

EUROPEAN COURT OF HUMAN RIGHTS

Application No. 35950/20

BETWEEN:

*Hasani*

Applicant

v.

*Sweden*

Respondent

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WRITTEN SUBMISSIONS ON BEHALF OF THE INTERVENERS

The AIRE Centre (Advice on Individual Rights in Europe) and the European Council on Refugees and Exiles (ECRE).

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pursuant to the Registrar's notification dated 25<sup>th</sup> February 2022 on the Court's permission to intervene under Rule 44 § 3 of the Rules of the European Court of Human Rights

18<sup>th</sup> March 2022

## **Executive Summary**

- I. Article 2 of the Convention obliges the Contracting States not only to refrain from the intentional and unlawful taking of life but also to take appropriate steps to safeguard the lives of those within their jurisdiction. The authorities of Contracting States have an operational duty to take reasonable steps to protect persons from threats to the right to life in all circumstances, including in cases of self-harm and suicide.
- II. An enhanced duty is owed to vulnerable individuals or where the authorities knew or ought to have known that there was a real and immediate risk to the life of an individual, in particular in the care of the state, including from self-harm, they were obliged to take reasonable measures within their power to avoid that risk.
- III. The interveners submit that in the migration context such reasonable measures could include ensuring that vulnerable persons concerned are provided with the necessary psychological and, where relevant, legal support when they are forced to be confronted with particularly traumatising news including concerning the outcomes of their asylum proceedings and potential removal.
- IV. Where deficiencies of the Contracting States in taking such reasonable steps are systematically reported vis-a-vis a particular group of individuals, such as adolescents in the migration context or persons facing removal, it is the interveners' opinion that in order to effectively discharge the obligations under Article 2, the Contracting States concerned should be invited to adopt and/or effectively comply with a legislative and administrative framework to deter against the loss of life in such context.
- V. The interveners further submit that the Contracting States remain bound by their obligations under EU and international law by virtue of Article 53 ECHR.
- VI. EU law provides for clear mandatory time limits for asylum decisions, clear observance of special protective needs, clear prescriptive requirements for conveying negative decisions and information about appeals in light of the principle of effectiveness. A failure to comply with those clear protective provisions must be taken into account when assessing whether a State has taken all the steps it could reasonably have been expected to take to protect the life of a vulnerable young person within its jurisdiction.

## **General obligations to protect the right to life**

1. This Court has reiterated on numerous occasions that Article 2 ECHR ranks as one of the most fundamental provisions of the Convention and enshrines one of the basic values of democratic societies. It must be interpreted and applied, in accordance with the object and purpose of the Convention, in a manner which enables its safeguards to be practical and effective.<sup>1</sup>
2. Article 2 § 1 ECHR obliges the Contracting States not only to refrain from the intentional and unlawful taking of life but also to take appropriate steps to safeguard the lives of those within its jurisdiction. The positive obligations under Article 2 must be construed as applying in the context of any activity, whether public or not, in which the right to life may be at stake.<sup>2</sup> The absence of any direct State action responsible for the death of an individual does not exclude the applicability of Article 2.<sup>3</sup>

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<sup>1</sup> *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-47, Series A no. 324; *Boychenko v. Russia*, no. 8663/08, § 76, 12 October 2021.

<sup>2</sup> *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania*, no. 47848/08, § 130, ECHR 2014.

<sup>3</sup> *Angelova and Iliev v. Bulgaria*, no. 55523/00, § 93, 26 July 2007.

3. The obligation of States to take steps to safeguard the right to life include the duty on States to adopt a legislative and administrative framework to deter against threats to the right to life and to take preventative operational measures to prevent risks from materialising. This also implies a positive obligation on the part of the authorities to take measures in particular circumstances to protect an individual from himself or herself.<sup>4</sup>
4. Contracting States authorities have a general operational duty to take reasonable measures to prevent a person from self-harm, irrespective of whether that person is in voluntary or involuntary state care.<sup>5</sup> Article 2 cannot require the relevant authorities to take operational measures to prevent a claimed risk to life from materialising in all circumstances. However, this Court is required per Article 2 to examine **whether the authorities knew or ought to have known that there was a real and immediate risk to the life of an individual and whether the authorities failed to take reasonable measures within their power to avoid that risk**, including where this risk derives from potential self-harm.<sup>6</sup>
5. When examining whether the relevant authorities knew or ought to have known that there was a real and immediate risk to a person's life this Court has taken into account various factors. These factors include a history of mental health problems; previous attempts of suicide or self-harm; signs of physical or mental distress; and suicidal threats or thoughts.<sup>7</sup> **The interveners submit that, for this Court, these factors, in particular, a previous suicide attempt clearly puts the authorities on notice that there is a risk to life.**<sup>8</sup>
6. In the case of *Nencheva and Others*, the Court found a violation of Article 2 where the persons concerned were effectively under the exclusive care of the State in a social care home for children with disabilities.<sup>9</sup> In respect of the obligations under Article 2, the Court considered whether the relevant authorities failed to take prompt, concrete, and sufficient measures to prevent death despite having precise knowledge of the real and imminent risk to life.<sup>10</sup> **The interveners submit that the principles outlined by this Court's jurisprudence on Article 2 are relevant, *mutatis mutandis*, to persons seeking asylum including children, young adults and other vulnerable individuals provided with reception facilities and thus effectively in the care of the state.**
7. The Court must therefore ascertain whether the authorities did all that could reasonably be expected of them in the circumstances of the case to prevent the materialisation of a certain and immediate risk to life and therefore prevent that risk.<sup>11</sup> In *Renolde v France*, this Court considered that while the authorities had "*undeniably made efforts to that end*"<sup>12</sup>, they were expected to have

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<sup>4</sup> *Boychenko v. Russia*, no. 8663/08, §§ 77, 78, 12 October 2021.

<sup>5</sup> *Fernandes de Oliveira v. Portugal* [GC], no. 78103/14, § 124, 31 January 2019.

<sup>6</sup> *Boychenko v. Russia*, no. 8663/08, §§ 79, 80, 12 October 2021; *Keenan v. the United Kingdom*, no. 27229/95, § 89, ECHR 2001-III.

<sup>7</sup> *Boychenko v. Russia*, no. 8663/08, § 80, 12 October 2021.

<sup>8</sup> *Renolde v. France*, no. 5608/05, § 89, ECHR 2008.

<sup>9</sup> *Nencheva and Others v. Bulgaria*, no. 48609/06, 18 June 2013.

<sup>10</sup> *Nencheva and Others v. Bulgaria*, no. 48609/06, §§ 119, 121, 124, 18 June 2013.

<sup>11</sup> *Fernandes de Oliveira v. Portugal* [GC], no. 78103/14, § 125, 31 January 2019.

<sup>12</sup> *Renolde v. France*, no. 5608/05, § 91, ECHR 2008.

taken ‘special measures’ to accommodate the individual’s vulnerable mental state.<sup>13</sup> **Where a Contracting State fails to take such steps, the interveners invite this Court to consider whether said reasonable measures would “have had a real prospect of altering the outcome or mitigating the harm”, therefore engaging responsibility under Article 2.**<sup>14</sup>

8. This Court is also invited to take into consideration the need for such enhanced special measures in other instances of vulnerability, including for example where the person concerned entered into administrative procedures as an orphan child or only recently reached the age of majority, or suffers from a serious disability, or is accommodated apart from siblings, or is an asylum seeker, or does not speak the language or where there is a combination or accumulation of those factors. Appropriate measures could include ensuring that such vulnerable persons are provided with the necessary psychological (and where relevant legal) support when they are forced to be confronted with particularly traumatising news.

### **Article 13 in conjunction with Article 2**

9. Article 13 ECHR requires an effective domestic remedy for any arguable violation of any Convention right. Article 13 taken together with Article 2 (which already has inherent procedural safeguards) a thorough and effective investigation capable of leading to the identification and where appropriate punishment of those responsible. It must include effective access for the complainant to the investigatory procedure.<sup>15</sup> Article 13 requires States to establish responsibility and accountability for procedural failings identified by an investigation and be capable of providing effective redress. **This Court has found that a mechanism should be available to a victim’s family to determine any State liability for omissions that concern a violation of Article 2 where the State has failed to protect individuals from harm inflicted by themselves.**<sup>16</sup>

### **Article 53 ECHR and the UN Convention on the Rights of the Child (UN CRC)**

10. This Court has held that the ECHR does not exist in a vacuum and the Contracting States remain bound by their obligations under international law by virtue of Article 53 ECHR.<sup>17</sup> The particular vulnerability of a child seeking asylum is recognised by Article 22 of the UN Convention on the Rights of the Child (CRC) and elaborated on by the Committee on the Rights of the Child (the Committee) in its General Comment 14.<sup>18</sup> To fully enjoy their CRC rights, children must be appropriately protected and assisted.<sup>19</sup> Similarly, the Convention on the Rights of Persons with Disabilities (CRPD) provides Contracting States with a framework for ensuring that children and young adults with psychosocial disabilities are protected and enjoy their rights without discrimination. Sweden is a party to both these instruments and has ratified the Optional Protocol

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<sup>13</sup> *Renolde v. France*, no. 5608/05, § 98, ECHR 2008.

<sup>14</sup> *Boychenko v. Russia*, no. 8663/08, § 95, 12 October 2021.

<sup>15</sup> *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania*, no. 47848/08, § 149, ECHR 2014.

<sup>16</sup> *Keenan v. the United Kingdom*, no. 27229/95, §§ 122-133, ECHR 2001-III.

<sup>17</sup> *Pini and Others v. Romania*, nos. 78028/01 and 78030/01, § 138, ECHR 2004-V.

<sup>18</sup> UN Committee on the Rights of the Child, General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (Article 3, para .1), 29 May 2013, CRC/C/GC/14, § 75-76; Article 22, United Nations General Assembly, Convention on the Rights of the Child (CRC), 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3.

<sup>19</sup> CRC General comment No. 7 (2005): Implementing Child Rights in Early Childhood, 20 September 2006, CRC/C/GC/7/Rev.1, § 32.

to the CRPD enabling cases to be taken to the Committee on the Rights of Persons with Disabilities. The EU is also a party to the CRPD.

11. Children come under the protection of the CRC from birth to the age of 18 (Article 1, CRC). The preamble states: “*the child, by reason of his physical and mental immaturity needs special safeguards and care.*” A child who is *eo ipso* in need of such safeguards and care does not cease to have those needs at the stroke of midnight on reaching the age of eighteen. This is particularly true if the child in question has some other discernible and identified vulnerability or disability, or is an asylum seeker or orphan. Sometimes one child – including a child on the cusp of adulthood – may suffer all of these disadvantages and the state must respond accordingly. The period of coming of age should be acknowledged and addressed through the extension of some safeguards and services. Support services should not abruptly end but foresee a transitional period of ‘after-care’, with practitioners trained to deal with youth. This transitional period must begin after the child turns 18 years old and cannot be used to curtail safeguards, care and services for children before they turn 18.<sup>20</sup> General Comment No. 4 recognises that adolescents in migration situations “*may be particularly vulnerable*” and that such circumstances “*might seriously hamper their health and development*”.<sup>21</sup>
12. In accordance with the Guidelines for Alternative Care of Children,<sup>22</sup> States should provide adequate follow-up, support and transition measures for children as they approach 18 years of age, particularly those leaving a care context, including by ensuring access to long-term regular migration status and psychological support, access to decent jobs and integrating into the society they live in.<sup>23</sup> The child should be adequately prepared for independent living during this transition period, and competent authorities shall ensure adequate follow-up of the individual situation. Both the CRC and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families in a Joint Comment have additionally encouraged States to take protective and support measures beyond the age of 18 years.<sup>24</sup>
13. **It is in that context that the interveners submit that the principles and provisions that are set out below should be applicable not just to those under 18 (who are obviously within the scope of the UNCRC) but should continue to be applied to some young persons who have technically ceased to be children who were previously protected as children but are just a few months over the age of 18. Young adults should be duly prepared, in particular, they should continue to be provided with timely information about their status and options, in a language and manner they can actually understand given the level of their maturity, as well as free, quality legal counselling.**

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<sup>20</sup> See UK case: *KA (Afghanistan) & Ors v Secretary of State for the Home Department*, [2012] EWCA Civ 1014, 25 July 2012: “There is no ‘bright line’ or dateline which when crossed by the appellants reaching 18 years of age means that the risks to children suddenly disappear”. For further information see Colin Yeo, (2018) “Boys to men: how to prepare asylum appeals for young Afghans” (21 June 2018) available at: <https://bit.ly/360dLeh> .

<sup>21</sup> UN Committee on the Rights of the Child, General Comment No. 4 on adolescent health and development in the context of the Convention on the Rights of the Child, 1 July 2003, CRC/GC/2003/4, § 38.

<sup>22</sup> UN General Assembly, Guidelines for the Alternative Care of Children: resolution / adopted by the General Assembly, 24 February 2010, A/RES/64/142, available at: <https://www.refworld.org/docid/4c3acd162.html>,

<sup>23</sup> See Committee on the Rights of the Child, report of the 2012 day of general discussion on the rights of all children in the context of international migration, paras. 68-69, available at <https://bit.ly/3liZiaj>.

<sup>24</sup> Joint general comment No. 4 (2017) of the UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, 16 November 2017, par. 3, CMW/C/GC/4-CRC/C/GC/23.

14. In addition to the provisions of general application such as Article 2 (non-discrimination) Article 3 (best interests principle) Article 4 (the State's obligation of implementation) and Article 12 (hearing the child's views), the UNCRC has a number of other provisions of specific relevance to this intervention: Article 6 (the right to life), Article 20 (special protection for children deprived of their family environment), Article 22 (refugee and asylum seeking children), Article 23 (children with disabilities).
15. In relation to **Article 6 CRC** and suicide, the Committee has urged States to take the necessary preventive measures and to recognize that when such suicides occur the State must implement a systemic, independent and public review of any death either in care or in detention and use its results to enhance its preventive measures.<sup>25</sup>
16. A UNHCR 2018 Report notes that: "*Studies done with refugee populations resettled in high income countries have shown **increased risk of suicidal behaviors**, likely due a combination of socioeconomic disadvantage, exposure to potentially traumatic events, **burden of mental disorders**, and **lack of appropriate and accessible care**.*"<sup>26</sup> (Emphasis added) The Report strongly emphasises that it is imperative to bear in mind that **suicide is preventable**.<sup>27</sup> The Committee emphasises in GC No. 4 that "*by investing heavily in preventive policies and measures States parties can drastically reduce levels of vulnerability and risk factors.*"<sup>28</sup>
17. Similarly, a number of studies have shown that unaccompanied asylum seeking minors have a high risk of having experienced trauma and poor mental health,<sup>29</sup> which represent major risk factors for suicide.<sup>30</sup> A recent study concerning suicide risk among refugees compared with non-refugee migrants and the Swedish-born majority population observed that: "*the suicide rate among asylum-seeking unaccompanied refugee minors was almost tenfold that for Swedish youth.*"<sup>31</sup> The study showed that all unaccompanied minors who died by suicide in 2017 were young men and most of them from Afghanistan (83%) and concluded that a rapid implementation

<sup>25</sup> Peleg, N., & Tobin, J, 2019, Article 6: The rights to life, survival and development. In J. Tobin (Ed.), *The UN Convention on the Rights of the Child: A commentary* (Oxford University Press, 2019), pp. 186-236.

<sup>26</sup> Haroz, E.E., Decker, E., Lee, C. (2018) Evidence for suicide prevention and response programs with refugees: A systematic review and recommendations Geneva: United Nations High Commissioner for Refugees, page 6, available at: <https://www.unhcr.org/5e15d3d84.pdf>.

<sup>27</sup> Haroz, E.E., Decker, E., Lee, C. (2018) Evidence for suicide prevention and response programs with refugees: A systematic review and recommendations Geneva: United Nations High Commissioner for Refugees, page 7.

<sup>28</sup> CRC, General Comment No. 4 on adolescent health and development in the context of the Convention on the Rights of the Child, 1 July 2003, CRC/GC/2003/4, § 38.

<sup>29</sup> See Eide, K., & Hjern, A. (2013) 'Unaccompanied refugee children – vulnerability and agency', *Acta Paediatrica*, 102(7), 666–668. 10.1111/apa.12258; Vervliet, M., Lammertyn, J., Broekaert, E., & Derluyn, I. (2014), 'Longitudinal follow-up of the mental health of unaccompanied refugee minors', *European Child and Adolescent Psychiatry*, 23(5), 337–346, 10.1007/s00787-013-0463-1.

<sup>30</sup> Hawton, K., & van Heeringen, K. (2009), 'Suicide', *Lancet*, 373(9672), 1372–1381. 10.1016/S0140-6736(09)60372-X.

<sup>31</sup> Anna-Clara Hollander, Alexandra Pitman, Hugo Sjöqvist, Glyn Lewis, Cecilia Magnusson, James B Kirkbride and Christina Dalman, 'Suicide risk among refugees compared with non-refugee migrants and the Swedish-born majority population', *The British Journal of Psychiatry* (2020) 217, 686–692. doi: 10.1192/bjp.2019.220, page 691, available at: <https://bit.ly/3lektKA> referring to Mittendorfer-Rutz E, Hagström A, Hollander A. High suicide rates among unaccompanied minors/youth seeking asylum in Sweden. *Crisis* 2019, available at: <https://bit.ly/3lk2x1f>

of suicide preventive measures is necessary.<sup>32</sup> The study also concludes that “*continuous monitoring of suicide deaths in this vulnerable population should be established.*”<sup>33</sup>

18. In its Concluding observations on the initial report of Sweden, **the Committee on the Rights of Persons with Disabilities** has expressed its deep concern about the increasingly high rate of suicide among persons with disabilities, including boys and girls, in the State party and has urged Sweden to adopt all necessary measures to prevent, identify and address situations of risk of suicide in persons with disabilities, including boys and girls.<sup>34</sup> The CRC Committee similarly voices its concern about the increase in adolescents’ mental ill-health, including suicide in General Comment No. 15.<sup>35</sup>
19. **Article 20 UNCRC** requires States to provide *special* protection for children deprived of their family environment. This provision recognises that children and young people without parental care are at an enhanced risk of being denied a supportive, protective and caring environment and Art 4 UNCRC requires the State to provide them with special protection (see GC No.4 and GC No. 15 in respect of children’s mental health). Where relevant, **Article 20 needs to be read together with Article 22** which sets out the rights of refugee and asylum seeking children. A child or young person who has been initially refused asylum but still has avenues of appeal available through the asylum appeals system or procedural safeguards under the Returns Directive should still be treated as an “asylum seeking child”. The CJEU has noted in *C-550/16 A and S*<sup>36</sup> that “aging out” during a prolonged asylum determination procedure should not deprive children of the advantages to which they would have been entitled had a decision on their protection needs been taken more speedily.<sup>37</sup> **The interveners invite the Court to recall in this context that it has repeatedly found that decisions concerning children must be conducted with particular expedition as the lapse of time may result in the irreparable loss of the benefits associated with status as a child.**<sup>38</sup>
20. Joint General Comment No. 22 the Committee stresses that States should “*Develop and put into practice, with regard to unaccompanied children and children with families, a best-interests determination procedure aimed at identifying and applying comprehensive, secure and sustainable solutions*”,<sup>39</sup> explaining that “*A comprehensive, secure and sustainable solution is one that, to the greatest extent possible, caters to the long-term best interests and welfare of the child and is sustainable and secure from that perspective. The outcome should aim to ensure*

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<sup>32</sup> Mittendorfer-Rutz E, Hagström A, Hollander A. High suicide rates among unaccompanied minors/youth seeking asylum in Sweden. Crisis 2019, p. 2-3.

<sup>33</sup> Mittendorfer-Rutz E, Hagström A, Hollander A. High suicide rates among unaccompanied minors/youth seeking asylum in Sweden. Crisis 2019, p. 3.

<sup>34</sup> Committee on the Rights of Persons with Disabilities (CRPD), Concluding observations on the initial report of Sweden, CRPD/C/SWE/CO/1, 12 May 2014, § 29.

<sup>35</sup> CRC, General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), 17 April 2013, CRC/C/GC/15, § 38.

<sup>36</sup> Court of Justice of the European Union (CJEU), Case C-550/16 *A and S*, 12 April 2018.

<sup>37</sup> See also where applicable, ECRE/ELENA Legal Note On Ageing Out And Family Reunification (2018), <https://bit.ly/3qgaiyS>

<sup>38</sup> See *Mutatis mutandis, H. v. the United Kingdom*, 8 July 1987, Series A no. 120.

<sup>39</sup> CMW and CRC, Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration, 16 November 2017, CMW/C/GC/3-CRC/C/GC/22, § 32(j).

*that the child is able to develop into adulthood, in an environment that will meet his or her needs and fulfil his or her rights as defined by the Convention on the Rights of the Child.”<sup>40</sup>*

21. **Article 23 UNCRC** provides for the rights of children with mental or physical disabilities. Clearly the situation warrants particular protection when a child with a physical disability also has mental health problems. The Committee has adopted General Comment No. 9 on the rights of children with disabilities. The seriousness of the situation of such children – and the corresponding obligations on the State – is compounded if other considerations are in play such as Articles 6, 20 and 22 with the overarching best interests requirement of Article 3 perennially present.<sup>41</sup>
22. **The interveners invite the Court to consider the relevant provisions of the CRC and General Comments of the Committee on the Rights of the Child, as well as the provision of the CRPD outlined above.**

### **EU Law: Returning asylum seekers including children whose claims have been rejected**

23. Sweden is a member of the European Union and thus bound by the EU asylum acquis, Directive 2008/115/EC (the Return Directive)<sup>42</sup> and the EU Charter of Fundamental Rights (CFREU).<sup>43</sup> Under Article 53 ECHR nothing in the ECHR – including the determination of applications made under Article 2 – shall be construed in a manner that would limit or derogate from the rights guaranteed under the relevant provisions of EU law.
24. CFREU (Article 24) imports into EU law the CRC. Child asylum seekers benefit from this provision based on Article 3 CRC so that their best interests must be a primary consideration - and be shown to have been accorded that consideration - in any decision about whether or not to recognise them as in need of international protection.<sup>44</sup> The EU, most unusually, is itself also a party to the CRPD and its provisions must thus inform any interpretation of EU law.
25. This means that, as a matter of EU law, both a best interests assessment and a best interests determination must be conducted in relation to any child whose rejection for protection or return is even proposed.<sup>45</sup> This will include *inter alia* an assessment of the child’s family circumstances which must include the likely impact of any decision in relation to other close family members including siblings who may be deemed to be able to provide care for the child.

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<sup>40</sup> CMW and CRC, Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) CMW/C/GC/3-CRC/C/GC/22, page 8 footnote 9.

<sup>41</sup> See *Thlimmenos v. Greece* [GC], no. 34369/97, ECHR 2000-IV, which requires states to adopt standards appropriate to different situations.

<sup>42</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348, 24.12.2008.

<sup>43</sup> Charter on Fundamental Rights of the European Union, 2012/C 326/02.

<sup>44</sup> See Explanations relating to the Charter of Fundamental Rights (2007/C 3030/02), available at: <https://bit.ly/3thsKJr>

<sup>45</sup> See also CRC General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (Article 3, para .1), 29 May 2013, CRC/C/GC/14, § 48-51.

26. Any child asylum seeker who has been definitively deemed not to be entitled to the protection status under Directive 2011/95/EU (the Qualification Directive)<sup>46</sup> will still benefit – as do adults – from the safeguards of the Return Directive.<sup>47</sup> In the same vein, decisions made under that Directive also require that where the proposed returnee is a child, the child's best interests are to be 'a primary consideration'.

### **Article 53 ECHR and specific provisions of the EU asylum acquis**

27. **Directive 2013/32/EU (the Asylum Procedures Directive):<sup>48</sup> Time limits:** The Directive is designed to ensure that proper procedures are followed in all Member States to which the Directive applies and in particular that the stipulated time limits are observed. In principle decisions should be taken within six months but Article 31(6) expressly stipulates that where a decision cannot be taken within 6 months the applicant shall (a) be informed of the delay; and (b) receive on request information on the reasons for the delay and the time frame within which the decision is to be expected. But, in all circumstances, Article 31(5) stipulates that the examination of a claim for international protection shall be concluded within a **maximum time limit of 21 months** from the date of lodging the application. Those seeking international protection are entitled to know the result of their application within that time limit and it is a breach of EU law to have failed to meet that deadline. The Asylum Procedures Directive recognises the stress (and distress) that is placed on applicants by undue delay leading to prolonged uncertainty about their future safety. Compliance with the prescribed time limits for the taking of a decision is an inherent part of the Asylum Procedures Directive's procedural safeguards.
28. The timeliness of the process is even more important for vulnerable applicants: Article 31(7) provides for the prioritisation of the examination of claims *inter alia* "where the applicant is vulnerable within the meaning of Article 22 of Directive 2013/33/EU or is in need of special procedural guarantees" and the provision refers in particular to unaccompanied minors.<sup>49</sup>
29. The Asylum Procedures Directive thus indicates that special guarantees including much shorter time frames should apply to vulnerable persons and particularly to vulnerable minors. **Vulnerable applicants** are defined under Articles 21-24 of Directive 2013/33 EU (the Reception Conditions Directive)<sup>50</sup> and specific provision is made for them. Article 22(1) expressly specifies "*Member States shall ensure that the support provided to applicants with special reception needs in accordance with this Directive takes into account their special reception needs throughout the duration of the asylum procedure and shall provide for appropriate monitoring of their situation.*" (Emphasis added) This means that when applying EU law (for example in any part of the asylum procedure) the principles and provisions of the CRPD will also inform any measures

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<sup>46</sup> Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), OJ L 337, 20.12.2011, p. 9–26.

<sup>47</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348, 24.12.2008, p. 98–107.

<sup>48</sup> Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) 29 June 2013 (APD), OJ L. 180/60 -180/95; 29.6.2013, 2013/32/EU.

<sup>49</sup> APD, 2013/32, Article 31(7)(b).

<sup>50</sup> Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), L/180/96.

taken. The Asylum Procedures Directive makes clear at art 2 (c) and (e) that the asylum procedure is deemed to continue until all available remedies and appeals have been exhausted.

30. Article 23 (1) of the Reception Conditions Directive states: *“The best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Directive that involve minors. Member States shall ensure a standard of living adequate for the minor’s physical, **mental**, spiritual, moral and social development.”* (Emphasis added) making it clear that **mental health** is also covered and that minors with mental vulnerabilities require particular support.
31. **Information about the decision:** Article 11(2) of the Asylum Procedures Directive provides: *“Member States shall also ensure that, where an application is rejected with regard to refugee status and/or subsidiary protection status, the reasons in fact and in law are stated in the decision and information on how to challenge a negative decision is given in writing.”* And Article 12(1)(f) Asylum Procedures Directive states: *“they shall be informed of the result of the decision by the determining authority in a language that they understand or are reasonably supposed to understand when they are not assisted or represented by a legal adviser or other counsellor. The information provided shall include information on how to challenge a negative decision in accordance with the provisions of Article 11(2)”*.
32. **“Effet Utile”:** These provisions make clear that anyone whose claim for international protection is rejected must be **made aware** that the decision being communicated is **not final** and that the individual can challenge this decision. A failure to make this clear is a breach of EU law.
33. If any applicant for international protection is, for example, a young person or has additional vulnerabilities or is known to have mental health problems or an inclination to self-harm or does not speak the language of the decision maker - or any combination or accumulation of those factors, it is even more incumbent on the person conveying the negative decision to ensure that the rejected applicant is **fully aware** that the decision being communicated is not final and equally aware of the possibilities for challenging the decision. Any other approach would deprive the provisions of Articles 11 and 12 of the Asylum Procedures Directive of their **“effet utile”**.
34. In short, EU law provides for clear mandatory time limits for decisions, clear observance of special protective needs, clear prescriptive requirements for conveying negative decisions and information about appeals - and the principle of **“effet utile”** governs all of the above. A failure to comply with those clear protective provisions must be taken into account when assessing whether a State has taken all the steps it could reasonably have been expected to take to protect the life of a vulnerable young person within its jurisdiction.
35. The positive obligations on States to protect life, including protecting vulnerable persons from self-harm are enhanced when a person is in the care of the State, when the person is young, exceptionally vulnerable, separated from family and parentless and/or suffers from a serious disability, and when States are already aware that the individual constitutes a suicide risk. When assessing compliance with those ECHR obligations account must also be taken of whether a State has complied with its other legal obligations to such persons.