intended to appeal, nor that he had fully understood that he could appeal, the prospect of success of such an appeal or that he would have the right to be represented by a lawyer.

25. The following day A.H. spoke with the applicant on the telephone and a day later, on 20 September 2017, A.H. committed suicide. The parties have not provided any further information regarding the circumstances of A.H.'s suicide.

26. The applicant subsequently appealed against the Migration Agency's decision in his case. On 26 September 2017 the Migration Agency reviewed its decision in the light of the changed circumstances, namely the death of the applicant's brother, and granted the applicant a residence permit.

27. The Migration Agency's legal department subsequently conducted an internal review of how the brothers' cases had been handled. The review focused on the examination of their asylum applications and did not address matters related to A.H.'s suicide. The review resulted in a report of 5 October 2017, in which it was concluded that there were certain shortcomings in both cases. Among other things, it was found that the depth of the investigation was insufficient, some country-of-origin information was lacking and the forward-looking assessment was deficient. It was noted that relevant questions about A.H.'s disability and mental health had not been asked during the interviews and that A.H.'s mental health had not been mentioned at all in the decisions, even though his case file contained information regarding suicide attempts and self-harming behaviour. The Migration Agency concluded that, due to the shortcomings, the available material had not constituted a sufficient basis for the refusal decisions. It was further deemed to have been unreasonable to refer the applicant to A.H. as a sufficient male network upon return.

III. COMPENSATION PROCEEDINGS BEFORE THE CHANCELLOR OF JUSTICE

28. In November 2018 the applicant lodged a claim for compensation before the Chancellor of Justice (*Justitiekanslern*) in the amount of 300,000 Swedish kronor (SEK, approximately 26,000 euros (EUR)) plus interest. Among other things, he submitted that there had been a breach of Article 2 of the Convention because the State had failed to protect A.H.'s life. In this regard, he argued that the Migration Agency had known, or ought to have known, that there was a real and immediate risk that A.H. would harm himself in the event of a negative decision on his asylum request and had failed to take measures which could have been expected of them to prevent that risk from materialising. Instead, the Migration Agency, through their flawed

handling of the case and incorrect decisions, had acted in a way which had increased that risk.

29. On 17 February 2020 the Chancellor of Justice refused the applicant's request for compensation. The Chancellor took note of the deeply tragic character of the case. However, having regard to the Court's case-law and the circumstances of the case, she found that there had been no violation of Article 2 of the Convention.

30. The Chancellor noted that at the time of his death A.H. had been living in accommodation where he had had access to around-the-clock assistance and care, but that it had not been a specialised or compulsory care institution and that there had been no staff with psychiatric expertise. Thus, the accommodation did not appear to have been suitable to deal with persons with serious mental health problems, such as a risk of suicide. Moreover, there was no information as to whether anyone at that accommodation had any knowledge of A.H.'s mental state at that time. The State had thus had limited control over A.H., and it was open to question whether the State, in these circumstances, had an obligation to take measures to minimise the risk that A.H. would harm himself.

31. Nevertheless, the Chancellor proceeded to examine whether the Migration Agency's choice to place A.H. in that accommodation had been adequate or whether he should rather have been under psychiatric care. In that context, the Chancellor noted that A.H. had had mental health problems for a long time and had not been in contact with psychiatric care services. His family home consultant had stated that he had attempted to commit suicide on one previous occasion, when his placement at the family home had ended. During the asylum interviews A.H. had also, on several occasions, threatened to take his life if he were not granted asylum. Consequently, the Migration Agency had been aware that there was a risk that A.H. could harm himself in the event of a negative decision on his asylum request.

32. However, the Chancellor went on to note that A.H. had been placed in the last accommodation as a temporary solution after he had expressed a wish to move from the institution where he had been staying, to be closer to the applicant. He had also stated that he was happy with the new placement. Thus, the Migration Agency did not appear to have had reasons to assume that there was a real and immediate risk that A.H. at that time would try to harm himself, based on his general situation.

33. The Chancellor further noted that the negative decision on his asylum application had been delivered to A.H. at a personal meeting, where the case handler from the Migration Agency, assisted by an interpreter, had explained the decision to him and had also informed him of his right to appeal. According to the minutes of that meeting A.H. had confirmed that he understood the interpreter and had also demonstrated that he understood the information provided by asking the case handler questions. He had also stated that he intended to appeal against the decision. There was no indication that

at that meeting, which was his last meeting with the Migration Agency before his suicide, A.H. had had suicidal thoughts or that his mental state had been such that he was in immediate need of support. Furthermore, there was no indication that A.H. or the applicant had contacted the authorities after the meeting to ask for help or express concern over A.H.'s wellbeing.

34. The Chancellor concluded that although, viewed in retrospect, it was clear that the most appropriate course of action would have been for the Migration Agency to ensure that A.H. received psychological support and possibly even compulsory psychiatric care after he had been served with the decision, it had not been shown that the Migration Agency at that time should have known that there was a real and immediate risk that A.H. would harm himself.

35. The Chancellor furthermore found that there had been no other violations of the Convention, as had been alleged by the applicant. Moreover, she noted that she agreed with the Migration Agency's findings in its internal review, and that the Migration Agency was to be criticised for its handling of the applicant's and A.H.'s asylum applications. However, there was no indication that there had been any criminal negligence which could qualify as misconduct in office (*tjänstefel*).

RELEVANT DOMESTIC LEGAL FRAMEWORK

I. RECEPTION OF ASYLUM SEEKERS

36. Under Section 2, subsection 1, of the Reception of Asylum Seekers and Others Act (*lag om mottagande av asylsökande m.fl.*, 1994:137), the Migration Agency has the primary responsibility for the reception of asylum seekers. It operates accommodation centres for this purpose and may also commission others to operate accommodation centres.

37. There are primarily three types of housing for asylum seekers: accommodation provided by the Migration Agency, accommodation arranged by the individual him- or herself, and institutional accommodation. The different types of accommodation are not regulated in law other than that the Migration Agency must offer the residents occupation in the form of the opportunity to participate in Swedish language instruction, the upkeep of the accommodation centres and other activities that help make their stay meaningful, and that residents are entitled to certain financial assistance (Sections 4 to 19 of the Reception of Asylum Seekers and Others Act).

38. However, in regard to asylum seekers who are unaccompanied minors the Migration Agency shall instead assign a municipality which is responsible for the child's housing. This follows from Section 2, subsection 2, and Section 3, subsection 2, of the Reception of Asylum Seekers and Others Act.

39. When the unaccompanied minor turns 18 years old, the municipality usually decides to terminate the placement and responsibility for the person's

housing is transferred to the Migration Agency. Where possible, the Migration Agency should try to arrange a place in the assigned municipality, taking, *inter alia*, schooling and contact with health care providers into account, although moving to housing in another municipality may also be required. The Migration Agency must also examine whether the person in question has special reception needs. A housing place offered by the Migration Agency will be presented to the person in question, and they will be asked whether they accept it.

40. Moreover, in regard to unaccompanied minors, Section 2 of the Act on Special Representatives for Unaccompanied Minors (*lag om god man för ensamkommande barn*, 2005:429) provides that a special representative must be appointed as soon as possible to be responsible for the child's personal circumstances and look after the child's interests in lieu of their custodial parent or guardian, unless it is manifestly unnecessary.

41. Additionally, public counsel must be appointed for a child who has applied for a residence permit as a refugee or as a person eligible for subsidiary protection, if the child does not have a custodian in Sweden. Public counsel shall also be appointed for an adult in many cases concerning refusal-of-entry or expulsion. This follows from Chapter 18, Section 1, of the Aliens Act (*utlänningslagen*, 2005:716).

42. As to health care, pursuant to Section 5 of the Health and Medical Services for Asylum Seekers and Others Act (*lag om hälso- och sjukvård åt asylsökande m.fl.*, 2008:344), asylum seekers under the age of 18 are entitled to the same health care as any other child residing in the relevant region. Pursuant to Section 6 of the same Act, asylum seekers who are 18 years old, or older, are mainly entitled to health care which cannot be delayed.

II. COMPULSORY PSYCHIATRIC CARE

43. Pursuant to Section 3 of the Compulsory Psychiatric Care Act (*lag om psykiatrisk tvångsvård*, 1991:1128) a person can be taken into compulsory psychiatric care if he or she suffers from a serious mental disorder and, due to his or her mental state and personal circumstances, has an indispensable need for psychiatric care which cannot be met in any other way than by the patient being hospitalised in a medical institution for qualified psychiatric 24-hour care (compulsory closed psychiatric care), or needs to fulfil special conditions in order to receive necessary psychiatric care (compulsory open psychiatric care). A prerequisite for compulsory care is that the patient opposes the treatment, or that there are reasonable grounds for assuming that the treatment cannot be provided with his or her consent due to the patient's mental state. Decisions on compulsory psychiatric care are taken by a chief physician after a medical certificate has been issued by another doctor (Sections 4 to 6b and 11 of the Compulsory Psychiatric Care Act). The

decision is subsequently reviewed by the administrative courts (Sections 7 to 10, 12 and 32 of the Compulsory Psychiatric Care Act).

THE LAW

ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

44. The applicant complained that the Swedish authorities had failed to fulfil their obligation to protect his brother's life, as required by Article 2 of the Convention, by failing to take measures to prevent his brother from committing suicide. Relevant parts of Article 2 read as follows:

“1. Everyone's right to life shall be protected by law. ...”

A. Admissibility

45. The Government argued that the application should be declared inadmissible as manifestly ill-founded.

46. The applicant contested the Government's arguments.

47. The Court notes that the Government have not raised an objection in connection with the applicant's *locus standi*, but since it concerns a matter which goes to the Court's jurisdiction, the Court is not prevented from examining it of its own motion (see, *mutatis mutandis*, *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, §§ 89 and 93, 27 June 2017). The Court finds that as A.H.'s close relative, the applicant has the requisite *locus standi* to introduce the present application raising issues relating to his brother's death (see, among other authorities, *Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, §§ 111-12, ECHR 2009; *Van Colle v. the United Kingdom*, no. 7678/09, § 86, 13 November 2012; and *Tsalikidis and Others v. Greece*, no. 73974/14, § 64, 16 November 2017). The Court furthermore notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

48. The applicant submitted that A.H. had a history of mental health problems and had previously attempted to commit suicide as well as harmed himself in other ways. His suicidal thoughts and threats, as well as signs of mental distress, were well documented and known to the authorities. While the gravity of his mental condition was difficult to assess with certainty, since no in-depth professional examination had ever been made, it could reasonably

be assumed that his problems had been serious and that he had been in need of professional help to treat them.

49. The applicant argued that the Swedish authorities thus knew that there was a real risk of suicide. They also knew that the suicide risk had previously become imminent when A.H. had been obliged to leave his family home, that one of his biggest fears was returning to Afghanistan and that the negative decisions from the Migration Agency entailed not only that A.H.'s request for protection in Sweden was refused but also that he became the reason that the applicant's request was refused. Against that background, the Migration Agency knew, or at least ought to have known, that the decisions would cause A.H. distress that would render the risk for self-harm imminent.

50. The applicant further submitted that the authorities did not do all that could reasonably have been expected of them to prevent that risk from materialising. Neither the officials deciding on A.H.'s application for asylum, nor the officials delivering the decision during the personal meeting, had taken any measures to assess and prevent the risk of suicide. No lawyer had been present when A.H. had been given notice of the decision. Instead of preventing A.H. from self-harm the Migration Agency had exposed him to increased anxiety by deciding to expel him and the applicant, in flawed decisions following deficient proceedings in which A.H.'s particular vulnerability was disregarded. Moreover, the Migration Agency did not appear to have any guidelines or routines for dealing with asylum-seekers who represented a real and imminent suicide risk, or for contacts between the Migration Agency and psychological or psychiatric care institutions.

51. The applicant acknowledged that A.H. had not been under compulsory psychiatric care or in any other forced confinement. However, he emphasised that A.H. had been in a particularly vulnerable situation due to, *inter alia*, his disability, his fragile mental state, his young age and being newly arrived in a country where he did not speak the language. His personal autonomy had therefore been limited and he had not been in a position to decline the housing and care offered to him. Since leaving the family home, he had been fully dependent on the Migration Agency for his subsistence and everyday life. The State thus had far-reaching control over A.H.'s life situation and *de facto* the role as his main carer. The applicant contended that the State's positive obligations to take reasonable measures to prevent A.H. from self-harm had to be assessed against that background.

(b) The Government

52. The Government, while noting that the circumstances of the case were exceptionally tragic, disputed that there had been a violation of the State's obligations under Article 2 of the Convention.

53. The Government submitted that, following A.H.'s arrival in Sweden, due account had been taken of his situation and his need for care. He had initially, at his own request, been placed in a family home with his brother.

Subsequently, he had been offered, and accepted, institutional accommodation where he was given assistance on account of both his physical and mental state of health. General measures and precautions had thus been in place in order to reduce any opportunities for self-harm, without infringing on his personal autonomy. At the time of his suicide, he had left the institutional accommodation and been offered, and accepted, temporary accommodation in order to live closer to his brother. There he had had access to around-the-clock assistance and care, but it was not compulsory or psychiatric care. He had confirmed that he was satisfied with this solution.

54. The Government emphasised that, at the time of A.H.'s suicide, the domestic authorities thus had had limited control over him, since he had not been detained or institutionalised. This, in the Government's view, limited the obligation to take measures in order to reduce any opportunities for self-harm, especially without infringing on A.H.'s personal autonomy.

55. Furthermore, the Government submitted that there had been no indication of a real and immediate risk to A.H.'s life at the time of the decision on his asylum application. It followed from statements he had made during the asylum interviews and documents he had submitted that he had suicidal thoughts. The authorities had also been informed that he had attempted to commit suicide in early 2017. However, the gravity of his mental condition was not apparent from any of the medical certificates submitted. The authorities thus had information from which it followed that there was a real suicide risk, but not how imminent that risk was. Moreover, when A.H. had been offered temporary accommodation closer to his brother, he had not shown the kind of mental distress that would indicate that there was an immediate risk of suicide, and the negative decision had been delivered to A.H. at a personal meeting, during which there had been no indication that he had suicidal thoughts. Additionally, neither A.H. nor the applicant had expressed any concern nor taken any measures after the meeting on grounds that there was a risk of self-harm.

56. The Government submitted that although, viewed in retrospect, it would have been more appropriate to have given A.H. psychological or psychiatric care upon delivery of the decision, the negative decision did not in itself engage the State's responsibility under Article 2 of the Convention and there had been no indication of a real and immediate risk of self-harm.

2. Third party submissions

57. The AIRE Centre and the European Council on Refugees and Exiles (ECRE) submitted, among other things, that the principles outlined by the Court in its jurisprudence on Article 2 of the Convention were relevant, *mutatis mutandis*, to persons seeking asylum, including young adults and other vulnerable individuals provided with reception facilities and thus effectively in the care of the State. They invited the Court to take into consideration the need for enhanced special measures for vulnerable persons,

for example where the person concerned entered into administrative procedures as an orphan child and had only recently reached the age of majority, suffered from a serious disability, was accommodated apart from siblings, was an asylum-seeker, did not speak the language, or where there was a combination of those factors. Appropriate measures could include ensuring that such vulnerable persons were provided with the necessary psychological support when they were forced to be confronted with particularly traumatising news, including concerning the outcome of their asylum proceedings.

3. *The Court's assessment*

(a) **General principles**

58. The Court reiterates that the first sentence of Article 2, which ranks as one of the most fundamental provisions in the Convention and also enshrines one of the basic values of the democratic societies making up the Council of Europe, enjoins the State not only to refrain from the “intentional” taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports of Judgments and Decisions* 1998-III, and *Fernandes de Oliveira v. Portugal* [GC], no. 78103/14, § 104, 31 January 2019).

59. The Court further reiterates that Article 2 may imply, in certain well-defined circumstances, a positive obligation on the authorities to take preventive operational measures to protect an individual from another individual or, in particular circumstances, from himself (see *Fernandes de Oliveira*, cited above, § 108, with further references).

60. In the particular circumstances of the danger of self-harm, the Court has held that for a positive obligation to arise, it must be established that the authorities knew or ought to have known at the relevant time that the person posed a real and immediate risk of suicide. Where the Court has found that the authorities knew or ought to have known of that risk, it proceeded to analyse whether the authorities did all that could reasonably have been expected of them to prevent that risk from materialising (see, among others, *Keenan v. the United Kingdom*, no. 27229/95, § 93, ECHR 2001-III; *Hiller v. Austria*, no. 1967/14, § 49, 22 November 2016; and *Fernandes de Oliveira*, cited above, § 110). Thus, the Court assesses whether, looking at all the circumstances of a given case, the risk in question was both real and immediate (see *Fernandes de Oliveira*, cited above, § 110).

61. Bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, such an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Accordingly, not every claimed risk to life can entail for the authorities a Convention requirement to take operational

measures to prevent that risk from materialising (see, among others, *Keenan*, cited above, § 90; *Mikayil Mammadov v. Azerbaijan*, no. 4762/05, § 99, 17 December 2009; and *Fernandes de Oliveira*, cited above, § 111).

62. In order to establish whether the authorities knew or ought to have known that the life of a particular individual was subject to a real and immediate risk, triggering the duty to take appropriate preventive measures, the Court has previously had regard to a number of factors. These factors commonly include i) whether the person had a history of mental health problems; ii) the gravity of the mental condition; iii) previous attempts to commit suicide or self-harm; iv) suicidal thoughts or threats; and v) signs of physical or mental distress (see *Fernandes de Oliveira*, cited above, § 115, with further references; *Boychenko v. Russia*, no. 8663/08, § 80, 12 October 2021; and *Varyan v. Armenia*, no. 48998/14, § 93, 4 June 2024).

63. The duty to take preventive operational measures to protect life in the context of self-harm has so far mainly been examined by the Court in the context of persons detained in custody or in prison (see, for example, *Keenan*, cited above; *Trubnikov v. Russia*, no. 49790/99, 5 July 2005; *Renolde v. France*, no. 5608/05, ECHR 2008 (extracts); and *S.F. v. Switzerland*, no. 23405/16, 30 June 2020); persons carrying out military service (see, for example, *Perevedentsevy v. Russia*, no. 39583/05, 24 April 2014; *Malik Babayev v. Azerbaijan*, no. 30500/11, 1 June 2017; and *Boychenko*, cited above); or persons under voluntary or involuntary psychiatric care (see, for example, *Hiller* and *Fernandes de Oliveira*, both cited above). In these cases, the Court has emphasised that persons in custody are in a vulnerable position and that the authorities are under a duty to protect them (see, for example, *Keenan*, § 91; *Renolde*, § 83; and *S.F. v. Switzerland*, § 77, all cited above). The Court has furthermore emphasised that, as with persons in custody, persons undergoing compulsory military service are within the exclusive control of the authorities of the State, and that the authorities are under a duty to protect them (see, for example, *Perevedentsevy*, § 93; *Malik Babayev*, § 66; and *Boychenko*, § 77, all cited above). As regards mentally ill persons, the Court has considered them to be particularly vulnerable (see, for example, *Renolde*, § 84; *Hiller*, § 48; *Fernandes de Oliveira*, § 113; and *S.F. v. Switzerland*, § 78, all cited above).

64. However, the Court has not ruled out that a positive obligation to take preventive operational measures to protect an individual from self-harm may also arise in other situations (see *Mikayil Mammadov*, cited above, concerning a person who committed suicide during her eviction and, more generally, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 130, ECHR 2014, where the Court held that the positive obligations under Article 2 must be construed as applying in the context of any activity, whether public or not, in which the right to life may be at stake). The context in which a death takes place, and the degree of control that the authorities exercised over the events, is nonetheless relevant

for the Court's assessment (see *Mikayil Mammadov*, cited above, § 106 and, *mutatis mutandis*, § 119).

65. In regard to asylum seekers the Court has recognised, albeit not in the context of the State's positive obligations to protect a person from self-harm, that they are a particularly underprivileged and vulnerable population group in need of special protection (see *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 251, ECHR 2011). However, the Court has also held, in cases concerning whether an expulsion would be in breach of Article 3 of the Convention, that the fact that a person whose expulsion has been ordered has threatened to commit suicide does not require the State to refrain from enforcing the envisaged measure, provided that concrete measures are taken to prevent those threats from being realised (see *Al-Zawatia v. Sweden* (dec.), no. 50068/08, § 57, 22 June 2010, with further references).

(b) Application of the principles to the present case

66. The Court observes at the outset that some of the applicant's arguments concern alleged flaws in the Migration Agency's examination of his and A.H.'s asylum applications and the decisions to refuse them asylum (see paragraph 50 above). The Court also observes that both the Migration Agency and the Chancellor of Justice found that there had been shortcomings in the examination of the applicant's and A.H.'s asylum applications (see paragraphs 27 and 35 above).

67. Nevertheless, the Court considers that for the purposes of the present complaint under Article 2 of the Convention, the question of whether the Migration Agency's decisions were flawed is not crucial. The Court considers that, by issuing these decisions (whether they were flawed or not), the authorities could not be considered to have intentionally put A.H.'s life at risk or otherwise caused him to commit suicide (see, *mutatis mutandis*, *Mikayil Mammadov*, cited above, § 111). The Court also reiterates that the fact that a person whose deportation has been ordered has threatened to commit suicide does not require the State to refrain from enforcing the envisaged measure, provided that concrete measures are taken to prevent those threats from being realised (see paragraph 65 above, with case-law references). Moreover, the Court notes that the impugned decisions were not final as they could have been appealed against to the Migration Court.

68. Considering the above, the Court finds that the Migration Agency's decisions to refuse the applicant's and A.H.'s asylum requests and to order their deportation (irrespective of whether they were flawed) did not, in themselves, engage the State's responsibility under Article 2 of the Convention.

69. Rather, the question in the present case is whether the authorities knew or ought to have known at the relevant time that A.H. posed a real and immediate risk of suicide and, if so, whether they did all that could reasonably have been expected of them to prevent that risk from materialising.

70. In that regard, the Court initially observes that A.H. was not in custody or prison, undergoing military service or under inpatient psychiatric care at the time of his suicide. Thus, he was not under the exclusive control of the authorities of the State (compare the case-law referred to in paragraph 63 above). However, due to his circumstances as a young asylum-seeker, who was unaccompanied by adult family members, and considering his visual impairment and mental health problems, he was certainly particularly vulnerable and to a large extent dependent on the care and accommodation provided by the Swedish authorities. At the time of his suicide, he also lived in accommodation suitable for people in need of assistance, provided by the Migration Agency. Furthermore, the Migration Agency, due to their contacts with A.H., his submissions to them and the reports from his accommodation, had in-depth knowledge of his situation and state of health. Thus, the authorities had more knowledge of A.H.'s situation than may generally be the case for any person merely residing within the territory of the State and he cannot be considered to have been completely outside their supervision and/or control. Moreover, the Court reiterates that it has not ruled out that a positive obligation to take preventive operational measures to protect an individual from self-harm may arise also in situations not involving deprivation of liberty, military service or inpatient psychiatric care, though the context in which a death takes place, and the degree of control that the authorities exercised over the events, is relevant for the Court's assessment (see paragraph 64 above).

71. Turning to A.H.'s history of mental health problems and their gravity, it is undisputed that A.H. suffered from mental health problems which included self-harming behaviour and suicide attempts. Considering, in particular, the information from A.H.'s former family home, the reports from his later accommodation and the assessments made by the Migration Agency regarding his need for appropriate accommodation and support, the Court finds that A.H.'s mental health problems appear to have been rather serious. The Court observes, however, that A.H. had never been diagnosed with any psychiatric condition; nor had he ever been prescribed any medication, been hospitalised, or deemed to require compulsory psychiatric care (contrast, for example, *Keenan*; *Renolde*; *Hiller*; and *Fernandes de Oliveira*, all cited above). It does not appear from the information before the Court that this was due to any omission on the part of any medical staff, or staff at the applicant's accommodation or other public officials. In this regard, the Court notes, in particular, that A.H. was seen by a doctor and a psychologist while staying in the institutional accommodation in Vimmerby. He also had interactions with nurses and treatment staff there. There is no indication in the materials before the Court that those professionals considered A.H. to be in need of medication, hospitalisation, or compulsory psychiatric care. In this context the Court reiterates that it is not its function to call into question the assessment of a person's health by medical professionals or their decisions

on the treatment to be given (see, *mutatis mutandis*, *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, § 198, 19 December 2017, and *Pindo Mulla v. Spain* [GC], no. 15541/20, § 130, 17 September 2024).

72. As to previous attempts to commit suicide and suicidal thoughts or threats, the Court notes that A.H. attempted to commit suicide in February 2017 (see paragraph 14 above) and in July 2017 (see paragraph 20 above). Moreover, the materials before the Court support that there had also been other self-harming behaviour on his part and that he had on several occasions expressed suicidal thoughts to those around him. During his asylum interviews he also repeatedly expressed suicidal thoughts, which were, *inter alia*, related to his possible removal to Afghanistan and to his visual impairment (see paragraphs 17 and 18 above).

73. Turning to signs of physical or mental distress, the Court observes that A.H. had displayed signs of mental distress, for example during his stay at the family home, when he arrived at the Migration Agency's reception centre in February 2017 and during his stay in the institutional accommodation in Vimmerby. However, there is no indication that A.H. had exhibited signs of distress since moving to his new accommodation on 14 August 2017. He had moved there, *inter alia*, to be closer to his brother, which he had explicitly requested, and the staff at the accommodation in Vimmerby noted that he appeared pleased with the relocation. Nothing in the materials before the Court indicates that the staff at the new accommodation, where around-the-clock care and assistance was available, noted any suicidal tendencies or signs of mental distress during A.H.'s stay there, not even after he had become aware of the outcome of Migration Agency's decision concerning the applicant on 7 September 2017 (see paragraph 23 above).

74. Moreover, the Court notes that there is no indication that A.H. displayed suicidal tendencies or signs of mental distress during the meeting on 18 September 2017 at which he was given notice of the Migration Agency's decision concerning his asylum application. Though no minutes or other record from this meeting have been submitted to it, the Court finds no reason to question the Chancellor of Justice's and the Government's description of the meeting (see paragraphs 24 and 33 above). Therefore, while the Court notes with concern the Migration Agency's seeming lack of guidelines or routines for delivering negative decisions to asylum-seekers who have displayed suicidal tendencies and for contacts with psychological or psychiatric care institutions, the Court concludes that there was nothing in A.H.'s actions, statements or demeanour during that meeting which should have alerted the authorities that A.H. posed a real and immediate suicide risk. The Court, *inter alia*, notes that A.H. during the meeting was informed that the decision was subject to appeal and that he stated that he intended to appeal. Furthermore, there is no indication that A.H., the applicant or anyone else contacted the authorities to express any particular concern over A.H.'s mental state in the time between the meeting and A.H.'s suicide.

Additionally, there is no indication, nor has it been claimed by the applicant, that any staff at A.H.'s accommodation, or other public officials, were present at the time of his suicide (contrast *Mikayil Mammadov*, cited above, § 115, concerning a situation where an individual threatens to take his or her own life in plain view of State agents).

75. Considering the above, the Court finds that the authorities were aware of A.H.'s mental health problems and knew that, at times, he posed a real risk to his own life. This has also been acknowledged by the Government (see paragraph 55 above). Despite this, no in-depth examination of A.H.'s mental condition appears to have been conducted and he was never put in contact with psychiatric care services, from which he might have benefited. However, from the time that A.H. left the family home after turning 18 years old, the Migration Agency ensured that he was provided with accommodation where he was offered supervision and care which was deemed to meet his needs, both in regard to his visual impairment and his mental ill-health (see paragraphs 15, 16, 20 and 21 above). Moreover, the Court reiterates that A.H.'s condition had never been deemed to be so grave as to require medication, hospitalisation or compulsory psychiatric care (see paragraph 71 above). The Court further stresses that the very essence of the Convention is respect for human dignity and human freedom. In this regard, the authorities must discharge their duties in a manner compatible with the rights and freedoms of the individual concerned and in such a way as to diminish the opportunities for self-harm, without infringing personal autonomy (see *Fernandes de Oliveira*, cited above, § 112). A.H. was an adult and thus had to agree to the care and assistance he was offered, as well as to any treatment, unless his condition had been deemed so serious that compulsory measures were considered necessary.

76. Furthermore, the Court approaches the question of risk with a view to assessing whether it was both real and immediate and notes that the positive obligation incumbent on the State must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities (see *Fernandes de Oliveira*, cited above, § 131). Additionally, the Court's assessment is centred on what the authorities knew or ought to have known at the relevant time, namely in the days preceding A.H.'s suicide (see *Fernandes de Oliveira*, cited above, § 131, and *Tagiyeva v. Azerbaijan*, no. 72611/14, § 66, 7 July 2022) and the Court must be cautious about revisiting events with the wisdom of hindsight (see *Kurt v. Austria* [GC], no. 62903/15, § 160, 15 June 2021). In the present case, considering the lack of signs of mental distress or suicidal tendencies in the month preceding A.H.'s suicide (see paragraph 73 above) and, in particular, during the meeting with the Migration Agency and the days thereafter (see paragraph 74 above), the Court finds that, although the Migration Agency knew that the negative decision on his asylum application would be distressing for A.H., there were no signs to alert the authorities, in the days prior to A.H.'s suicide, that he

was in a disturbed state of mind, rendering a suicide attempt likely, even though he had previously voiced such thoughts. In the light of these elements, the Court concludes that it has not been established that the authorities knew or ought to have known that there was a real and immediate risk to A.H.'s life in the days preceding 20 September 2017. Accordingly, the Court does not need to proceed to examine whether the authorities had taken measures which could reasonably have been expected of them.

77. The foregoing considerations are sufficient to enable the Court to conclude that there has been no violation of Article 2 of the Convention in the circumstances of this case.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the application admissible;
2. *Holds*, by four votes to three, that there has not been a violation of Article 2 of the Convention.

Done in English, and notified in writing on 6 March 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt
Deputy Registrar

Ivana Jelić
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Jelić, Krenc and Kučs is annexed to this judgment.

JOINT DISSENTING OPINION OF JUDGES JELIĆ, KRENC AND KUČS

1. Much to our regret, we respectfully disagree with the majority's finding that there has been no violation of Article 2 of the Convention in the present case. We are unable to conclude that, in this tragic case, the authorities took all the appropriate preventive measures to fulfil their positive obligation under this provision with regard to A.H.'s specific situation.

2. At the outset, it is of paramount importance to highlight how exceptional that situation was. He was a young asylum-seeker who had entered Sweden as an orphaned minor with an important visual disability, suffering from both a physical illness, namely Retinitis Pigmentosa, and mental health problems. In fact, he ticked almost all the boxes to qualify as a vulnerable person, a factor which is relevant for determining the scope of the States' obligations under the Convention. We strongly believe that greater consideration should have been given to A.H.'s particular and multiple vulnerabilities in the present case.

3. We fully agree that not every risk to life triggers the positive obligation under Article 2 of the Convention to take appropriate measures to prevent that risk from materialising. We are also acutely aware that the Court cannot impose an impossible or disproportionate burden on the authorities. We absolutely do not intend to depart from the Court's settled case-law.

4. However, unlike the majority (see paragraph 76 of the judgment), we consider that the authorities knew or ought to have known that A.H. represented a real and serious suicide risk at the time when he was informed of the Migration Agency's decision to refuse his asylum request and order his removal to Afghanistan.

We note that A.H. had previously attempted to commit suicide in February 2017 (see paragraph 14 of the judgment) and again in July of that year (see paragraph 20 of the judgment), along with self-harming behaviour. Moreover, during his asylum interviews in April and June 2017 he had repeatedly expressed suicidal thoughts in connection with his possible removal to Afghanistan (see paragraphs 17-18 of the judgment). We would like to emphasise that these suicidal intentions were expressed consistently, including very shortly before A.H.'s suicide on 20 September 2017.

Against this background, we are particularly concerned by the fact that, during the interview concerning A.H.'s request, the Migration Agency did not ask any questions about A.H.'s disability or mental health and that the latter was not mentioned at all in the Agency's decisions (see paragraph 27 of the judgment). This leaves open the question whether the official from the Migration Agency who informed A.H. of the refusal of his asylum request was even aware of A.H.'s serious mental health problems.

However, in several meetings with agents of the Migration Agency, the applicant, his family home parent and medical professionals all stated that

A.H. was a risk to himself, that his mental state was very unstable and that the wait for the decision regarding his asylum request was making him very anxious and agitated.

When looking at all the particular circumstances prior to A.H.’s suicide, we consider that the risk of committing this act was serious and could not have been unknown to the national authorities.

5. According to the Court’s case-law, the threat of suicide by an individual requesting asylum is not reason enough for the State to refrain from enforcing an expulsion order. This is absolutely clear. However, the State must take concrete and reasonable steps to prevent that threat from materialising (see *Al-Zawatia v. Sweden* (dec.), no. 50068/08, § 57, 22 June 2010; *Dragan and Others v. Germany* (dec.), no. 33743/03, 7 October 2004; and *Karim v. Sweden* (dec.), no. 24171/05, 4 July 2006).

In the case at hand, we have concerns about two elements in particular.

First, we cannot but be struck by the fact that no psychological or psychiatric support was provided to A.H. when he was informed that his asylum application had been rejected and that his removal to Afghanistan had been ordered. Nor was he given any legal assistance. By contrast, we note that public counsel had been present during the previous interviews at the Migration Agency (see paragraphs 17 and 18 of the judgment). The authorities could not reasonably have been unaware that this negative decision might prove highly distressful for A.H. given his extremely fragile mental health. Moreover, there is no element in the case file showing that A.H. was monitored after he was given notice of this decision.

Secondly, we observe that the delivery of the Migration Agency’s decision regarding A.H.’s asylum application was not preceded by an assessment of his mental state or the risk of suicide. The majority themselves acknowledge that “no in-depth examination of A.H.’s mental condition appears to have been conducted and he was never put in contact with psychiatric care services, from which he might have benefited” (see paragraph 75 of the judgment). Without this assessment, it seems very difficult to us to conclude, as the majority have, that there was no real and immediate risk of suicide following the decision to refuse A.H.’s asylum application and order his removal to Afghanistan.

6. Even though we have to be cautious about revisiting events with the benefit of hindsight, we do not understand why the two measures mentioned above (an assessment of A.H.’s mental health, on the one hand, and the provision of psychological and legal support on the other) could not have been taken, especially considering A.H.’s exceptional vulnerability (see paragraph 2 above) and his history. In our humble view, these are not unreasonable measures and they would not have placed an unbearable burden on the authorities. These are basic precautions which authorities should be expected to take in circumstances such as those of the present case, of which

they could not have been unaware. The fact that A.H. was not under the exclusive control of the authorities is irrelevant in this regard.

What is more, these measures are not aimed at undermining personal autonomy, the importance of which is stressed by the majority (see paragraph 75 of the judgment). In this connection, we cannot lose sight of the fact that, in some circumstances, persons suffering from mental health problems may be unable to make coherent complaints.

7. Of course, we cannot be certain that these measures would have averted the risk to A.H.'s life as a result of self-harm, but they could have contributed to mitigating that risk. While the Court cannot conclude with certainty that matters would have turned out differently if the authorities had acted otherwise, it must be recalled that the test under Article 2 of the Convention does not require it to be shown that "but for" the failing or omission of the authorities the death would not have occurred. Rather, what is important, and what is sufficient to engage the responsibility of the State under that Article, is that the reasonable measures which the domestic authorities failed to take could have had a real prospect of altering the outcome or mitigating the harm (see *Boychenko v. Russia*, no. 8663/08, § 95, 12 October 2021, and *Bljakaj and Others v. Croatia*, no. 74448/12, § 124, 18 September 2014, with further references).

8. Lastly, the majority consider that "for the purposes of the present complaint under Article 2 of the Convention, the question whether the Migration Agency's decisions were flawed is not crucial" (see paragraph 67 of the judgment). With all due respect, we are not able to share this finding, which tends to minimise these shortcomings. Indeed, the Migration Agency's legal department conducted an internal review, which found that there had been shortcomings in the treatment of the asylum requests filed by the applicant and his brother, namely the superficiality of the investigation, a lack of information and deficient forward-looking assessments. The legal department further found that it had been unreasonable to consider that A.H. would provide a sufficient social network for the applicant upon the brothers' return (see paragraph 27 of the judgment). In our view, those shortcomings are also relevant for deciding this case, as they had an impact on the decision concerning A.H.'s asylum request and, consequently, his state of mind.

9. In conclusion, our position does not amount to extending the scope of the State's obligations under Article 2 of the Convention. It is based on the fact that the national authorities did not take adequate steps to assess the risk of suicide in respect of A.H. and, consequently, did not adopt measures to prevent that risk from materialising. We deeply regret that, in the present case, which concerns a particularly vulnerable young asylum-seeker whose personal and family history was deeply tragic, the level of protection afforded under Article 2 has been weakened by the majority's finding. In our opinion, the particularities of A.H.'s situation and his multiple vulnerabilities have not been sufficiently taken into account by the present judgment in assessing

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whether the Swedish authorities did all that could reasonably have been done to avoid his death.