

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

FIRST SECTION

CASE OF V.N. AND OTHERS v. SWEDEN

(Application no. 42101/23)

JUDGMENT

Art 8 • Positive obligations • Family life • Refusal to grant a residence permit and suspend the valid deportation order against the husband of a seriously-ill woman with a "short life expectancy" on the basis he posed a threat to public order and security in Sweden • Fair balance struck between competing interests • Margin of appreciation not overstepped

Prepared by the Registry. Does not bind the Court.

STRASBOURG

19 February 2026

FINAL

15/06/2026

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



In the case of V.N. and Others v. Sweden,

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

Ivana Jelić*, President*,
Erik Wennerström,
Raffaele Sabato,
Davor Derenčinović,
Alain Chablais,
Artūrs Kučs,
Anna Adamska-Gallant, *judges*,
and Liv Tigerstedt, *Deputy Section Registrar*,

Having regard to:

the application (no. 42101/23) 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 four Azerbaijani nationals, Mr V.N. ("the first applicant"), his wife ("the second applicant"), their daughter ("the third applicant") and their son ("the fourth applicant"), on 7 December 2023;

the decision to give notice of the application to the Swedish Government ("the Government");

the decision not to have the applicants' names disclosed;

the decision to indicate an interim measure to the respondent Government under Rule 39 of the Rules of Court and the fact that this interim measure has been complied with;

the parties' observations;

Having deliberated in private on 27 January 2026,

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

INTRODUCTION

1. The application concerns the refusal by the Swedish authorities to grant a residence permit to the husband of a woman who was seriously ill because the authorities considered him a threat to public order and security in Sweden. The applicants relied on Article 8 of the Convention.

THE FACTS

2. The applicants' personal details are indicated in the appended table. They were represented by Mr D. Gagula, a lawyer practising in Stockholm.

3. The Government were represented by their Agent, Mr F. Bergius, of the Ministry for Foreign Affairs.

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

5. The applicants, all Azerbaijani nationals, were living in Baku, Azerbaijan, before arriving in Sweden.

I. FIRST SET OF ASYLUM PROCEEDINGS

6. The applicants entered Sweden on 21 May 2013 and applied for asylum, submitting that the third applicant, who was seven years old at the time, needed an operation. She had a heart condition and had already had operations in Ukraine in May 2007, during which she had been fitted with a pacemaker. The family travelled to Moscow twice a year so that the pacemaker could be checked. The third applicant needed a new pacemaker, but the family claimed that they could not afford the operation.

7. On 4 October 2013 the third applicant's pacemaker was replaced in Sweden. According to a doctor's certificate, she would need regular check-ups thereafter.

8. On 5 June 2014 the Swedish Migration Agency (*Migrationsverket*) rejected the applicants' request for asylum and ordered their deportation to Azerbaijan. The Migration Agency noted that the available country of origin information (COI) indicated that there were cardiologists in Baku who could check the pacemaker and change its battery, and that batteries for that precise model were available there. It was therefore considered that the necessary care was available for the third applicant in Azerbaijan. The Migration Agency also found that the family had stronger ties to their country of origin than to Sweden, considering the relatively short time they had spent in the country, and that they had family in Azerbaijan but not in Sweden. Deportation was not considered to be contrary to the best interests of the child or Article 8 of the Convention.

9. On 14 November 2014 the decision was upheld by the Migration Court (*Migrationsdomstolen*).

10. On 1 April 2015 the Migration Court of Appeal (*Migrationsöverdomstolen*) refused leave to appeal.

11. On 21 April 2015 the applicants were registered as having absconded to avoid the enforcement of their deportation orders. Accordingly, on 25 June 2015 the Migration Agency decided to hand over such enforcement to the police, who on 16 December 2016 found it established that the first applicant had returned to Azerbaijan.

II. THE APPLICANTS' CLAIMS THAT THERE WERE IMPEDIMENTS TO THE ENFORCEMENT OF THE DEPORTATION ORDERS

12. In the meantime, the applicants had claimed that there were impediments to the enforcement of their deportation orders. The Migration Agency refused their claims on 2 November 2016.

13. Moreover, since the first applicant no longer appeared to be in Sweden, on 2 May 2018 the Migration Agency dismissed an application which his legal representative had submitted which was based on stated impediments to the enforcement of the deportation order.

14. It was considered that the other applicants, who had remained in Sweden, refused to cooperate with the enforcement of their deportation orders.

15. Being anew in Sweden, in a new application, the first applicant claimed that after returning to Azerbaijan in 2016 he had left the country again on 5 October 2017, after being arrested by the police and then released on bail. The Migration Agency rejected the application on 23 November 2018, finding that such circumstances could not be considered impediments to the enforcement of the deportation order of 1 April 2015.

III. SECOND SET OF ASYLUM PROCEEDINGS

16. Since the applicants refused to leave Sweden voluntarily and it was not possible for the authorities to deport them by force, the deportation orders became statute-barred on 1 April 2019, four years after they had been issued (see paragraph 53 below).

17. On 2 April 2019 the applicants requested asylum again. At that time the third and fourth applicants were 13 and 20 years old respectively.

18. At the beginning of 2020 the second applicant was diagnosed with cervical cancer.

19. On 17 December 2021 the Migration Agency refused to grant the second, third and fourth applicants asylum. However, they were granted temporary residence permits allowing them to live in Sweden until 17 January 2023, for the following reasons.

20. A Medical Country of Origin Information (MedCOI) report that was obtained indicated that at the time, the treatment that the second applicant needed for her metastatic cancer – namely, the drug Bevacizumab/Avastin – was not available to her in Azerbaijan. The Migration Agency did not find that the medical certificates submitted and the prevailing circumstances could justify granting her a permanent residence permit.

21. Another MedCOI report that was obtained indicated that the third applicant would be able to receive the treatment she needed in Azerbaijan. However, the Migration Agency nevertheless considered that in the specific circumstances of the case, deporting her would constitute a disproportionate interference with her right to family life under Article 8 of the Convention.

22. The Migration Agency also considered that, taking into account the specific circumstances of the case, including the fact that the fourth applicant had spent his formative years in Sweden (although illegally) and the second and third applicants were dependent on his support, deporting him would constitute a disproportionate interference with his right to family life under Article 8 of the Convention.

23. On 17 December 2021 the Migration Agency rejected the first applicant's request for asylum and a residence permit, which had been made on the basis of family ties to his wife and children. The Migration Agency

noted that there was information indicating that the first applicant was withholding his passport and had submitted falsified documents. More importantly, his own account was that while working for a security company from 2010 to around 2013, he had participated in debt collection and had, in that connection, repeatedly committed crimes including torture, bodily harm kidnapping, extortion and threats. He had thus committed and participated in serious non-political crimes in his home country. Such crimes were subject to prison sentences of up to ten years in Azerbaijan, but were apparently rarely pursued. The first applicant bore individual responsibility for the crimes committed and had not tried to avoid participating in those crimes. The Migration Agency therefore found that he could be considered a real threat to public order and security in Sweden. In addition, the first applicant had lived most of his life in Azerbaijan and had family there, as well as an Azerbaijani cultural and linguistic background. There were no circumstances suggesting that he would experience any difficulties in readapting to the conditions in his home country. For these reasons, deporting the applicant to his country of origin could not be considered a disproportionate interference with his right to respect for family and private life under Article 8 of the Convention. For the same reason, the deportation order was combined with a five-year re-entry ban.

24. The first applicant appealed to the Migration Court, which heard him on 7 May 2022. He stated that he had previously submitted incorrect information and that he himself had never participated in the crimes described, but had merely recounted what he had heard from colleagues.

25. By a judgment of 7 June 2022, the Migration Court upheld the decision to refuse the first applicant a residence permit allowing him to live in Sweden under Chapter 5, section 17a, subsection 1(3) of the Aliens Act, on the basis that he posed a threat to public order and security in Sweden (see paragraph 49 below). The Migration Court noted in particular that the Migration Agency had held four investigative interviews with the first applicant, during which he had talked about the serious crimes that he had committed in a coherent and detailed manner. He had added his own thoughts and emotional expressions. The general interest in upholding public order and security was considered to outweigh the first applicant's right to respect for his private and family life as covered by Article 8 of the Convention.

26. The first applicant lodged a request for leave to appeal to the Migration Court of Appeal, which was refused on 31 August 2022.

IV. PREVIOUS PROCEEDINGS BEFORE THE COURT

27. On 30 September 2022, relying on Article 8 of the Convention, the applicants lodged an application (no. 46241/22) with the Court and requested that the Court indicate an interim measure to the respondent Government

under Rule 39 of the Rules of Court to stay the first applicant's deportation to Azerbaijan.

28. On the same day the Court informed the applicants that the application fell outside the scope of Rule 39 and that it had therefore not been submitted to a judge for decision, and that accordingly the Court had not stayed the first applicant's deportation.

29. On 1 December 2022 the Court, sitting in a single-judge formation pursuant to Article 24 § 2 and Article 27 of the Convention, declared the application inadmissible as being manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention.

V. PROCEEDINGS GIVING RISE TO THE PRESENT APPLICATION

30. At the beginning of 2023 the second and third applicants applied to extend their residence permits. The third applicant was almost 17 years old at the time. On 5 May 2023 the Migration Agency extended their residence permits until 18 January 2025.

31. The fourth applicant also applied to extend his residence permit, and on 29 November 2023 the Migration Agency extended his residence permit until 18 January 2025. It noted in particular that the first applicant was not a guardian of the third applicant, who would be of age in April 2024. The third applicant depended on her brother (the fourth applicant) for support. He lived alone, had a job and spoke fluent Swedish.

32. In the meantime, in connection with a police check carried out on 31 October 2023, the first applicant had been detained with a view to enforcing the deportation order against him.

33. The first applicant applied to the Migration Agency, maintaining that there were impediments to enforcing the deportation order against him because he could not be separated from his wife, the second applicant, whose state of health had deteriorated as a result of her cancer. He also maintained that his daughter, the third applicant, needed his support because she had a heart condition.

34. He submitted a medical certificate relating to his wife dated 27 October 2023. Among other things, the report indicated that she would tentatively be given another round of chemotherapy, but the chances of this working were low and "the patient ha[d] a short life expectancy".

35. On 1 November 2023 the police decided to release the first applicant from custody and instead oblige him to report to a police station twice a week to prove that he had not absconded again.

36. In a decision of 1 November 2023, the Migration Agency reiterated that the first applicant had been deemed to constitute a threat to public order and security in Sweden. It found that the information submitted as regards his wife and daughter could not be considered to reveal new circumstances

sufficient to conclude that the deportation order should not be enforced under Chapter 12, section 18, subsection 1(3), of the Aliens Act.

37. On 5 December 2023 the police took the first applicant into custody again with a view to enforcing the deportation order against him.

38. The first applicant applied to the Migration Agency again, maintaining that there were impediments to enforcing the deportation order against him. He submitted that his wife's health had deteriorated and that she was dying. The family had received information indicating that she had about two months to live. His children also needed him. Enforcing the deportation order would be in violation of their right to respect for their private and family life under Article 8 of the Convention.

39. The first applicant submitted a medical certificate relating to his wife dated 6 December 2023, which indicated that the treatment was no longer effective and that "the patient ha[d] a short life expectancy".

40. On 7 December 2023 the Migration Agency found that there was no reason to deviate from its previous assessment of 1 November 2023. Taking into account the new medical certificate, it found that no new circumstances regarding the second applicant's poor state of health had emerged. Moreover, the first applicant had failed to substantiate that the third applicant would suffer serious damage if the deportation order against him were to be enforced. In addition, the third applicant had her brother to support her in Sweden. In summary, the Migration Agency found that there were no impediments to enforcing the deportation order under Chapter 12, section 18, subsection 1(3), and thus did not grant the first applicant a residence permit or suspend the enforcement of the deportation order (see paragraph 52 below).

41. On 7 December 2023, upon request by the applicants, the Court indicated an interim measure to the respondent Government under Rule 39 of the Rules of Court to stay the first applicant's deportation to Azerbaijan.

42. Consequently, on the same date the Migration Agency stayed the enforcement of the first applicant's deportation order until further notice. It appears that the first applicant was released from custody on the same day.

43. On 24 April 2024 the third applicant turned 18, and thus became an adult under Swedish legislation.

44. According to a medical certificate dated 6 March 2024, the second applicant received treatment of a palliative nature. According to a medical certificate dated 29 May 2024, she was admitted to a palliative unit at a hospital. She passed away on 16 June 2024.

45. It appears that the first, third and fourth applicants are still in Sweden.

RELEVANT LEGAL FRAMEWORK

I. THE SWEDISH ALIENS ACT

46. The basic provisions applicable to the present case, concerning the right of aliens to enter and remain in Sweden, are laid down in the Aliens Act (*utlänningslagen*, 2005:716).

47. An alien who is considered to be a refugee or otherwise in need of protection is, with certain exceptions, entitled to a residence permit in Sweden (Chapter 5, section 1 of the Act).

48. A residence permit is to be granted to a foreigner who is the spouse of a person who is residing in Sweden (Chapter 5, section 3, subsection 1(3) of the Aliens Act).

49. A residence permit may be refused if the alien poses a threat to public order and security (Chapter 5, section 17a, subsection 1). In a previous case, the Swedish Migration Court of Appeal determined that the application of Chapter 5, section 17a, subsection 1(3), of the Aliens Act required a final judgment if the relevant crime had been committed in Sweden. The same requirement did not apply if the criminal act had been committed abroad. In other judgments giving guidance, the court further stated that that section of the Act had to be applied restrictively, and that the alien in question had to pose a serious and real threat to a fundamental societal interest (see MIG 2007:10; MIG 2007:49; MIG 2008:46; MIG 2009:21; and MIG 2017:11).

50. Under certain conditions, an alien may be granted a residence permit even if a deportation or expulsion order has acquired legal force. This is the case where new circumstances have emerged which indicate that there are reasonable grounds for believing, *inter alia*, that enforcement would put the alien at risk of capital or corporal punishment, torture or other inhuman or degrading treatment or punishment, or where there are medical or other special reasons why the order should not be enforced (Chapter 12, section 18).

51. If a residence permit cannot be granted under these criteria, the Migration Agency may instead decide to re-examine the matter. Such a re-examination is to be carried out where it may be assumed, on the basis of new circumstances relied upon by the alien, that there are lasting impediments to the type of enforcement referred to in Chapter 12, sections 1 and 2, and that these circumstances could not have been referred to previously, or the alien shows that he or she has a valid excuse for not doing so. If the applicable conditions have not been met, the Migration Agency will refuse to allow a re-examination (Chapter 12, section 19).

52. Save for a few exceptions which are of no relevance to the present case, a deportation or expulsion order may be enforced only when it has acquired legal force. Thus, appeals to the courts against a decision by the

Migration Agency on an application for asylum and a residence permit in ordinary proceedings have automatic suspensive effect. If an alien cites new circumstances, within the meaning of Chapter 12, section 19, the deportation order may not be enforced until the Migration Agency has determined whether a re-examination should take place (Chapter 12, section 19 a, subsection 1). Furthermore, if the matter of re-examination has not been previously decided on and the alien appeals against the Migration Agency's decision not to allow a re-examination, the Migration Court shall determine whether a stay of execution as regards the deportation order should be issued, and the order may not be enforced until this matter has been determined (Chapter 12, section 19 a, subsection 3).

53. Under Chapter 12, section 22, of the Aliens Act, as in force at the relevant time, the validity of a deportation order which has not been issued by a general court (that is, not as a consequence of a criminal conviction) expired four years after the date on which it acquired legal force. That provision was amended as of 1 April 2025, and now the validity of a deportation order expires five years after the date the foreign national leaves the country in accordance with that decision. When a deportation order thus becomes statute-barred, the alien in question may reapply for asylum and a residence permit. A new application entails a full examination by the Migration Agency of the reasons put forward by the alien, and if the agency's decision is negative then it may be appealed against to the Migration Court and the Migration Court of Appeal, in accordance with the rules pertaining to ordinary proceedings concerning asylum and residence permits. An appeal against a negative decision by the agency has suspensive effect, and accordingly the alien may not be expelled while the proceedings are pending.

54. The Migration Agency may grant a foreign national who has been issued with a re-entry ban special permission to make a short visit to Sweden if the visit concerns particularly important matters (Chapter 8, section 25).

II. THE EUROPEAN UNION

55. Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ 2003 L 251, p. 12 (hereinafter "the Family Reunification Directive") is the main EU secondary legislation dealing with family reunification rights of third-country nationals (that is, those who are not nationals of an EU member State). The purpose of the Family Reunification Directive is to determine the conditions for the exercise of the right to family reunification by third-country nationals residing lawfully in the territory of the member States. The relevant provisions of the Family Reunification Directive read as follows:

Article 6

"1. The Member States may reject an application for entry and residence of family members on grounds of public policy, public security or public health.

2. Member States may withdraw or refuse to renew a family member's residence permit on grounds of public policy or public security or public health.

When taking the relevant decision, the Member State shall consider, besides Article 17, the severity or type of offence against public policy or public security committed by the family member, or the dangers that are emanating from such person.

3. Renewal of the residence permit may not be withheld and removal from the territory may not be ordered by the competent authority of the Member State concerned on the sole ground of illness or disability suffered after the issue of the residence permit."

Article 17

"Member States shall take due account of the nature and solidity of the person's family relationships and the duration of his residence in the Member State and of the existence of family, cultural and social ties with his/her country of origin where they reject an application, withdraw or refuse to renew a residence permit or decide to order the removal of the sponsor or members of his family."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

56. The applicants complained that the Migration Agency's decisions of 1 November and 7 December 2023 refusing to grant the first applicant a residence permit or suspend his removal in some other way violated their rights as provided for in Article 8 of the Convention, which reads as follows:

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

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

A. Preliminary issue

57. The Court notes that following the second applicant's death on 16 June 2024, her children – the third and fourth applicants – expressed their wish to pursue the application on her behalf. The Government did not comment on this issue.

58. In cases in which an applicant has died after lodging an application, the Court has taken into account the statements of the applicant's heirs or of close family members expressing their wish to pursue the proceedings before

the Court. In relation to the Court's assessment of a person's standing to maintain an application on behalf of a deceased, what is important is not whether the rights at issue are transferable to the heirs, but whether the victim made a choice to exercise his or her right of individual application under Article 34 of the Convention by activating the Convention mechanism (see *Ergezen v. Turkey*, no. 73359/10, § 29, 8 April 2014). The Court has accepted that the next-of-kin or heir may in principle pursue the application, provided that he or she has sufficient interest in the case (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 97, ECHR 2014). In this connection, the Court reiterates that human rights cases before it generally have a moral dimension, and persons near to an applicant may thus have a legitimate interest in ensuring that justice is done, even after the applicant's death (see *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, ECHR 2000-XII).

59. In view of the above, and having regard to the circumstances of the present case, the Court accepts that the second applicant's children have a legitimate interest in pursuing the application on her behalf, and it will therefore continue to deal with the case in respect of her. For convenience, it will continue to refer to her as the second applicant in the present judgment.

B. Admissibility

60. The Government reiterated that the Court, sitting in a single-judge formation, had declared the applicants' previous application concerning the same subject matter inadmissible on 1 December 2022 (see paragraph 29 above). Accordingly, the present application should be considered inadmissible, as it was substantially the same as the matter that had already been examined by the Court. In any event, the Government considered that the application was manifestly ill-founded.

61. The applicants disagreed.

62. The Court reiterates that in accordance with Article 35 § 2 (b) of the Convention, an application is to be declared inadmissible if it "is substantially the same as a matter that has already been examined by the Court ... and contains no relevant new information". Thus, in so far as the applicants' complaint in the present case is substantially the same as the matter dealt with by the Court on 1 December 2022 and contains no relevant new information, it must be declared inadmissible in accordance with Article 35 § 4.

63. The applicants' previous application was lodged with the Court on 30 September 2022; it concerned the domestic proceedings which had ended on 31 August 2022 (see paragraphs16-26 above). The applicants relied on Article 8 of the Convention and requested that the Court stay the first applicant's deportation to Azerbaijan. Their request was refused on the same day, and on 1 December 2022 the application was declared inadmissible as being manifestly ill-founded (see paragraphs 27-29 above).

64. In the present case, the applicants' complaint under Article 8 relates to the decisions taken by the Migration Agency on 1 November and 7 December 2023 refusing to grant the first applicant a residence permit or suspend the deportation order which had acquired legal force on 31 August 2022. In the Court's view, the issue of whether relevant new information was submitted in the proceedings which led to those decisions is closely connected to the merits of the applicants' complaint. The objection should therefore be joined to the merits of the complaint.

65. In some cases, the Court has held that there is no family life between parents and adult children or between adult siblings unless the persons in question can demonstrate additional elements of dependence. However, in a number of other cases, it has not insisted on additional elements of dependence with respect to young adults who are still living with their parents and have not yet started a family of their own (see, for example, *M.T. and Others v. Sweden*, no. 22105/18, § 76, 20 October 2022, and *Savran v. Denmark* [GC], no. 57467/15, § 174, 7 December 2021).

66. The Court notes that at the time of the events the fourth applicant was an adult, lived alone, had a job and spoke Swedish fluently. On 17 December 2021 he was granted a temporary residence permit allowing him to live in Sweden (see paragraph 19 above), which was extended until 18 January 2025 (see paragraph 31 above). He did not submit that there were any factors of dependency, other than normal emotional ties, between him and his father, the first applicant. In these circumstances, as regards the fourth applicant, the Court finds that the complaint is incompatible *ratione materiae* with Article 8 of the Convention within the meaning of Article 35 § 3 (a) and must be declared inadmissible in accordance with Article 35 § 4.

67. As regards the remainder of the applicants, the Court finds 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 in respect of those applicants.

C. Merits

1. The parties' submissions

68. The applicants insisted that they had submitted relevant new information since the Court had declared their previous application inadmissible on 1 December 2022. At that time, it had been expected that the care that the second applicant was receiving in Sweden would lead to a significant and lasting improvement, that she would be able to return to Azerbaijan after completing the treatment, and that the family could reunite there.

69. However, on 1 November and 7 December 2023, when the Migration Agency had refused to grant the first applicant a residence permit or suspend his deportation order in some other way, the second applicant's health had

deteriorated significantly; she had had only a few months to live and could not reunite with the first applicant in Azerbaijan or any other country. The refusal to grant the first applicant a residence permit or suspend his deportation order in some other way had thus meant that the spouses would be separated while the second applicant was dying from cancer, and that the third applicant would be left without her father's support while she witnessed her mother slowly dying.

70. The applicants also contested that the first applicant posed a danger to public order and security in Sweden.

71. In the applicants' view, the Migration Agency had therefore failed to strike a fair balance between the competing rights under Article 8 of the Convention.

72. The Government contended that the deportation order against the first applicant, which had acquired legal force on 31 August 2022, had been thoroughly examined by the Migration Agency and the Migration Court. That examination had been in the light of Article 8 of the Convention and had included an assessment of the crimes committed by the first applicant in Azerbaijan, the risk he posed to public order and security in Sweden, the time he had spent in Sweden, his family ties, and the fact that his wife had fallen ill with cancer.

73. It had to be assumed that the Court had taken all these elements into account when it had declared the applicants' previous complaints under Article 8 inadmissible on 1 December 2022.

74. In the Government's view, the applicants had not submitted any relevant new information in the present case. The second applicant's serious health condition had been known and taken into account, and that was the very reason why she had been granted a temporary residence permit on 17 December 2021.

75. Moreover, the Migration Agency had had due regard to the medical certificates dated 27 October 2023 (see paragraph 34 above) and 6 December 2023 (see paragraph 39 above), and the assessment that the second applicant had a short life expectancy. However, the Government pointed out that those medical certificates had not stated that she had only two months or a few months left to live, as alleged by the applicants. It had only become evident that she was receiving palliative care when the medical certificate dated 6 March 2024 (see paragraph 44 above) had been issued. Nevertheless, in its decisions issued in November and December 2023, the Migration Agency had also had to take into account that the applicant continued to constitute a threat to public order and security in Sweden.

76. The Government therefore submitted that the authorities had not overstepped the margin of appreciation accorded to them in immigration matters. Accordingly, refusing to grant the first applicant a residence permit, in the light of the second applicant's state of health, and finding that there

were no impediments to enforcing the deportation order against him, had not entailed a violation of the applicants' right under Article 8 of the Convention.

2. The Court's assessment

77. The Court will first examine whether the applicants' previous application to the Court (see paragraph 27-29 above) and the present application relate essentially to the same persons, the same facts and the same complaints.

78. It is clear that the present complaint relates to the same persons and the same deportation order against the first applicant, which acquired legal force on 31 August 2022.

79. The crux of the matter is therefore whether, as maintained by the applicants, the deterioration in the second applicant's health constituted relevant new information.

80. The Court observes that the second applicant was diagnosed with cancer at the beginning of 2020 (see paragraph 18 above), and that on 17 December 2021 she was granted a temporary residence permit in order to receive the care that she needed in Sweden (see paragraph 19 and 20 above).

81. These factors were therefore part of the assessment made by the Court when declaring the applicants' previous application inadmissible as being manifestly ill-founded on 1 December 2022. Moreover, in the light of the rather unpredictable nature of a serious illness like cancer, the chances of treatment being effective and the life expectancy of the patient, in the Court's view, the gradual deterioration in the second applicant's state of health did not constitute "relevant new circumstances".

82. In the present case, however, the Court is ready to accept the applicants' argument that the fact that the second applicant had "a short life expectancy", according to the medical certificates dated 27 October and 6 December 2023, could constitute relevant new information. The Court must therefore assess this argument. It thus dismissed the Government's objection that the present application is substantially the same as the previous one lodged by the applicants.

83. However, it reiterates that the scope of the case is limited to the complaint of which the Government were given notice – that is to say, whether, on the basis of the information available to the Migration Agency on 1 November and 7 December 2023, when it refused to grant the first applicant a residence permit or suspend the deportation order against him, there was a violation of the applicants' rights under Article 8 of the Convention.

84. Accordingly, and in order to ensure that the scope of the case does not extend beyond the complaints contained in the application (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018), the Court must emphasise that contrary to the applicants' claims (see paragraph 69 above), the case is not about the spouses being

physically separated at the time of the second applicant's death on 16 June 2024, or about the third applicant lacking her father's support while witnessing her mother dying. In fact, the first applicant remained in Sweden during his wife's illness and was there when she died, and he remains there still. Moreover, even if the deportation order against the first applicant had been enforced as planned in November or December 2023, there is no information indicating, among other things, whether the second applicant could have received palliative treatment in Azerbaijan, or whether the Migration Agency could have granted the first applicant special permission to make a short visit to Sweden (see paragraph 54 above).

85. The Court will therefore proceed to examine whether on 1 November and 7 December 2023 there was a positive obligation on the part of the Swedish Government to grant the first applicant a residence permit or suspend the valid deportation order of 31 August 2022 in view of the fact that the second applicant had "a short life expectancy".

86. The Court reiterates in this connection that where immigration is concerned, Article 8 cannot be considered to impose on a State a general obligation to respect a married couple's choice of country for their matrimonial residence or to authorise family reunification on its territory. The Court has on numerous occasions recognised that immigration control is a legitimate aim for the State to interfere with the right to respect for family life within the meaning of Article 8 of the Convention. The same applies with regard to positive obligations. The Court has also acknowledged that immigration control serves the general interests of the economic well-being of a country in respect of which a wide margin is usually allowed to the State (see, for example, *M.A. v. Denmark* [GC], no. 6697/18, §§ 142-43, 9 July 2021, and the cases cited therein).

87. When requesting a residence permit or the suspension of the deportation order of 31 August 2022, the first applicant referred to the state of health of his wife and daughter, who had both been granted temporary residence permits allowing them to live in Sweden.

88. The Court therefore considers that some of the circumstances which have been relied on in its case-law on the substantive requirements regarding family reunification are also of relevance in the current case (see, in particular, *M.A. v. Denmark*, cited above, §§ 134-35, and the cases cited therein).

89. In this respect, the medical certificates dated 27 October and 6 December 2023 stated that the second applicant had "a short life expectancy". While acknowledging the hardship experienced by the applicants when faced with such a medical assessment, the Court cannot but agree with the Government that the second applicant's life expectancy was not limited to two months or a few months, and that it was not until 6 March 2024 that it became clear from a new medical certificate (see paragraph 44 above) that she was receiving palliative care.

90. Furthermore, the applicants have failed to substantiate that the third applicant's well-being was at stake. She was almost adult (she turned 18 on 24 April 2024, see paragraph 43 above) and until then her health had been taken care of by the Swedish authorities (see, for example, paragraph 7 above). Moreover, as regards personal support, she had her mother and adult brother who, like her, had been granted temporary residence permits allowing them to live in Sweden. Indeed, the Swedish authorities had found that the third applicant was dependent on her brother's support and that her father was not her guardian (see paragraphs 22 and 31 above).

91. The Court also notes that first and second applicants were around 40 and 38 years old respectively when they entered Sweden in May 2013. They had strong ties to Azerbaijan and limited ties to Sweden.

92. On 1 April 2015, after they had been refused asylum and residence permits allowing them to live in Sweden (see paragraph 15 above), the applicants failed to comply with the valid deportation orders and remained illegally in Sweden. It was not until 17 December 2021, more than six years later, that the second applicant was granted a temporary residence permit on the basis of her illness, which had been diagnosed in the beginning of 2020 (see paragraph 18 above).

93. On 31 August 2022, when the first applicant was refused asylum and a residence permit again (see paragraph 26 above), he continued to disobey the deportation order against him. Furthermore, on four occasions he unsuccessfully relied on Chapter 12, section 18 of the Aliens Act, claiming that there were impediments to enforcing the deportation order. All his claims were refused, and the last two decisions in that regard gave rise to the present application. Thus, apart from a period in 2016 and 2017 when he returned to Azerbaijan (see paragraph 15 above), the first applicant has been in Sweden since 21 May 2013, despite never being granted a residence permit allowing him to live there.

94. Most importantly, the Swedish authorities found that the first applicant could be considered a threat to public order and security in Sweden. They based this finding on four investigative interviews with the first applicant, during which he had repeatedly described the serious crimes that he had committed in Azerbaijan between 2010 and 2013 in connection with debt collecting, including torture, bodily harm, kidnapping, extortion and threats (see paragraph 23-26 above). He had explained about the crimes in a coherent and detailed manner, and added his own thoughts and emotional expressions, including that he had not attempted to avoid committing those crimes. The Court is mindful that this case is not about alleged self-incrimination or about the said crimes not having been established by a court. It notes, though, that in its judgment of 7 June 2022, the Migration Court upheld the decision to refuse the first applicant a residence permit under Chapter 5, section 17a, subsection 1(3) of the Aliens Act, on the basis that he posed a threat to public order and security in Sweden (see paragraph 25

above). The general interest in upholding public order and security was considered to outweigh the first applicant's right to respect for his private and family life as covered by Article 8 of the Convention, and that judgment was already considered, when on 1 December 2022 the Court declared the applicants' previous application inadmissible as being manifestly ill-founded (see paragraph 29 above).

95. The Court also notes that there was information indicating that the first applicant was withholding his passport and had submitted falsified documents (see paragraph 23 above).

96. The Court observes in this connection that it is common ground that member States may reject an application for entry and residence of family members on grounds of public security (see, for example, Article 6 of the Family Reunification Directive, cited in paragraph 55 above).

97. Furthermore, the nature and seriousness of offences which have been committed are relevant criteria to apply when justifying the expulsion of foreigners (see *Üner v. the Netherlands,* [GC], no. 46410/99, §§ 54-60, ECHR 2006-XII, and *Maslov v. Austria* [GC], no. 1638/03, §§ 68-76, ECHR 2008, although those cases concerned the expulsion of settled migrants who had been born in the host country or had spent most of their youth there). Moreover, when assessing the length of a re-entry ban, consideration is given to whether an offence leading to an expulsion order is of such a nature that the person in question poses a serious threat to public order (see, among other authorities, *Miari v. Denmark*, no. 2852/24, § 40, 15 July 2025, and the cases cited therein).

98. In the light of the foregoing, and being aware of the scope of the case, the Court concludes that in the circumstances of the present case, the domestic authorities struck a fair balance between the interests of the applicants and those of the State in controlling immigration, and that they did not overstep the margin of appreciation afforded to them in refusing to grant the first applicant a residence permit on 1 November and 7 December 2023.

99. Lastly, as regards the decision by the Migration Agency of 7 December 2023 not to suspend the enforcement of the deportation order of 31 August 2022 under Chapter 12, section 18 of the Aliens Act, the Court observes that the purpose of granting such an interim measure is usually to preserve or restore the status quo, or otherwise provide temporary relief pending the resolution of a case on the merits (see also paragraph 52 above). Likewise, when the Court applies Rule 39 of the Rules of Court, as it did in the present case, it does so to prevent an imminent risk of irreparable harm, in the interests of the parties or the proper conduct of the proceedings, while awaiting a final decision on the merits.

100. In the present case, on 7 December 2023 the Migration Agency took a final decision on the merits and maintained its refusal to grant the first applicant a residence permit. Accordingly, and in view of its finding above in

paragraph 98, the Court finds no reason to question the Migration Agency's decision not to suspend the valid deportation order of 31 August 2022.

101. It follows that there has been no violation of Article 8 of the Convention in respect of the first, second and third applicants.

II. RULE 39 OF THE RULES OF COURT

102. The Court reiterates that, in accordance with Article 44 § 2 of the Convention, the present judgment will not become final until (a) the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if referral of the case to the Grand Chamber has not been requested; or (c) the Panel of the Grand Chamber rejects any request to refer under Article 43 of the Convention.

103. Nevertheless, having regard to the arguments submitted by the first applicant in support of staying his deportation to Azerbaijan (see paragraph 40-41 above) and the Court's conclusion in the present case, the Court considers that the indication made to the Government under Rule 39 of the Rules of Court should be lifted.

FOR THESE REASONS, THE COURT

1. *Decides*, by a majority, to join to the merits the Government's objection concerning the application being substantially the same as a previous one, and *dismisses* it;

2. *Declares*, by a majority, the application admissible in so far as it concerns the first, second and third applicants, and inadmissible regarding the fourth applicant;

3. *Holds*, by six votes to one, that there has been no violation of Article 8 of the Convention concerning the first, second and third applicants;

4. *Decides*, unanimously, to lift the interim measure indicated under Rule 39 of the Rules of Court.

Done in English, and notified in writing on 19 February 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt	Ivana Jelić
Deputy Registrar	President

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

DISSENTING OPINION OF JUDGE KUČS

1. I voted against declaring the application admissible in respect of the first, second and third applicants. In the light of the scope of the applicants' submissions, I consider that there was a basis to strike the application out of the list under Article 37 § 1 (c) of the Convention, since the Swedish Government complied with the interim measure indicated by the Court under Rule 39 of the Rules of Court and the first applicant was allowed to remain in Sweden during his wife's terminal illness (see paragraph 84 of the present judgment).

2. As to the merits of the case, I respectfully disagree with the majority opinion that the Swedish authorities balanced the different interests at stake. In my opinion, there has been a violation of the applicants' rights under Article 8 in this case.

3. I would like to take this opportunity to express my reasons for dissenting. To make it plain at the outset, my reasons are closely related to the factual assessment of the applicants' situation.

Furthermore, I would like to raise a broader issue: the extent of the assessment the Court ought to undertake, and whether it should restrict itself to a procedural review of actions taken by national authorities. In addition, the rigour and flexibility of this procedural assessment.

4. I will begin by briefly referring to the specific circumstances of this case. I fully subscribe to the case-law of the Court according to which States have the right to control their borders. The Court has emphasised that "as a matter of well-established international law and subject to their treaty obligations, the States have the right to control the entry, residence and expulsion of aliens. The Convention does not guarantee the right of an alien to enter or to reside in a particular country" (see *Muhammad and Muhammad v. Romania* [GC], no. 80982/12, § 114, 15 October 2020; *Ilias and Ahmed v. Hungary* [GC], no. 47287/15, § 125, 21 November 2019; and *De Souza Ribeiro v. France* [GC], no. 22689/07, § 77, ECHR 2012). However, this case is not about V.N.'s right to asylum or even to permanently reside in a foreign country. This case is about the four applicants' – V.N., his wife, his daughter and his son – right to reside temporarily in a country together as a family, at a time when V.N.'s wife, to whom he had been married for twenty years, had been diagnosed with a particularly aggressive form of cancer with no prospect of treatment and a short life expectancy.

5. When it comes to the assessment of a review conducted by the national authorities, the relevant criteria for the expulsion of migrants and its compatibility with Article 8 were set out in *Üner v. the Netherlands* ([GC], no. 46410/99, § 57, ECHR 2006-XII). They include, *inter alia*, the nature and seriousness of the offence committed, the length of the applicant's stay in the country from which he or she is to be expelled, the time elapsed since the

offence was committed, the applicant's conduct during that period, the applicant's family situation, such as the length of a marriage, whether there are children from the marriage and, if so, their age, the seriousness of the difficulties the spouse is likely to encounter in the country to which the applicant is to be expelled and the solidity of social, cultural and family ties with the host country and with the country of destination.

6. The fact that the offence committed by an applicant was at the more serious end of the criminal spectrum is not in and of itself determinative of a case, but just one factor which has to be weighed in the balance (see *Unuane v. the United Kingdom*, no. 80343/17, § 87, 24 November 2020).

7. I agree that where domestic courts have carefully examined the facts, applying the relevant Convention case-law, and adequately balanced the applicant's personal interests against the more general public interest in the case, it is not for the Court to substitute its own assessment of the merits for that of the competent national authorities, except where there are strong reasons for doing so (see *Savran v. Denmark* [GC], no. 57467/15, § 189, 7 December 2021).

8. In my opinion, the Swedish authorities did not sufficiently assess two essential criteria developed in the Court's case-law when denying V.N. the right of temporary stay with his family and declining to suspend the enforcement of the deportation order at a time when his wife and family were undergoing a particularly difficult period in their lives. The first criterion is the time elapsed since the offence was committed and the applicant's conduct during that period. The second, the applicant's family situation, such as the length of a marriage.

9. The Court has stated that where there is a significant lapse of time between the denial of the residence permit and the actual deportation, the developments during that period of time may be taken into account (see *T.C.E. v. Germany*, no. 58681/12, § 61, 1 March 2018). In the present case, the domestic authorities concluded that V.N. presented a threat to public order and security and the enforcement of his deportation order could not be suspended, despite a medical certificate indicating that V.N.'s wife's treatment was no longer effective and that she had a short life expectancy (see paragraphs 39-40 of the present judgment).

10. The principal basis for this finding were the serious non-political crimes including torture, bodily harm, kidnapping, extortion and threats allegedly committed by V.N. while he was working for a security company from 2010 to around 2013 in Azerbaijan. Admittedly, the allegations against V.N. were at the more serious end of the criminal spectrum. However, this is not in and of itself determinative of a case, but just one factor which must be weighed in the balance (see *Unuane*, cited above, § 87). Moreover, those allegations pertained to acts that had allegedly taken place more than ten years previously in another country (see paragraph 23 of the present judgment). The

domestic authorities did not refer to any crime of which V.N. had been found guilty during his time in Sweden since 2013.

11. The Court has rejected irrebuttable presumptions of dangerousness based solely on past offences, requiring instead an individualised assessment and recognition that a person can change over time. Therefore, the assessment of dangerousness must consider current individual circumstances, not solely past conduct (see, for instance, *Boultif v. Switzerland*, no. 54273/00, § 51, ECHR 2001-IX). The Migration Agency did also refer to the fact that V.N. was withholding his passport and had submitted falsified documents. However, these findings were apparently not the main factor in the domestic authorities' findings and cannot in my view justify *per se* the non-suspension of the deportation order in circumstances where V.N.'s wife had a short life expectancy.

12. The present judgment largely follows the Court's recent case-law towards a procedural review of national authorities' decisions in immigration cases. In certain of those cases, the Court undertook a substantial review of decisions taken by domestic authorities. In my humble view, the humanitarian circumstances of the present case required it to do so here as well.

13. The Court has often emphasised that national authorities are closer to their societies and are best placed to assess the facts and the credibility of individuals appearing before them (see *F.G. v. Sweden*, no. 43611/11, § 118, ECHR 2016). However, the fact of conducting a procedural review should not mean renunciation of the Court's supervision or freedom for the national authorities to give importance only to those criteria which correspond to their conclusions. Deference in a procedural review to domestic authorities' proportionality assessment when relevant criteria established by the Court itself have not been assessed by the national courts may erode the established standards of the Court and, ultimately, applicants' trust in it as a guarantor of European public order.

APPENDIX

List of applicants: (anonymity has been granted)

No.	Applicant's Name	Year of birth	Nationality	Place of residence
1.	V.N.	1973	Azerbaijani	Umeå
2.	T.K.	1975 Deceased 2024	Azerbaijani	Umeå
3.	A.N.	2006	Azerbaijani	Umeå
4.	R.N.	1999	Azerbaijani	Umeå