

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

SECOND SECTION

CASE OF HAUGEN v. NORWAY

(Application no. 59476/21)

JUDGMENT

Art 35 § 1 • Lack of effective remedies at the time of lodging the application, offering the applicant reasonable prospects of obtaining non-pecuniary damages for his son's death • Civil claim under general tort law for non-pecuniary damage for human rights violations not an effective remedy at the material time • No statutory domestic-law provision for granting such compensation • Absence of consistent and unambiguous domestic court practice and relevant legislative framework unclear and uncertain • Recent Supreme Court rulings which provided clarification, eliminating void in domestic law and creating precedents
Art 2 • Positive obligations • Life • Failure to safeguard the life of the applicant's son who suffered from psychiatric disorders and committed suicide in pre-trial detention in an ordinary prison unit • Applicant's son in a particularly vulnerable situation and at risk of self-harm, requiring special attention, monitoring of his situation and continuous assessment of his suicide risk • Shortcomings in the authorities' actions after the applicant's son returned to prison from hospital • Absence of an in-depth assessment of the suicide risk and limited medical attention and treatment • Lack of prison-healthcare-service involvement in the decision to transfer him into an ordinary cell without the benefit of reinforced supervision and care • Serious deficiencies in the coordination of the medical care and in the communication between the various medical authorities
Art 13 (+ Art 2) • Lack of an effective remedy for the applicant to obtain a determination of the alleged failure to protect his son's right to life and to obtain satisfaction for the damage suffered

Prepared by the Registry. Does not bind the Court.

STRASBOURG

15 October 2024

FINAL

17/03/2025

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



In the case of Haugen v. Norway,

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

Jovan Ilievski*, President*,
Arnfinn Bårdsen,
Pauliine Koskelo,
Lorraine Schembri Orland,
Frédéric Krenc,
Davor Derenčinović,
Gediminas Sagatys*, judges*,

and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 59476/21) against the Kingdom of Norway lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Norwegian national, Mr Age Nils Haugen ("the applicant"), on 1 December 2021;

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

the parties' observations;

Having deliberated in private on 17 September 2024,

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

INTRODUCTION

1. The case concerns suicide in pre-trial detention of the applicant's son, who suffered from psychiatric disorders. It raises issues under Articles 2 and 13 of the Convention.

THE FACTS

2. The applicant was born in 1948 and lives in Rykkinn. He was represented by Mr H.A. Strand, a lawyer practising in Jessheim.

3. The Government were represented by their Agent, Ms H. Busch, of the Attorney General's Office (Civil Matters), assisted by Ms G. Mostuen, an advocate at the same office.

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

I. BACKGROUND

5. The applicant's son, X, was born in 1977.

6. In 2019 X was sentenced to compulsory mental health treatment after the attempted murder in 2018 of an acquaintance and other criminal acts committed in a psychotic state of mind. X could not be held criminally liable

as unaccountable for his actions and was instead sentenced to compulsory mental health treatment under Chapter 5 of the Mental Healthcare Act. He was admitted to a secure unit at the Innlandet Hospital Trust's inpatient psychiatric department at Reinsvoll ("IHT Reinsvoll").

7. Between 2018 and 2019 X's mental health significantly improved as a result of his hospitalisation and treatment. On 11 December 2019 he was discharged from IHT Reinsvoll and transferred to Hov Nordre, a municipal residential facility with fewer security restrictions, to live in shared housing with other patients.

8. On 17 January 2020 X, under the influence of alcohol, killed a fellow patient at the residential facility. He was arrested and charged with murder under Article 275 of the Criminal Code.

9. On 18 January 2020 X was examined in police custody by a psychiatrist to assess his mental health. The psychiatrist observed that he did not appear to have any psychotic symptoms or behaviour, such as delusions or perceptual disturbances. He seemed downcast and affected by the situation, but not acutely suicidal. X had stated that he did not remember anything about the incident and that he had the impression that he had suffered a disturbance of consciousness at the relevant time. The psychiatrist therefore concluded that X should undergo a complete forensic psychiatric examination. The psychiatrist also consulted the senior psychiatrist from IHT Reinsvoll, who stated that X had been stable, adequately treated with antipsychotic injections every fourteen days and had not been in a psychotic state since autumn 2018.

II. X'S PRE-TRIAL DETENTION IN OSLO PRISON

10. On 20 January 2020 the Oslo District Court ("the District Court") ordered that X be remanded in custody until the public prosecutor or the court decided otherwise, but no later than 17 February 2020.

11. The District Court also ordered, under Articles 186 and 186a of the Code of Criminal Procedure, that X be banned from correspondence, visits and access to newspapers and broadcasting services during his pre-trial detention. The restrictions were intended to prevent him from interfering with the investigation, but were lifted on 7 February 2020. He was also placed in solitary confinement until 3 February 2020.

12. X consented to pre-trial detention, said that he did not wish to be present at the hearing and did not appeal against the decision.

13. On 20 January 2020 staff at Oslo Prison concluded that because of the suicide risk X should be placed in Unit 1, where detainees in need of special health treatment were held. In Unit 1, X was under supervision every thirty minutes and an action plan to manage his suicide risk was drawn up, which contained recommendations to include him in activities within the unit and to refer him to the prison healthcare service and the prison psychiatric polyclinic ("the FPP").

14. On 21 January 2020 the prison healthcare service conducted a preliminary assessment of X's mental health. It appears from his medical records that X informed the prison health care service's staff that he suffered from bipolar disorder and had previously been treated for psychosis. He also said that he was depressed and had had suicidal thoughts, but had no concrete plans to commit suicide. The prison healthcare service sent the report of its preliminary assessment to the FPP so that it could examine X and assess his treatment needs.

15. On 22 January 2020 a nurse from the prison healthcare service called A.R., the senior psychiatrist at IHT Reinsvoll, who did not object to the FPP being involved but stressed that the responsibility for X's healthcare formally remained with IHT Reinsvoll, since X had been sentenced to compulsory mental health treatment in that institution. Furthermore, it was uncertain when the senior psychiatrist from IHT Reinsvoll would be able to come to the Oslo Prison, as he himself could be called as a witness in the criminal proceedings against X.

16. On the same date, the nurse noted that X appeared depressed, with no facial expression and little eye contact. He had confirmed suicidal thoughts and expressed his wish to speak to the healthcare professionals at IHT Reinsvoll, whom he knew well and trusted. The nurse concluded the entry in his medical records by noting that the prison doctor and FPP would soon have to be involved if the doctors from IHT Reinsvoll were unable to come to Oslo Prison to see X.

17. On 24 January 2020 the nurse noted the following in X's medical records:

> "[X] wants Valium because he thinks a lot about what has happened. According to the guards, he sleeps a lot. The patient confirms this, but also says that he wakes up frequently. I called A.R. as agreed today. It is not clear whether they will be allowed to see the patient. A.R. will not recommend Valium for the patient on a general basis as there is a substance abuse problem, but he has not evaluated the patient himself. He suggests giving class C drugs. Trying Atarax. The patient has been informed and says he thinks it is okay to try this."

18. On 27 January 2020 X's lawyer visited him in the Oslo Prison. She was concerned about his mental state and asked that he see a doctor as soon as possible. The following day her office sent an email to the prison to follow up on that request, stating that X urgently needed to see a doctor because of his "very poor mental health".

19. On the same day X saw a doctor and a psychologist from the FPP for an emergency assessment. It appears from his medical records that they concluded that he was struggling with ambivalence and guilt, and was clearly in crisis. They were unsure whether he was depressed and considered his state of mind to probably be more of a crisis reaction than depression. X stated that he would manage to contact staff if things got worse. They considered that supervision every thirty minutes was sufficient. It further appears from the

medical records drawn up by the prison healthcare service that IHT Reinsvoll had informed it that it had patient and treatment responsibility for X.

20. On 28 January 2020 X was visited by A.R., the senior psychiatrist from IHT Reinsvoll, who noted as follows:

> "Visiting the patient in the Oslo Prison together with two [police] investigators ... who were primarily present to ensure that the conversation with the patient did not touch on topics related to the murder case. The main purpose was to administer an antipsychotic injection ... He reports ruminations that disturb his concentration and are of a self-blaming nature. He also mentions feelings of guilt and emptiness. He appears to be in a clearly downward mood, although his face can sometimes light up with a little smile during the conversation. He confirms recurring suicidal thoughts and possibly more concrete considerations about a method of suicide, without wanting to say anything further about whether he has concrete plans. There is an increased risk of suicide and the patient is clearly in a very stressful situation with the onset of depression, which should be reviewed at the next visit."

21. On 27 and 29 January 2020 the prison healthcare service and the FPP conducted a joint assessment of X's mental state and decided to admit him to hospital because of the overall suicide risk. Since several patients at IHT Reinsvoll had witnessed the murder, an alternative placement needed to be found.

22. It appears from X's medical records that on 30 January 2020 the FPP requested legal assistance to have him admitted to hospital as, after three assessments, it considered him to be in urgent need of hospitalisation. The records further stated that the FPP was also considering the possibility of contacting the County Governor for assistance. However, the FPP was informed the same day that IHT Reinsvoll would be admitting X to IHT Sanderud.

III. X'S ADMISSION TO IHT SANDERUD

23. On 30 January 2020 X was admitted to IHT Sanderud. In the FPP's referral to that hospital, it was stated that he was considered to be in a state of shock after the murder, that he had confirmed suicidal thoughts, that he had thought of a specific method to do so but did not wish to talk about it, and that he had also stated that his life was not worth living.

24. In medical records drawn up by IHT Sanderud on 31 January 2020, it was noted that X's risk of suicide was heightened, but that it was being managed within the hospital framework and through continuous supervision.

25. On 3 February 2020 it was noted that X had been diagnosed with bipolar disorder, but that his current symptoms were considered part of an adjustment disorder following the murder, rather than a deterioration of his original condition. From the hospital's observations, it could be concluded that the symptoms he was displaying were not compatible with a severe depressive condition. There were no signs of psychosis, irritability or other

affective disorders. The risk of suicide was considered to be the same as before, given X's confirmation that he had suicidal thoughts.

26. On 4 February 2020 X was transferred back to Oslo Prison from IHT Sanderud.

27. In a discharge note issued the same day, the hospital's senior psychiatrist and psychologist stated that the risk of suicide was higher than in the general population, on the basis of known risk factors and X's suicidal thoughts. However, his condition was improving, and he had expressed more future-oriented thoughts. He had also expressed a wish for further follow-up and activities while in pre-trial detention. According to his medical records, he still had suicidal thoughts but did not want to talk about them and therefore had not expressed any concrete plans to commit suicide. He had described being troubled by thoughts and inner restlessness and had requested sedatives. However, he did not appear visibly anxious or troubled. Overall, the acute risk of suicide in his current state was considered low and was being managed within the framework of follow-up counselling in pre-trial detention.

28. According to a clinical diary entry made the same day, one of IHT Sanderud's doctors considered it a protective factor for X to be placed in solitary confinement and followed up by psychiatrists at Oslo Prison. That entry was not included in the discharge note.

IV. SECOND PERIOD OF PRE-TRIAL DETENTION IN OSLO PRISON

29. When X returned to Oslo Prison on 4 February 2020, he was again placed in Unit 1, where he was under supervision every thirty minutes. None of his prison medical records indicate that either the FPP or the prison healthcare service offered him any healthcare after his return from IHT Sanderud, other than simple patient contact, which seems to have involved a nurse providing him with medication.

30. On 14 February 2020 X refused to go to the prison healthcare service to receive his antipsychotic injection. The nurse therefore contacted the senior psychiatrist at IHT Reinsvoll, who visited him in prison later that day. He administered the injection, noting that there were no signs of psychotic symptoms and that X was in the same state as he had been during his time at IHT Reinsvoll before being transferred to Hov Nordre. The senior psychiatrist also noted that X did not appear suicidal that day. X had stated that he had nothing to live for, but he did not seem to be contemplating taking his own life and, beyond the conversation, did not appear to be actively suicidal. The senior psychiatrist noted that X seemed sad about the situation in which he had found himself.

31. Later that day, X's supervision every thirty minutes was stopped, after an overall assessment by the head of department.

32. It was noted in the prison records that between 14 and 28 February 2020 X participated in activities in that he went outdoors ten times, refused to do so once and was offered activities on three further occasions.

33. On 17 February 2020 the District Court extended X's detention until a further decision was made, but no later than 16 March 2020. Prior to this decision, he had agreed to remain in pre-trial detention and to the hearing being held in his absence. X, who was represented by a lawyer, did not appeal against that decision.

34. On 25 February 2020 the senior psychiatrist from IHT Reinsvoll visited X in prison to provide him with a further antipsychotic injection. He considered that X's mental state had not changed since the previous visit and noted that he was affected by his situation, displaying a downcast demeanour and a somewhat withdrawn appearance. He also noted that X was not making use of the activities offered. The senior psychiatrist was due to return within three weeks to provide X with a further injection.

35. In prison records dated 25 February 2020 it was noted that X was no longer under supervision and could be transferred from Unit 1 if there was a need for prison cells in that unit. According to the Government, this was discussed during the weekly planning meeting in Unit 1, usually attended by both prison and medical staff, at which all detainees in Unit 1 were evaluated. No written record of that meeting was provided to the Court.

36. On 28 February 2020 X was moved from Unit 1 of Oslo Prison to Unit 6, an ordinary prison unit. It appears from the prison records that he was transferred because of a need for prison cells in Unit 1.

37. On 1 March 2020, two days after being transferred from Unit 1, X committed suicide by hanging himself using the drawstring of his hooded jumper and the clothing rod in his room. He was found by prison staff at around 9.15 a.m. in his cell, where he had been alone since 6.30 p.m. the previous evening.

V. INVESTIGATION INTO X'S DEATH

38. On 1 March 2020 the police interviewed several employees of Oslo Prison, inspected X's cell and examined his medical records. The police also requested a forensic post-mortem examination, which was conducted on 2 March 2020.

39. On 4 March 2020 the police notified the County Governor of Oslo and Viken of the suspicious death and requested to be informed if it considered that the case should be investigated further.

40. The Correctional Service for Oslo Prison conducted a review of the incident in accordance with its emergency procedures. It appears from a letter dated 5 March 2020 from Oslo Prison that the decision to discontinue X's close supervision had been taken because he was considered to be doing

better, had been spending more time outside with other detainees and there had been no indications of self-harm or a risk of suicide. In the same letter, the prison evaluated the process and found that all relevant units had been involved in X's follow-up, including the prison healthcare service, the FPP, an external hospital and prison staff. Oslo Prison further considered that the available resources had been channelled towards X and that the decision to end his supervision and transfer him from Unit 1 to an ordinary prison unit "seemed reasonable on the basis of the information provided at the time."

41. In a letter from the prison healthcare service dated 9 March 2020, it was stated that its last contact with X had been on 14 February 2020, when a consultation with the prison nurse had taken place. It appears that it had only sporadic contact with X after that date and that IHT Reinsvoll had retained responsibility for his treatment.

42. In a statement to the Oslo police dated 27 May 2020, IHT Reinsvoll said that it had been incorrect to hold that the hospital had retained treatment responsibility for X while he had been in Oslo Prison, since it had had limited opportunity to conduct interviews or assessments owing to his detention. Nevertheless, it had continued to administer antipsychotic injections and conduct short assessment interviews with X at his request. The statement also confirmed that X had been admitted to IHT Sanderud to be assessed for depression and to determine whether he was a suicide risk. Beyond that, he had been under the care of the FPP.

43. In a letter dated 11 June 2020 from Oslo Prison to the Oslo police, the prison healthcare service stated that it had not been involved in the decision to move X from Unit 1. It further stated that it was not possible to provide more specific information concerning the assessments that had formed the basis of that decision or who had participated in any such assessment. Officially, the head of department would take the decision to end a detainee's supervision in Unit 1. Planning meetings to discuss such transfers were normally also attended by the prison healthcare service and the FPP. However, there were no minutes to show exactly who had attended the meeting at which X's transfer had been decided.

VI. PROCEEDINGS INITIATED BY THE APPLICANT

44. On 17 March 2020 the applicant filed a complaint about X's suicide with the police. He also reported Oslo Prison (including the Correctional Service for Oslo Prison), IHT Sanderud, the District Court and the judges that had been involved in the case.

45. The Oslo police opened an investigation and contacted the County Governors of Innlandet and of Oslo and Viken, who were responsible for the administrative supervision of both general and specialist health services in their respective districts. The County Governor of Innlandet was responsible for the administrative supervision of the Innlandet Hospital Trust, while the

County Governor of Oslo and Viken was responsible for the supervision of the prison healthcare service in Oslo Prison.

A. Investigation by the County Governor of Oslo and Viken

46. On 28 August 2020 the County Governor of Oslo and Viken sent a letter to the Oslo police informing them that no further criminal investigation of the prison healthcare service was recommended. The investigation that had been conducted had not revealed any substantive breach of the requirement to provide X with adequate healthcare pursuant to section 67 of the Healthcare Personnel Act, which could give rise to criminal liability. Furthermore, on the basis of the overall documentation, the County Governor considered that there was no evidence that X's medical follow-up in Oslo Prison deviated significantly from accepted practice. For this reason, there were no grounds to recommend a further investigation.

47. On 4 January 2021 the Oslo police decided not to prosecute the administration of Oslo Prison, the prison healthcare service, the District Court or the judges involved in the decision to place X in pre-trial detention. The police found that none of the authorities involved had committed a grossly negligent breach of their official duty or professional misconduct and that therefore no criminal offence had been committed under Article 172 of the Criminal Code. The police also concluded that the prison healthcare service was not guilty of a substantive breach of its duty to provide proper health services pursuant to section 67 of the Healthcare Personnel Act. The applicant was informed of that decision by a letter on the same day.

48. On 12 January 2021 the applicant lodged a complaint against that decision, reiterating that his son had been sentenced to compulsory mental health treatment and that instead he had been detained in an ordinary prison and that everybody had known that he had been seriously mentally ill. He should therefore have been detained in an institution or a hospital.

49. On 5 March 2021 the Oslo regional public prosecutor's office ("the prosecutor's office") upheld the Oslo police's decision not to prosecute (see paragraph 47 above), referring to the assessment by the County Governor of Oslo and Viken of 28 August 2020 (see paragraph 46 above).

50. On 26 March 2021 the County Governor of Oslo and Viken issued a decision concluding that, contrary to section 4-1 of the Municipal Health and Care Services Act, the prison healthcare service had not provided adequate health services to X after 14 February 2020 as there had been no entries in his medical records after that date. The relevant part of that decision reads as follows:

> "Although the patient was in a treatment process managed by an external psychiatrist, it was the prison healthcare service that was closest to the patient on a daily basis and therefore had the opportunity to monitor and detect any changes in his mental health status, such as an increased risk of suicide. The fact that there is no documentation of any follow-up healthcare in prison after 14 February 2020 is considered to be a

> deviation from good practice of such a degree as to amount to a breach of professional care.
>
> The prison healthcare service has noted that the treatment providers at IHT Reinsvoll were clear about their responsibility, but that information was otherwise sparse. This may indicate that the communication and exchange of information between the specialist health services responsible and the healthcare service did not function optimally."

The County Governor's decision of 26 March 2021 could not be appealed against, but the prison healthcare service was asked to provide a statement on how it would ensure proper healthcare in the future.

51. On 31 May 2021 the applicant was informed that the prosecutor's office would not reverse the decision of 5 March 2021. The latter decision was taken after the public prosecutor had consulted the County Governor of Oslo and Viken, who confirmed his recommendation not to prosecute made in the letter of 28 August 2020 (see paragraph 46 above) despite shortcomings subsequently established as a result of his administrative supervision of the prison healthcare service's duties (see paragraph 50 above).

52. On 14 June 2021 the applicant lodged a complaint against that decision to the Director of Public Prosecutions who, in a letter dated 28 June 2021, requested more information regarding the County Governor's recommendation to the police not to conduct a further criminal investigation.

53. On 9 September 2021 the Director of Public Prosecutions dismissed the applicant's complaint. He was informed of that decision by a letter dated 23 April 2021 and appealed against it.

54. On 27 September 2021 the prosecutor's office informed the applicant that his complaint had been dismissed. The decision was final and could not be appealed against.

B. Investigation by the County Governor of Innlandet

55. On 30 September 2020 the County Governor of Innlandet concluded that the facts of the case did not disclose a violation of the Innlandet Hospital Trust's requirement to provide X with adequate health services. Moreover, the County Governor stated that it was unclear whether IHT Reinsvoll had been involved in X's treatment apart from continuing to administer his injections and conducting short conversations with him on those occasions.

56. On 23 April 2021 the Oslo police prosecutor decided not to prosecute the Innlandet Hospital Trust. The decision was based on the County Governor of Innlandet's conclusion of 30 September 2020 (see paragraph 55 above).

57. By a letter dated 28 September 2021 the Oslo Attorney General notified the applicant that his complaint regarding IHT had also been dismissed.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LEGISLATION

A. The Code of Criminal Procedure

58. The relevant provisions of the 1981 Code of Criminal Procedure (*straffeprosessloven*), as in force at the relevant time, provided as follows:

Article 186

"A person who is arrested or imprisoned has the right to unrestricted written and oral communication with his or her public defence counsel.

In addition, the court may, to the extent that the investigation of the case so requires, order that the imprisoned person shall not receive visits or send or receive letters or other correspondence, or that visits or correspondence may only take place under police control. This does not apply to correspondence with and visits from public authorities unless expressly stated in the order. Imprisoned persons under the age of 18 shall be able to receive visits or send or receive letters [to and] from their close family unless there are special circumstances. The court may also order that the prisoner shall not have access to newspapers or broadcast services or that he shall be excluded from contact with certain other prisoners (partial solitary confinement). The court may leave it to the prosecuting authority to decide which inmates the imprisoned person shall be excluded from associating with.

The decision shall state how the investigation will be compromised if the imprisoned person is not subject to a ban or control in accordance with this provision. The decision shall also state that the use of a ban or control is not a disproportionate intervention ..."

Article 186a

"The court may decide that the imprisoned person shall be excluded from the company of the other inmates (complete solitary confinement) when remand in custody has been ordered pursuant to Article 184 second paragraph, cf. Article 171, first paragraph, second sub-paragraph, and there is an obvious risk that the imprisoned person will jeopardise evidence in the case if he is not kept in solitary confinement. If the accused is under 18 years of age, solitary confinement cannot be ordered ..."

B. Legislation on the right to healthcare in Norway

59. The relevant provisions of the 2011 Municipal Health and Care Services Act (*helse- og omsorgstjenesteloven*) read as follows:

Section 4-1 – Adequacy

"Health and care services offered or provided under this Act shall be adequate. The municipality shall organise the services so that:

(a) the individual patient or user is provided with comprehensive and coordinated health and care services;

(b) the individual patient or user is given a dignified service offer;

(c) the health and care services and personnel who provide the services are able to fulfil their statutory obligations; and

(d) adequate professional expertise is ensured in the services.

..."

60. The relevant provisions of the 1999 Healthcare Personnel Act (*helsepersonelloven*), which applies to healthcare professionals and organisations that provide healthcare in Norway, provide as follows:

Section 4 – Adequacy

"Healthcare personnel shall perform their work in accordance with the requirements of professional responsibility and diligent care that can be expected based on [their] qualifications, the nature of their work and the situation in general.

Healthcare personnel shall act in accordance with their professional qualifications and shall obtain assistance or refer patients onwards where necessary and possible. If the patient's needs so require, professional practice shall be carried out in cooperation and interaction with other qualified personnel. Healthcare personnel have a duty to participate in developing individual plans when a patient or user is entitled to such a plan under section 2-5 of the Patient and User Rights Act.

When collaborating with other healthcare personnel, the doctor and dentist shall make decisions on medical and odontological issues relating to the examination and treatment of the individual patient.

The Ministry may in regulations decide that certain types of healthcare may only be provided by personnel with special qualifications."

Section 67 – Penalty

"Anyone who intentionally or through gross negligence violates the provisions of this Act or pursuant to it shall be punished by a fine or imprisonment of up to three months."

61. Section 2-2 of the 1999 Specialist Health Services Act (*spesialisthelsetjenesteloven*) reads as follows:

Section 2-2 – Duty of adequacy

"Health services offered or provided in accordance with this Act shall be adequate. The specialist healthcare service shall organise its services so that personnel who perform the services are able to comply with their statutory duties, and so that the individual patient or user is provided with a comprehensive and coordinated range of services."

C. Right to healthcare in Norwegian prisons

62. Prisoners in Norway are entitled to the same health services as the general population. The prison healthcare service is run by the municipality as a primary health service, even though it is located within the prison.

Section 4 of the Execution of Sentences Act (*straffegjennomføringsloven*) provides that the Correctional Service must ensure, through cooperation with other public agencies, that inmates receive the services to which they have a statutory right, which includes the same right to healthcare as the rest of the population. This requires collaboration at national, regional and local level with the relevant healthcare providers.

63. If there is any indication that a detainee is ill, or if he or she requests health services, prison staff must put him or her in touch with the public health service (Regulation 3-16 of the Execution of Sentences Regulations (*forskrift om straffegjennomføring*)). For a detainee to receive healthcare, a doctor or other healthcare professional may need to visit the prison (section 51 of the Execution of Sentences Act); alternatively, he or she may need to access health services outside prison as escorted leave or during a leave of absence. In exceptional cases, a detainee may be transferred to serve all or part of his or her prison sentence in a treatment or care institution (section 12 of the Execution of Sentences Act) or may be admitted to hospital if treatment of an illness is necessary and cannot be given in prison (section 13 of the Execution of Sentences Act). This applies to both somatic hospitals and institutions under the mental healthcare system.

64. On 5 November 2018 the Directorate of the Norwegian Correctional Service published national guidelines on preventing and managing self-harm, suicide attempts and suicide in prison ("the suicide prevention guidelines"), which were distributed to all prison regions with the request that all levels take the necessary steps to ensure their effective implementation. The guidelines emphasise that interaction with the prison health service is of key importance.

65. According to Oslo Prison's internal guidelines, the prison healthcare service conducts preliminary interviews with all new detainees within twenty-four hours of their arrival and assesses whether there is a need for follow-up and, if so, what kind is required. Unit 1 of Oslo Prison is a secure unit designed to hold prisoners who need supervision and close follow-up for mental or physical health issues. Its staff collaborate closely with the prison healthcare service and the FPP, whose employees attend planning and morning meetings and are contacted when necessary.

66. In 2023 the Ministry of Justice and Public Security proposed amendments to the Execution of Sentences Act and the Municipal Health and Care Services Act. The proposal followed criticism in previous years, particularly about the use of solitary confinement in prisons. It also addressed a general concern in relation to mentally ill persons as follows:

> "The Norwegian Human Rights Institution (NIM) has on various occasions pointed to mentally ill persons in prison as a particular human rights challenge for Norway. Among other things, NIM has stated that the use of security cells for mentally ill, suicidal and self-harming inmates may, under the circumstances, constitute a violation of Article 3 of the Convention. Furthermore, NIM has recommended that a general rule be established that inmates have the right to spend at least eight hours outside their cells

... During 2018 and 2019, the UN Human Rights Committee, the UN Committee against Torture (CAT) and the [Council of Europe] Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) also criticised solitary confinement and coercion in prison. These committees are tasked with monitoring whether Norway and other countries fulfil their obligations in accordance with key human rights conventions. Among the issues that have been highlighted are that ... inmates who are mentally ill are isolated and do not receive adequate healthcare ... it is difficult to transfer inmates who are seriously mentally ill to psychiatric hospitals ... it can take a long time before an inmate in a security cell is supervised by healthcare personnel ... supervision by healthcare personnel should be systematic and not depend on the assessment of need by prison staff."

D. Compensation for violations of the Convention

1. Civil liability of the authorities

67. The general provisions regarding the State's liability for damage are set out in the 1969 Compensation Act (*skadeserstatningsloven*). Section 2-1, which assumes that there has been pecuniary (economic) loss and does not provide for compensation for non-pecuniary damage, provides as follows:

Section 2-1 – Employers' liability for employees

"1. The employer is liable for injury caused intentionally or negligently during the employee's performance of work or duties for the employer, taking into account whether the requirements that the injured party can reasonably expect of the business or service have been disregarded. Liability does not include damage caused by the employee going beyond what can reasonably be expected according to the nature of the business or field of activity and the nature of the work or office.

2. In this context, employer means the public sector and any other organisation that employs someone in its service, whether or not in gainful employment.

3. Employee means any person who performs work or holds a position in the employer's service, with the exception of positions as employee representatives in another enterprise. Employees also include agents in the public sector, those serving in the Norwegian armed forces and others who are required to perform public service, as well as inmates, patients and so forth who participate in work activities in the Norwegian Correctional Service's institutions, health institutions and so forth.

4. The Patient Injury Act applies to patient injury compensation."

68. Section 3-5 concerns compensation for non-pecuniary damage and provides as follows:

Section 3-5 – Compensation (redress) for non-pecuniary damage

"Anyone who intentionally or through gross negligence:

(a) causes personal injury; or

(b) causes offence or engages in misconduct as mentioned in section 3-3 may, irrespective of whether exemplary damages are awarded pursuant to section 3-2 or standardised damages pursuant to section 3-2a, be ordered to pay the aggrieved party such a lump sum as the court finds reasonable as compensation (redress) for the pain

and suffering caused and for another offence or damage of a non-economic nature. In the event of an offence or misconduct as mentioned in Articles 299 or 302 of the Criminal Code, particular emphasis shall be placed on the nature of the act, how long the relationship has lasted, whether the act is an abuse of a relationship of kinship, care, dependency or trust, and whether the act was committed in a particularly painful or offensive manner.

If several persons have jointly caused injury, caused offence or engaged in misconduct, separate claims for redress may be made for each person responsible. In the assessment under the first sentence, particular emphasis shall be placed on the increased burden on the aggrieved party as a result of several people acting jointly.

A person who has intentionally or through gross negligence caused the death of another person may be ordered to pay the deceased's spouse, cohabitant, child or parents such compensation as mentioned in the first paragraph."

69. The relevant provisions of the 2001 Patient Injury Act (*pasientskadeloven*) read as follows:

Section 2 – Compensation for patient injury

"The patient and others who have suffered loss as a result of patient injury shall be entitled to compensation if the injury results from:

(a) negligence in the provision of health services, even if no one can be held responsible;

...

(e) circumstances that give rise to liability for the health and care service or healthcare personnel under the general rules on compensation.

Consideration shall be given to whether the requirements that the injured party can reasonably place on the organisation or service at the time of the injury have been disregarded. Insufficient resources shall not give rise to liability if the distribution of resources has been reasonable and the organisation generally maintains a reasonable standard.

Even if there is no basis for liability for damage under the first and second paragraphs, compensation may exceptionally be paid when a patient injury has occurred that is particularly large or particularly unexpected, and which cannot be regarded as the result of a risk that the patient must accept. Emphasis shall be placed on whether sufficient information has been provided in advance."

Section 4 – Other compensation rules

"The assessment of loss, participation of the injured party, etc. is governed by the ... [Compensation Act] and the general rules of tort law. However, compensation (redress) for non-pecuniary damage under section 3-5 of the Compensation Act and losses of less than 10,000 [Norwegian kroner (NOK)] are not compensated under this Act. The Ministry may issue regulations on the calculation of non-pecuniary compensation in patient injury cases that supplement or deviate from the rules in section 3-2 of the Compensation Act.

...."

2. Criminal liability of the State

70. Criminal liability for improper treatment of patients is governed by the Healthcare Personnel Act and the Specialist Health Services Act. The relevant provisions are cited in paragraphs 60 and 61 above.

3. Case-law developments

71. On 3 March 2010 the Supreme Court adopted a judgment (Rt-2010-291) concerning a claim for compensation for pecuniary damage for a violation of the Convention. It concluded that such claims could be based on section 2-1 of the Compensation Act. The relevant part of the judgment reads as follows:

> "It follows from Article 1 of Protocol No. 1 to the Convention that an interference with property rights requires a legal basis and, in accordance with Article 13, States are obliged to establish satisfactory arrangements in national law to test the rights conferred by the Convention and to redress violations of such rights. In this case, [the injured party] has obtained a judgment that the Trondheim municipality's decision to refuse a change of use is invalid. Under the provisions of section 2-1 of the Compensation Act, [the injured party] may also claim damages. This is obviously sufficient to satisfy Article 13 [of the Convention]. States are not obliged to establish systems of strict liability for violations of Convention rights."

72. In a judgment of 11 March 2022 (TOSL-2021-107095) the Oslo District Court dealt with a claim for damages brought by three individuals against the Norwegian State, *inter alia*, on the basis of an alleged violation of Article 3 of the Convention as a result of regular body searches during their imprisonment. The District Court issued a declaratory judgement concluding that such practice constituted a breach of Article 3 of the Convention and Article 93 of the Constitution. It did not award them non-pecuniary damages, as it found no legal basis in Norwegian law for doing so. At the same time, it held that the domestic law should be amended to satisfy the requirements of Article 13 of the Convention:

> "The Convention is incorporated into Norwegian law pursuant to section 2 of the Human Rights Act, and the question may therefore arise as to whether Article 13 of the Convention can be used directly as a legal basis for compensation. However, Article 13 of the Convention is not designed to be a national legal basis for compensation and does not contain any conditions for compensation ... This court also finds that the case-law on the use of Article 13 of the Convention as a direct legal basis for compensation is very unclear, both in the Convention and in the [relevant] European case-law."

73. The above judgment was appealed against. In a judgment of 24 August 2023 (LB-2023-4761), the Borgarting Court of Appeal (*lagmannsretten*) found a violation of Article 3 of the Convention and Article 93 of the Constitution. It awarded the claimants non-pecuniary damages for the violations found directly on the basis of Article 13 of the Convention.

74. In a decision of 7 November 2023 (HR-2023-2095-U), the Appeals Committee of the Supreme Court granted the State leave to appeal on the

issues of Articles 3 and 13 of the Convention and the right to seek a declaratory judgment together with a judgment on non-pecuniary damages for human rights violations. In that case, the State argued that, were the Supreme Court to find a violation of Article 3, the case would also raise the question of whether the applicants were entitled to a declaratory judgment and non-pecuniary damages on the basis of Article 13. In the State's view, the Court of Appeal had incorrectly concluded that there were grounds for non-pecuniary damages and a declaratory judgment.

75. As regards the merits, in a judgment of 22 March 2024 (HR-2024-551-S), the Supreme Court, sitting as a Grand Chamber, ruled that there had been a violation of Article 3 of the Convention and Article 93 § 2 of the Norwegian Constitution.

76. On 26 June 2024, in its judgment HR-2024-1170-A the Supreme Court awarded non-pecuniary damages to the three former inmates relying on Article 13 of the Convention. The relevant parts of that judgment read as follows:

> "(14) The case has been litigated in conjunction with case HR-2024-1169-A, in which judgement was handed down earlier today. Following the Grand Chamber judgement from the Supreme Court, the State no longer asserts that there is no basis for compensation for non-pecuniary damage. Otherwise, the case is in the same position as before the Court of Appeal.
>
> ...
>
> (26) The parties agree that A, B and C are entitled to compensation for non-pecuniary damage. However, the parties do not agree on what is the formal legal basis for the claim. The question is whether the claim for compensation is authorised 'directly' in Article 13 of the ECHR or in Norwegian non-statutory law.
>
> ...
>
> The legal basis for redress in this case
>
> (35) Following the Grand Chamber judgement in HR-2024-551-S, the State no longer claims that the breaches of the Convention in our case are of a 'minor nature'. The parties agree that A, B and C are entitled to compensation for non-pecuniary damage. However, the parties do not agree on the legal basis for the claim - Article 13 of the ECHR 'directly' or on a non-statutory basis.
>
> (36) I would like to mention that already in Rt-2013-588, the Supreme Court ruled that breaches of Articles 3 and 8 of the ECHR may entitle the victim to compensation for financial loss and non-pecuniary damage. The Supreme Court did not say anything about the legal basis for this. At the same time, it is clear that none of the established grounds for liability in Norwegian law gave entitlement to compensation in that case.
>
> (37) Article 13 of the ECHR has been incorporated into Norwegian law through section 2 of the Human Rights Act, cf. section 3. In my view, it therefore makes no difference whether the liability in this case be based 'directly' on Article 13 of the ECHR or on a non-statutory basis, since it is in both instances the obligations under Article 13 of the ECHR which represent the real justification. Based on what I have said above, it is in any event the case that it is the breach of the Convention, combined with Article 13 of the ECHR, which dictates that individuals who have had their human

rights violated are entitled to compensation for non-economic damage, cf. HR-2024-1169-A, paragraph 85....”

77. In a parallel case, by a judgment of 25 May 2023 (LH-2022-170416), the Hålogaland Court of Appeal (*lagmannsretten*) concluded that a municipality had breached its obligations under Article 8 of the Convention following the issuance of a care order, mainly because it had reduced the biological mother’s contact rights without providing sufficient justification or considering how to facilitate the strengthening of family ties over time. The Court of Appeal awarded the mother non-pecuniary damages on a non-statutory basis, finding that this was necessary to fulfil the obligations under Article 13 of the Convention. On 26 June 2024 the Supreme Court awarded non-pecuniary damages for the above breach of the Convention rights basing its award on Article 13 of the Convention (HR-2024-1169-A).

E. 2023 report by the Norwegian Parliamentary Ombud

78. Prior to the Supreme Court’s judgments 26 June 2024, the Parliamentary Ombud for Scrutiny of the Public Administration (“the Parliamentary Ombud”), under its Optional Protocol to the Convention Against Torture (OPCAT) mandate, had investigated how the Norwegian Correctional Service works to prevent suicide and suicide attempts in prisons, as well as control and supervision in the aftermath of a suicide. The investigation resulted in a report on suicide and suicide attempts in prisons (*Rapport om selvmord og selvmordsforsøk i fengsel*) published in 2023, which revealed several shortcomings. The report was based on written information from thirty-four high-security prisons, the Directorate of the Norwegian Correctional Service and the Norwegian Board of Health. It was noted that the assessment of suicide risk on admission or during a person’s time in prison was not always carried out by the prison, despite specific requirements in the applicable guidelines. Furthermore, preventive action plans were not always prepared for inmates with an elevated risk of suicide.

79. It was further noted that the Directorate’s suicide prevention guidelines (see paragraph 64 above) provided prisons with very little concrete information about evidence-based prevention measures against suicide, beyond very acute and short-term measures such as carrying out regular inspections and removing objects that might pose a danger. This was considered a significant weakness, further reflected in the prisons’ action plans for individual inmates. A large proportion of these plans were short-term logs of measures such as supervision, placement in a security cell or short conversations with officers. The plans contained few important measures such as social activation and increased contact with family or other inmates. It was also considered worrying that isolation through exclusion from the community and the use of security cells continued to be a key measure for prisons.

80. The Parliamentary Ombud considered that the deficiencies found created a clear risk that authorities would not fulfil their duty to safeguard inmates' right to life and to freedom from inhuman and degrading treatment.

81. According to the Parliamentary Ombud, measures had to be implemented to ensure a systematic, uniform and professionally sound assessment of the suicide risk of inmates, both on admission and during their time in prison. In their view, prison suicide prevention measures should be strengthened and systematised by providing facilities with the most effective and evidence-based working methods possible, and solitary confinement should not be used as a means of preventing or managing suicide risk.

F. Other domestic developments

82. The Norwegian Human Rights Institution ("NIM") sent two letters to the Ministry of Justice and Public Security addressing the issue of compensation for non-pecuniary damage for human rights violations. In its first letter, dated 29 August 2019, it pointed out the following:

> "A starting point in Norwegian tort law is that compensation for non-pecuniary damage requires a legal basis. The general right to damages probably does not provide a basis for non-pecuniary damages in all cases where it is required under Article 13 of the Convention or Article 2 of the [International Covenant on Civil and Political Rights (ICCPR)]. A main problem is that both the Convention and ICCPR imply that the State can be held liable for non-pecuniary damage without qualified fault. Basically, the State cannot limit the right to claim compensation for non-pecuniary damage for violations of the Convention by imposing conditions on fault. Under the Compensation Act, compensation for non-pecuniary damage presupposes gross negligence. [Compensation for] non-pecuniary damage also requires personal injury, death or certain criminal offences, which are not necessarily the consequence of a breach of the Convention that provides a basis for compensation for non-pecuniary damage. In addition, the employer's liability in section 2-1 of the Compensation Act only provides a basis for compensation for pecuniary damage ...
>
> With the incorporation of [Article] 13 of the Convention and [Article 2 of the ICCPR] into the Human Rights Act, compensation for non-pecuniary damage can be claimed directly on the basis of the aforementioned Convention provisions. Such claims can be brought before the courts. However, the right to an effective remedy in the Convention ... is not adapted to function as a direct basis for compensation in national law ...
>
> In Norwegian law, there are sector-limited schemes that can repair previous errors and violations by the State. How well these schemes safeguard human rights claims and offer an effective remedy varies. In areas where special arrangements do not exist, general tort law will often fall short. Claims must then be raised directly on the basis of the Convention rights and the right to an effective remedy. In many cases, it is unclear under which circumstances such a claim will lead to an effective remedy, and what kind of remedy it will provide a basis for ...
>
> Although in Norwegian law, depending on the circumstances, compensation for non-pecuniary damage can be claimed on the basis of Article 13 of the Convention and [Article 2 of the ICCPR], the legal situation appears unclear and unpredictable. This applies, among other things, to questions about when compensation for non-pecuniary damage is necessary, the relationship to other forms of redress and the amount awarded

for non-pecuniary damage. It is also the case that compensation for non-pecuniary damage in accordance with the Human Rights Act can create certain problems in integration with general tort law."

83. In its second letter, dated 14 January 2022, it stated as follows:

"There is no general provision for compensation for non-pecuniary damage in the event of violations of the Convention, the Constitution, the ICCPR or other human rights in Norwegian law. Several court decisions are based on the notion that compensation for non-pecuniary damage requires a specific legal basis. In cases where the Supreme Court has awarded non-pecuniary damages, it has in several instances required a legal basis. This may also have been influenced by the extent to which the legislature had considered the limits of the compensation scheme in the relevant areas, such that an extension would conflict with their assumptions. It is unclear what a requirement for a special basis entails where weighty legal sources advocate a right to compensation ...

Section 3-5 of the Compensation Act requires intent or gross negligence for non-pecuniary damages to be awarded. This [condition] will often not be met for violations committed by the State, for example because subjective fault cannot be demonstrated in individual cases, or because the violation consists of many minor acts that, taken together, exceed the threshold of tolerance under Article 3 of the Convention. Furthermore, compensation for non-pecuniary damage has traditionally been considered excluded except in cases where the perpetrator can be associated with the State by virtue of 'organ liability'. In practice, this [condition] has been met in very few cases.

It is clear that there is currently no legal provision that allows for compensation for non-pecuniary damage where a person has been subjected to a violation of Article 3 of the Convention outside of police custody or pre-trial detention, and where there is no evidence of intent or gross negligence."

84. In 2022 the Ministry of Justice and Public Security appointed a commission to examine the issue of compensation for human rights violations. In its mandate of 8 December 2022, it was noted as follows:

"... There is no clear legal authority for compensation for human rights violations in Norwegian law. Employers' liability under section 2-1 of the Compensation Act provides, in more detailed terms, a basis for claiming compensation for economic loss, while section 3-5 of the Compensation Act provides, under certain conditions, the right to claim compensation for damage of a non-economic nature (redress). There are also some special compensation schemes that may be relevant in the event of human rights violations, such as compensation for victims of violence and compensation under Chapter 31 of the Code of Criminal Procedure. However, questions can be raised as to whether the possibilities of claiming compensation under Norwegian law fully cover those cases where Article 13 of the Convention and [Article 2 § 3 (a) of the ICCPR] require that an opportunity to claim compensation must be available nationally.

On 1 April 2018 new rules came into force in the Swedish Torts Act, which regulate the right to claim compensation from the State or municipality for economic and non-economic loss for violations of the Convention. Regulation of the right to claim compensation for violations of the Convention also exists in Great Britain."

85. The commission produced a report entitled "Norwegian legal regulation of the right to claim compensation for human rights violations",

which was submitted to the Ministry of Justice and Public Security by Professor Mujezinovic Larsen on 1 August 2023. It contains the following statement regarding the applicability of section 3-5 of the Compensation Act to human rights violations:

> "...the provision has limited significance in human rights violations, partly because in practice it will be difficult to establish intent or gross negligence on the part of the tortfeasor, and partly because liability under section 3-5 is personal and cannot be used to hold a public entity accountable.
>
> ...
>
> In my opinion, the legal sources unequivocally indicate the need in Norwegian law for legislation to regulate the right to compensation for both pecuniary and non-pecuniary damage in cases of violations of the [Convention] and the [ICCPR]. Existing grounds for compensation are insufficient, both individually and collectively, to meet the requirements for effective remedies under Article 13 of the Convention and Article 2 § 3 of the ICCPR. Under current Norwegian law, it is uncertain whether these provisions constitute independent legal grounds for awarding compensation and how they should be applied alongside (or instead of) other grounds for compensation. Even if one were to argue that the provisions provide a sufficient legal basis, the legal uncertainty surrounding this issue and the divergent application of these provisions by Norwegian courts indicate that it is not sufficiently effective to rely solely on them."

II. RELEVANT INTERNATIONAL MATERIALS

86. The Recommendation of the Committee of Ministers to member States of the Council of Europe on the European Prison Rules (Rec (2006)2), adopted on 11 January 2006 at the 952nd meeting of the Ministers' Deputies, as revised in 2020, in so far as relevant, reads as follows:

> "12.1 Persons who are suffering from mental illness and whose state of mental health is incompatible with detention in a prison should be detained in an establishment specially designed for the purpose.
>
> 12.2 If such persons are nevertheless exceptionally held in prison, there shall be special regulations that take account of their status and needs."

87. The United Nations Standard Minimum Rules for the Treatment of Prisoners ("the Nelson Mandela Rules"), A/RES/70/175, as the global key standards for the treatment of prisoners adopted by the United Nations General Assembly on 17 December 2015, in so far as relevant, as follows:

> "Rule 109
>
> 1. Persons who are found to be not criminally responsible, or who are later diagnosed with severe mental disabilities and/or health conditions, for whom staying in prison would mean an exacerbation of their condition, shall not be detained in prisons, and arrangements shall be made to transfer them to mental health facilities as soon as possible."

88. The Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited Norway from 28 May to 5 June 2018 and published its report on that visit in January 2019.

The report included an examination of healthcare-related issues in Oslo Prison and concluded that it was often up to the police or custodial staff to assess and decide whether a prisoner should have access to a doctor. At Oslo Prison, any subsequent visit by healthcare staff rested on the decision of the prison officer in charge. The initial decision was reviewed every eight hours on weekdays and every twelve hours on weekends. In principle, a prisoner could stay in a security cell for a total of seventy-two hours without being seen by healthcare staff. Other relevant parts of the report read as follows:

> "As regards the provision of health care, several shortcomings identified during the 2011 visit regrettably persisted. In particular, it remained the case that the medical screening of newly-arrived prisoners was often limited to an interview without a proper physical examination of the person concerned, and the recording and reporting of injuries to an outside body also remained deficient.
>
> ...
>
> It is a matter of serious concern that the delegation once again observed major problems in the prisons visited in transferring severely mentally-ill prisoners to psychiatric hospitals (especially for longer-term treatment). It was not uncommon for the prisoners concerned to be returned after only a few days from an acute psychiatric ward to the prison, where they did not benefit from the care and treatment required by their state of health. In particular at Oslo Prison, several severely mentally-ill prisoners had sometimes virtually been sent back and forth between the prison and a psychiatric hospital.
>
> At the outset of the visit, the Norwegian authorities indicated that the plan which had already existed in 2011 to construct a new regional psychiatric security department in the Oslo area had not yet materialised. Although a definitive policy decision had meanwhile been taken to construct such a facility with a capacity of 32 beds, the precise location still remained to be determined.
>
> The Committee urges the Norwegian authorities to implement the above-mentioned plan as a matter of priority. Pending the construction of a new regional psychiatric security department, urgent steps should be taken jointly by the Ministry of Justice and Public Security and the relevant health authorities to ensure that prisoners suffering from a severe mental disorder are transferred to an appropriate psychiatric unit/hospital for as long as is required by their state of health."

89. On 28 June 2019 the Norwegian authorities published a response to the issues addressed in the CPT report, the relevant parts of which read as follows:

> "The Directorate of [the] Norwegian Correctional Service and the Norwegian Directorate of Health have cooperated on preparing a report on the follow-up of prisoners with mental health disorders and/or substance abuse problems and proposed further measures to strengthen the services provided to prisoners in need of mental healthcare and cross-disciplinary specialist treatment for substance abuse issues from the specialist health services. Measures were also proposed to enhance cooperation between agencies and measures within the Norwegian Correctional Service, such as increased activation of prisoners and measures for vulnerable groups in prison. The Ministry of Health and Care Services has commissioned the Centre for Research and Education in Forensic Psychiatry and Psychology (SIFER) to prepare a report on how

the healthcare service offering can be strengthened and organised. The Ministry will follow up both of these reports.

Furthermore, there are separate outpatient clinics providing mental healthcare at the largest prisons.

The available capacity in mental health treatment for prisoners will be improved over the coming years by building more new hospitals/units for individuals with serious mental health illness."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

90. Relying solely on the substantive aspect of Articles 2 and 3 of the Convention, the applicant complained that the authorities had not done what could reasonably have been expected of them to prevent his son, who had suffered from a severe psychiatric disorder, from committing suicide in detention. He also complained about his son's solitary confinement and of the inadequacy of the medical care he had received in detention.

91. As a master of the characterisation to be given in law to the facts of the case before it (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 127, 20 March 2018), and bearing in mind its previous case-law in respect of such matters (see, for example, *Mustafayev v. Azerbaijan*, no. 47095/09, § 42, 4 May 2017), the Court considers that the applicant's complaints should be examined under Article 2 of the Convention, the relevant part of which reads as follows:

"Everyone's right to life shall be protected by law ..."

A. Admissibility

1. The parties' submissions

(a) The Government

92. The Government claimed that the applicant had failed to exhaust domestic remedies in respect of his complaints, arguing that the fact that he had reported his son's death to the police and appealed against the decision not to prosecute had been insufficient.

93. In particular, they argued that the applicant should have brought a civil action before the domestic courts for compensation for non-pecuniary damage under sections 2-1 or 3-5 of the Compensation Act. They also referred to section 2 of the Patient Injury Act, which provided that the patient and others who had suffered pecuniary damage as a result of an injury were entitled to compensation if the injury had resulted from negligence in the provision of health services.

94. The Government further submitted that domestic law allowed for declaratory judgments to be sought in certain circumstances and that the

applicant could have lodged a complaint with the Parliamentary Ombud. In their view, the aggregate of the above-mentioned available remedies satisfied the requirements of Article 13 of the Convention.

95. They further submitted that the most relevant remedy in the present case seemed to be a declaratory judgment accompanied by a claim for compensation for non-pecuniary damage under section 3-5 of the Compensation Act. However, as the Government admitted at the time of lodging of their observations, it was not possible to conclude definitively whether this was the case because no domestic court had been provided with the opportunity to assess the factual and legal questions raised in the present case.

96. In their additional observations on the matter, the Government pointed out that in judgment LB-2023-4761 the Court of Appeal (see paragraph 73 above) held that non-pecuniary damages could be awarded, which must have illustrated reasonable prospects of success. The Supreme Court's judgment issued in the same case on 26 June 2024 awarded the plaintiffs non-pecuniary damage for a breach of Article 3 of the Convention (see paragraph 76 above).

(b) The applicant

97. The applicant claimed that he had had no effective domestic remedy available to him, precisely because none of the remedies suggested by the Government afforded him reasonable prospects of success at the time of lodging of his complaint with the Court.

98. He argued that the right to compensation for non-pecuniary damage for human rights violations was highly uncertain in the Norwegian legal system. In this connection, he maintained that the prevailing understanding at domestic level was that individuals were only entitled to compensation for human rights violations if liability could be established on the basis of Norwegian tort law, under which the right to compensation for non-pecuniary damage required the establishment of subjective fault.

99. The applicant further submitted that a civil remedy under section 2-1 of the Compensation Act would have been ineffective in the circumstances, as that provision related solely to compensation for pecuniary damage. Moreover, compensation for non-pecuniary damage under section 3-5 of the Compensation Act would have required him to prove intent or gross negligence on the part of the State, which was why an action under that provision could not be considered an effective remedy in the present case.

100. The applicant submitted that there was nothing to indicate that the Norwegian courts would have found that any individual involved in the instant case met the high threshold of gross negligence or intent required by the relevant provision. On the contrary, the Oslo police, the police prosecutor, the Oslo regional public prosecutor's office, the Director of Public Prosecutions and the County Governors of Oslo and Viken and Innlandet had all reviewed the case thoroughly with the specific aim of considering

wrongdoing and fault on the part of those involved and had been unable to establish gross negligence or intent on the part of any of them.

101. The applicant further pointed out that a commission had recently been appointed to examine the issue of compensation for human rights violations. Such a mandate demonstrated that the Norwegian authorities were fully aware of the problems regarding the ineffectiveness of domestic remedies for violations of Articles 2 and 3 of the Convention.

102. Furthermore, referring to cases TOSL-2021-197095 and LB-2023-4761 (see paragraphs 72 and 73 above), the applicant argued that, at domestic level, the State generally contested claims for compensation for non-pecuniary damage for human rights violations brought before the domestic courts. He submitted that, in those cases before the domestic courts, the State had argued that victims of human rights violations were not entitled to compensation in respect of either pecuniary or non-pecuniary damage. Even in cases where the judges had agreed that victims should be entitled to compensation, it had been found that the Norwegian system did not allow for such an award. The applicant further emphasised that the fact that the State had been granted leave to appeal to the Supreme Court in the above case alone showed that the Norwegian legal system lacked an established and consistent practice in this area. Moreover, the State had argued in their appeal in that case that Article 13 of the Convention did not constitute a legal basis for compensation under Norwegian law.

103. In the applicant's view, the subsequent findings of the Supreme Court in the two judgments rendered on 26 June 2024 (see paragraphs 75 and 77 above) did not alter the fact that at the time that he had lodged his complaint with the Court the existence of any effective remedy under Norwegian law had been highly uncertain.

2. The Court's assessment

(a) General principles

104. The Court reiterates that the purpose of Article 35 of the Convention is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Convention institutions. Consequently, States are dispensed from answering for their acts before an international body before they have had an opportunity to put matters right through their own legal system (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 70, 25 March 2014).

105. The obligation to exhaust domestic remedies requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see *Vučković and*

Others, cited above, § 71; *Akdivar and Others v. Turkey*, 16 September 1996, § 66, ECHR 1996-IV; and *Selmouni v. France* [GC], no. 25803/94, §§ 74 and 75, ECHR 1999-V).

106. Furthermore, the Court reiterates that the assessment of whether domestic remedies have been exhausted is normally carried out with reference to the date on which the application was lodged with the Court. However, this rule is subject to exceptions, which may be justified by the particular circumstances of each case, notably following the creation of new remedies (see, among other authorities, *Demopoulos and Others v. Turkey* (dec.) [GC], nos. 46113/99 and 7 others, § 87, ECHR 2010, *İçyer v. Turkey* (dec.), no. 18888/02, §§ 72 and 86, ECHR 2006-I, and *Ancient Baltic religious association "Romuva" v. Lithuania*, no. 48329/19, § 94, 8 June 2021).

107. As regards the burden of proof, it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time. Once this burden has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from this requirement (see *Vučković and Others*, cited above, § 77, and *McFarlane v. Ireland* [GC], no. 31333/06, § 107, 10 September 2010). However, the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust that avenue of redress (see *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 70, 17 September 2009; *Aleksić v. Serbia* (dec.), no. 40825/15, § 62, 8 November 2022; and *Rutar and Rutar Marketing d.o.o. v. Slovenia*, no. 21164/20, § 37, 15 December 2022).

108. In respect of a substantive complaint of failure of the State to take adequate positive measures to protect a person's life in violation of Article 2 of the Convention, the Court has held that where there has been no intentional taking of life, an award of damages through civil or administrative proceedings may offer appropriate redress" (see *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 131, 14 April 2015, and *Molga v. Poland* (dec.), no. 78388/12, § 72, 17 January 2017).

(b) Application of the general principles to the present case

109. The Court notes that the applicant's complaint in the present case concerns the State's alleged responsibility for his son's suicide in detention. Having unsuccessfully sought to have criminal proceedings instituted against those he considered responsible for his son's death, it remains to be determined whether the applicant should have also brought a civil action for compensation for non-pecuniary damage before the domestic courts and

whether the various avenues of redress suggested by the Government would have had reasonable prospects of success in obtaining such damages.

110. Turning to the remedies put forward by the Government, in so far as they relied on section 2-1 of the Compensation Act, the Court observes that this provision relates solely to pecuniary damage and cannot therefore be considered an adequate remedy in the circumstances. It further notes that section 4 of the Patient Injury Act expressly excludes from the ambit of that Act any claims for compensation for non-pecuniary damage under section 3-5 of the Compensation Act, which is why that remedy would also not have provided the applicant with an appropriate avenue of redress for his Convention grievances. Nor could a complaint to the Parliamentary Ombud, which, as the Government admitted, cannot issue binding decisions, alone or in combination with any of the above remedies, be considered an effective remedy in the circumstances (compare *Silver and Others v. the United Kingdom*, no. 7136/75, §§ 114-15, 24 October 1983; *Leander v. Sweden*, no. 9248/81, § 82, 26 March 1987; and *Segerstedt-Wiberg and Others v. Sweden*, no. 62332/00, § 118, 6 June 2006).

111. As regards the remedy which the Government considered most likely to have afforded the applicant adequate redress, namely a declaratory judgment coupled with a claim for non-pecuniary damage, the Court notes as follows. It is undisputed between the parties that Norwegian law does not contain a specific provision on the liability of the State for damage as a consequence of a violation of the Convention. Therefore, in order for the applicant to obtain compensation for non-pecuniary damage in civil proceedings, he would have had to rely on the general provisions of Norwegian tort law, more specifically section 3-5 of the Compensation Act.

112. The Court further notes that the provision in question requires intent or gross negligence for non-pecuniary damages to be awarded in a particular case (see paragraph 68 above). However, in the present case, the domestic authorities had already rejected the applicant's criminal complaints, finding that no responsibility or fault on the part of the authorities could be established. In rejecting the applicant's complaint, the Oslo police explicitly stated that there had been no grossly negligent breach of official duty or professional misconduct on the part of Oslo Prison, the prison healthcare service, the District Court or the judges involved in the decision to place X in pre-trial detention (see paragraph 47 above).

113. Quite apart from the issue of setting such a high standard of liability as a prerequisite to obtaining non-pecuniary damages under domestic law (compare *Branko Tomašić and Others v. Croatia*, no. 46598/06, §§ 41-42, 15 January 2009, and, *mutatis mutandis*, *Ananyev and Others*, nos. 42525/07 and 60800/08, § 229, 10 January 2012), in a situation where the wording of national law on the face of it does not appear to offer any prospects of success for the remedy relied on, it would have been expected of the Government, which have the burden of proving that an effective domestic remedy existed

in the circumstances (see paragraph 107 above), to support their claim by providing appropriate examples of domestic case-law (compare *Vereinigung demokratischer Soldaten Österreichs and Gubi v. Austria*, 19 December 1994, § 53, Series A no. 302, and *Djavit An v. Turkey*, no. 20652/92, § 73, ECHR 2003-III). However, they submitted no such supporting case-law.

114. Consequently, there appears to be no consistent and unambiguous court practice in Norway to support the Government's assertion about the effectiveness of a civil claim under section 3-5 of the Compensation Act under Norwegian law (contrast *Eskilsson v. Sweden* (dec.), no. 14628/08, 24 January 2012, and *Ruminski v. Sweden* (dec.), no. 10404/10, § 37, 21 May 2013, where the Court established that the case-law of the Swedish Supreme Court, in combination with the practice of the Chancellor of Justice, had established an accessible and effective remedy in national law).

115. The Court further notes that a number of domestic sources indicated that the legislative framework in Norway for awarding non-pecuniary damages to victims of breaches of the Convention was at the material time unclear and uncertain (see paragraphs 72, 82 and 83 above). And, moreover, there was at the material time no judgment of the Supreme Court clarifying whether, or to what extent, compensation could be sought on a non-statutory basis, or 'directly' relying on Article 13 of the Convention.

116. The Court is well aware that the Norwegian Supreme Court very recently clarified the issue, awarding in two cases non-pecuniary damage for violations of the Convention with reference to its Article 13 (see paragraphs 75 and 77 above). In doing so, the Supreme Court confirmed that there had been no statutory provision under Norwegian law granting such compensation (ibid.). It further made clear, with reference to the Human Rights Act, that to the extent that there was a duty under the Convention to award non-pecuniary damage to the victims of a violation of their Convention rights, their claim should be accommodated by Norwegian law, without any further legislation in principle being needed. The Court notes this important step taken by the Supreme Court, as one that – due to the Supreme Court's role as a court of precedents – appears to eliminate in practice the aforementioned void in Norwegian law.

117. However, in the Court's view the outcome of those cases decided by the Supreme Court in June 2024 is not directly decisive for the issue of exhaustion of domestic remedies in the present case for the following reasons. Firstly, the Government did not suggest that the applicant had failed to lodge a claim based on Article 13 of the Convention before the domestic courts. Secondly, it appears that in the above leading cases the State argued that Article 13 of the Convention could not serve as a basis for an award of non-pecuniary damages, under Norwegian law (see paragraphs 74 and 76 above). Thirdly, and most importantly, the Court normally examines whether effective domestic remedies have been exhausted with reference to the date on which the application was lodged (see paragraph 106 above). Unlike in

some other cases where the Court has exceptionally departed from that rule (see the cases cited in paragraph 106 above), in the present case it discerns no specific factors justifying such an exception (compare *Reynolds v. the United Kingdom*, no. 2694/08, § 45, 13 March 2012, and *Sıdıka İmren v. Turkey*, no. 47384/11, § 50, 13 September 2016).

118. In the light of the above considerations, it cannot be said that the Government have shown that at the time of lodging of his application with the Court any of the other remedies which they suggested, alone or in combination (see paragraph 110 above) would have offered the applicant reasonable prospects of obtaining non-pecuniary damages for the death of his son. It follows that the Government's objection concerning non-exhaustion of domestic remedies must be dismissed.

119. The Court notes that this complaint 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' observations

(a) The applicant

120. The applicant maintained that his son's mental state had been such that he should not have been placed in pre-trial detention. In his view, the authorities had known or ought to have known that there had been a real and immediate risk that X would take his own life. His son, who had endured thirteen days of solitary confinement before being admitted to hospital, should have been admitted earlier or at least given appropriate treatment in Oslo Prison for his suicide risk and adjustment disorder.

121. The applicant submitted that IHT Reinsvoll had not allowed the FPP to treat X because it had claimed both patient and treatment responsibility. At the same time, IHT Reinsvoll had initially not even been allowed to talk to X about what had happened because of the involvement of its staff as possible witnesses in the murder case against X.

122. The applicant further pointed out that, under the national suicide prevention guidelines, there was a heightened risk of suicide after a patient had been discharged from hospital. When X had been discharged from IHT Sanderud, that hospital had been under the assumption that he would receive adequate medical care in Oslo Prison. There were, however, no medical records of any suicide assessment and he had not received any health services from the prison healthcare service or the FPP after his return from hospital. The applicant further pointed out that those national suicide prevention guidelines also obliged the authorities to take measures to secure the patient's physical surroundings specifically mentioning the covering or removal of any structure from which a patient could hang himself, as the most common form

of suicide at institutions. This would have been a simple highly effective measure which would not have imposed and excessive burden on the authorities. Yet, X hanged himself on the clothing rod in his cell with the drawstring from his hooded jumper.

123. Moreover, on his return from hospital, X had first been detained in Unit 1, which had been secured against suicide attempts. However, there were no records that he had received proper treatment for his adjustment disorder or suicidal thoughts. Even though he had expressed the wish to continue with therapy, the records only showed that he had received two visits from medical professionals from IHT Reinsvoll after his return to Oslo Prison, for the purpose of administering medication to him. The mere fact that he had been seen by a doctor and prescribed medication had not been sufficient or adequate treatment for his suicide risk or adjustment disorder (see *Rooman v. Belgium* [GC], no. 18052/11, 31 January 2019). All the records indicated that he had been struggling with guilt and obsessive thoughts and that therapy could have been helpful for him. X had gone from a situation where he had probably been in daily therapy to being almost entirely without any form of counselling for weeks, which was unacceptable for a person in his state of mind.

124. The applicant further submitted that there were no records showing that any healthcare personnel had been involved in the decision to move X from Unit 1 to an ordinary prison unit. What is more, the prison healthcare service had explicitly stated that it had not been involved in that decision. The applicant argued that his son's suicide risk, although heightened, could have been mitigated within the framework of continued therapy and pre-emptive measures in Oslo Prison such as securing his physical surroundings.

125. Lastly, it appeared from the relevant records that everyone had believed that IHT Reinsvoll had been treating X. However, IHT Reinsvoll had not received the discharge note from IHT Sanderud and must therefore have believed that X had been receiving follow-up treatment from the prison healthcare service. On the other hand, the prison healthcare service and the FPP had wanted to provide X with the healthcare to which he had been entitled, but had been prevented from doing so by IHT Reinsvoll, which had later claimed that it had not assumed continued responsibility for X's treatment.

(b) The Government

126. The Government submitted that neither the District Court's decision to place X in pre-trial detention nor his treatment in prison, including the restrictions placed on him as regards media, correspondence and visits, had violated his Convention rights.

127. They argued that X had not suffered from such mental disorders or psychosis, which would have meant that he could not be held in ordinary detention. He had been diagnosed with bipolar disorder, but his illness had

not been in an active phase since 2018. He had been provided with adequate medical care and treatment, which had included a period of hospitalisation while he had been suicidal. After he had returned from hospital on 4 February 2020, there had been strong indications that his mental health had improved, and the healthcare staff involved had considered that he was no longer acutely suicidal.

128. The Government further submitted that the authorities had been aware that detainees with mental disorders were more vulnerable than ordinary detainees, and that X had been treated accordingly. For that reason, until 28 February 2020 X had been detained in Unit 1 of Oslo Prison, which offered a structure that made it difficult for detainees to harm themselves. Following an improvement in X's condition, on 14 February 2020, at a meeting between prison staff and healthcare personnel from the FPP and the prison healthcare service, it had been considered that he no longer needed supervision every thirty minutes. Consequently, on 25 February 2020 it had been decided that his condition no longer required him to stay in Unit 1. There were no indications that these assessments had been unreasonable on the basis of the information available at the time or that they had not been based on good medical judgment.

129. The Government maintained that the authorities involved had done everything that could reasonably have been expected of them in the circumstances and submitted that no unbearable or excessive burden could be imposed on them in this regard. The fact that that the authorities involved could not agree who had treatment responsibility in the aftermath of X's suicide did not mean that he had not received the treatment and follow-up to which he had been entitled. In fact, the authorities had a shared responsibility: IHT Reinsvoll was responsible for compulsory mental health treatment pursuant to Chapter 5 of the Mental Healthcare Act, including responsibility for the provision, follow-up and assessment of antipsychotic medication, the FPP was responsible for immediate healthcare, provided that it received a note of concern or a referral, while the prison healthcare service had the overall responsibility of providing general health services to all prisoners, which had included X. The Government reiterated that X could have contacted the prison healthcare service at any time had he wanted to do so.

130. As regards the County Governor's decision of 26 March 2020, in which it was found that X's follow-up had been limited after 14 February 2020, the Government submitted that that decision had been based on incomplete information, since X had been visited by the senior psychiatrist from IHT Reinsvoll on 25 February 2020. Although that visit had been short and aimed primarily at administering the necessary medication, this had to be assessed in the light of the fact that the senior psychiatrist had known X well and had already established a good treatment relationship with him. In any event, the Government stressed that the threshold for the domestic

requirement to provide adequate health services was not necessarily the same as that under Articles 2 and 3 of the Convention.

131. In conclusion, the Government maintained that the personnel involved had not known, and could not have known, that there had been a real and immediate risk that X would commit suicide, and that they had not failed to take measures which – from a reasonable point of view – would have mitigated the risk of his committing suicide. X's treatment had been based on thorough assessments, *inter alia*, by trained medical staff, who had kept clinical diaries.

2. The Court's assessment

(a) General principles

132. 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, requires 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 *Fernandes de Oliveira v. Portugal* [GC], no. 78103/14, § 104, 31 January 2019, and *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 134, 25 June 2019).

133. According to the Court's well-established case law, Article 2 of the Convention may, in certain well-defined circumstances, impose a positive obligation on the authorities to take preventive operational measures to protect an individual from others or, in certain specific circumstances, from themselves (see *Nicolae Virgiliu Tănase,* cited above, § 136; *Renolde v. France*, no. 5608/05, § 80, ECHR 2008 (extracts); and *S.F. v. Switzerland*, no. 23405/16, § 73, 30 June 2020).

134. Not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. The Court must examine whether the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual and, if so, whether they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (see *Fernandes de Oliveira*, cited above, § 110, and *De Donder and De Clippel v. Belgium*, no. 8595/06, § 69, 6 December 2011). The Court has also held that the assessment of the nature and level of risk constitutes an integral part of the duty to take preventive operational measures where the presence of a risk so requires. Thus, an examination of the State's compliance with this duty under Article 2 must comprise an analysis of both the adequacy of the assessment of risk conducted by the domestic authorities and, where a relevant risk triggering the duty to act was or ought to have been identified, the adequacy of the preventive measures taken (see *Kurt v. Austria* [GC], no. 62903/15, § 159, 15 June 2021).

135. Concerning suicide risks in particular, the Court has previously had regard to a variety of factors 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. These factors commonly include: a history of mental health problems; the gravity of the mental condition; previous attempts to commit suicide or self-harm; suicidal thoughts or threats; and signs of physical or mental distress (see *Fernandes de Oliveira*, cited above, § 115, with further references).

136. As regards mentally ill persons, the Court has considered them to be particularly vulnerable (see *Renolde*, cited above, § 84). Where the authorities decide to place and keep in detention a person suffering from a mental illness, they should demonstrate special care in guaranteeing such conditions as correspond to the person's special needs resulting from his or her disability (see *Fernandes de Oliveira*, cited above, § 113).

137. In any event, 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 *Jeanty v. Belgium*, no. 82284/17, § 73, 31 March 2020, and *Keenan v. the United Kingdom*, no. 27229/95, § 90, ECHR 2001-III).

(b) Application of the general principles to the present case

138. In the present case, the Court first needs to establish whether the authorities knew or ought to have known that the applicant's son posed a real and immediate risk of suicide (see *Laptev v. Russia*, no. 36480/13, § 46, 9 February 2021).

139. Having regard to the relevant criteria for assessing such a risk in the circumstances of the present case (see paragraph 135 above), it is common ground that X suffered from bipolar disorder, for which he was admitted to and treated in a psychiatric hospital (see paragraph 5 above). It further appears that his disorder had not been acute since 2018 and that he was receiving adequate treatment (see paragraph 9 above).

140. However, the Court notes that immediately after his arrest X was assessed as suicidal and admitted to hospital for that reason during his detention. During his stay at IHT Sanderud, X was further diagnosed with an adjustment disorder following the murder in relation to which he had been detained (see paragraph 25 above). The Court therefore concludes that his mental disorders were of considerable gravity and that his risk of suicide must have been well known to the authorities.

141. As regards the Government's argument that X's mental state had improved to such an extent that the authorities no longer needed to be aware of his heightened risk of suicide (see paragraph 131 above), the Court notes that such a conclusion cannot be accepted in the absence of any in-depth assessment of his risk of suicide following his release from IHT Sanderud (see paragraph 147 below; compare also *Kurt*, cited above, § 159). In any event, although there is no information indicating that X had ever previously attempted suicide, in the Court's view, given all the above circumstances, the authorities knew or ought to have known that X was in a particularly vulnerable situation and at risk of self-harm, which required special attention, monitoring of his situation and continuous assessment of his suicide risk (compare *Keenan*, § 96; *Renolde*, § 89; and *De Donder and De Clippel*, § 76, all cited above, and *Çoşelav v. Turkey*, no. 1413/07, § 62, 9 October 2012).

142. Turning to the measures taken by the authorities to mitigate the suicide risk, the Court notes that immediately following his arrest X was examined by a psychiatrist, who recommended that he undergo a complete forensic psychiatric examination (see paragraph 10 above). It does not appear from the documents submitted by the parties that any such examination was performed.

143. The Court further notes that, because of the suicide risk, X was initially placed in Unit 1 of the prison, which was specifically reserved for detainees who required closer supervision for health reasons (see paragraph 13 above). An action plan seems to have been drawn up to manage his suicide risk (see paragraph 13 above), various medical authorities operating within Oslo Prison were informed of his situation and he was even admitted to IHT Sanderud for a few days. It cannot therefore be said that the authorities failed to take any action to safeguard X's life (see, in this connection, the international standards cited at paragraphs 86 and 87 above).

144. However, following X's return on 4 February 2020 to Oslo Prison from his stay at IHT Sanderud, the Court notes that there were a number of shortcomings in the authorities' subsequent actions.

145. Firstly, it is clear from the facts of the case, and was admitted by the Government, that it remained unclear which of the various health authorities involved in X's case assumed ultimate responsibility for his medical treatment and follow-up during his detention in Oslo Prison. While IHT Reinsvoll initially insisted that X had been under its responsibility (see paragraph 17 above, also supported by the Government's submission cited in paragraph 130 above), it later stated that its treatment had been limited to injecting him with antipsychotic drugs as it had otherwise been restricted in its ability to have contact with him or assess his mental state owing to the fact that he had been in detention (see paragraphs 42 and 55 above).

146. The Government submitted that the FPP was responsible for the immediate mental healthcare of detainees, provided that it received a referral note concerning a specific detainee, while the prison healthcare service had

the overall responsibility of providing general health services to all prisoners, which had included X (see paragraph 129 above).

147. However, the Court observes that following X's return to Oslo Prison from IHT Sanderud, he does not seem to have been provided with any sort of treatment or therapy for his suicidal thoughts or diagnosed adjustment disorder, despite the fact that, at the time of his release, the hospital considered that his risk of suicide would be ensured within the framework of the follow-up and counselling provided to him in pre-trial detention (see paragraph 27 above). What is more, his mental state or risk of suicide had never been assessed by either the FPP or the prison healthcare service following his return from IHT Sanderud.

148. According to X's medical records, the only contact he had with medical professionals between 4 and 25 February 2020 were two visits from the senior psychiatrists from IHT Reinsvoll, who primarily came to administer antipsychotic medication to him and had a short conversation with him on 14 and 25 February 2020 (see paragraphs 30 and 34 above). The lack of follow-up was criticised by the County Governor as "a deviation from good practice" to provide routine healthcare to detainees by the prison healthcare service of such a degree as to amount to a "breach of professional care" on its part (see paragraph 50 above).

149. Secondly, and closely connected to the above, the Court has serious concerns about the manner in which X was transferred from Unit 1 to an ordinary prison unit, where he was no longer under close supervision and where he had unrestricted access to items suitable for taking his own life, such as strings and ropes, which he ultimately used to take his own life (see paragraph 37 above).

150. The Government claimed that that decision had been taken in consultation with the FPP and the prison healthcare service (see paragraph 128 above). However, the Court notes that the prison healthcare service expressly stated in its letter of 11 June 2020 that it had not been involved in the decision to terminate X's close supervision or to move him out of Unit 1 (see paragraph 43 above).

151. The Court further observes that there is no detailed information, let alone documents, to show that any medical professionals were in fact involved in the decisions to terminate X's close supervision or to transfer him to an ordinary prison unit. Even assuming that staff from the FPP or the prison healthcare service were involved in some way, as maintained by the Government, the Court has already established that none of their staff had proper contact with or performed any sort of in-depth medical assessment of X's mental state following his return from IHT Sanderud in order to arrive at the conclusion that he no longer presented a suicide risk (see paragraphs 147 and 148 above). As stated above, the only notes in his records during the relevant period were made by the senior psychiatrists of IHT Reinsvoll, reflecting their own impressions that X did not appear suicidal during their

visits on 14 and 25 February 2020, based on a short conversation with him when administering an antipsychotic injection to him (see paragraph 148 above).

152. In such circumstances, the Court cannot but conclude that there were serious deficiencies in the coordination of X's medical care and in the communication between the various medical authorities involved in his case (see also the findings of the domestic authorities cited in paragraph 50 above). This resulted in X being provided with only limited medical attention and treatment after his return from IHT Sanderud, despite his diagnosed mental disorders and repeated suicidal thoughts. Ultimately, it culminated in his transfer to an ordinary prison unit, where he no longer had the benefit of reinforced care and supervision and where he took his life only two days later.

153. The foregoing considerations are sufficient to enable the Court to conclude that the authorities in the present case did not do everything that could reasonably have been expected of them to safeguard the life of the applicant's son, who was entirely under their control.

154. There has accordingly been a violation of Article 2 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

155. The applicant complained that he had no effective domestic remedy available to him in respect of the breach of his son's right to life. He relied on Article 13 of the Convention, which reads as follows:

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

A. Admissibility

156. The Court notes that this complaint 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

157. The applicant maintained that he had no effective domestic remedy available to him in respect of his son's death.

158. The Government did not submit any observations on the merits of this complaint.

159. The Court reiterates that Article 13 requires the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief (see, *inter alia*, *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI; *Ramirez Sanchez*

v. France [GC], no. 59450/00, § 157, ECHR 2006-IX; and *A.K. v. Liechtenstein (no. 2)*, no. 10722/13, § 84, 18 February 2016).

160. The scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint; however, the remedy required by Article 13 must be "effective" in practice as well as in law (see, for example, *İlhan v. Turkey* [GC], no. 22277/93, § 97, ECHR 2000-VII; *Kudła*, cited above, § 157, and *Ramirez Sanchez*, cited above, § 158). The "effectiveness" of a "remedy" within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant (see *Kudła*, cited above, § 157; *Sürmeli v. Germany* [GC], no. 75529/01, § 98, ECHR 2006-VII; and *Ramirez Sanchez*, cited above, § 159).

161. The Court further reiterates that where an arguable breach of one or more of the rights under the Convention is in issue, there should be available to the victim a mechanism for establishing any liability of State officials or bodies for that breach. Where violations of the rights enshrined in Article 2 are alleged, compensation for the pecuniary and non-pecuniary damage flowing from the breach should in principle be available as part of the range of possible remedies (see *Keenan*, cited above, § 130, and *Budayeva and Others v. Russia*, nos. 15339/02 and 4 others, § 191, ECHR 2008 (extracts) and cases cited therein).

162. Turning to the present case, on the basis of the evidence adduced by the parties, the Court has found that the respondent State was responsible under Article 2 of the Convention for the death of the applicant's son, who suffered from mental disorders and committed suicide in custody (see paragraph 153 above). The applicant's complaint in this regard is therefore "arguable" for the purposes of Article 13 taken in conjunction with Article 2 of the Convention.

163. The Court has already examined the various remedies put forward by the Government and concluded that none of them would have separately or jointly offered the applicant reasonable prospects of success at the material time (see paragraphs 118 above). In other words, the applicant did not have available to him an appropriate means of obtaining a determination of his allegations that the authorities failed to protect his son's right to life and the possibility of obtaining an enforceable award of compensation for the damage suffered thereby (see *Roth v. Germany*, nos. 6780/18 and 30776/18, § 96, 22 October 2020). In the Court's view, this is an essential element of a remedy under Article 13 of the Convention for a bereaved parent (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 101, ECHR 2002-II).

164. Finally, the Court notes once again the important clarification that came about by the two rulings of the Norwegian Supreme Court the 26 June 2024 (see paragraphs 74-77 and 116-117 above). However, while the judgments of the Supreme Court have created precedents for the future, filling

in an apparent void in Norwegian law, they could not provide any redress for the applicant in the current case.

165. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 13 of the Convention in the present case.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

166. Article 41 of the Convention provides:

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

A. Damage

167. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

168. The Government contested that claim.

169. The Court considers that the applicant must have experienced anguish and distress on account of the violation found. It accordingly awards him EUR 30,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

170. The applicant also claimed 75,656 Norwegian kroner (NOK – approximately EUR 6,530) for the costs and expenses incurred before the Court, corresponding to about forty hours of legal work at an hourly rate of NOK 1,500 plus VAT.

171. The Government contested that claim.

172. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum (see, among many other authorities, *L.B. v. Hungary* [GC], no. 36345/16, § 149, 9 March 2023). In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 6,530 for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 2 of the Convention;

3. *Holds* that there has been a violation of Article 13 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 6,530 (six thousand five hundred and thirty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 15 October 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim Deputy Registrar	Jovan Ilievski President