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Recognising the Imminence of Suicide Risk—Reframing Positive Obligations Under the European Convention on Human Rights

Sabina Garahan

University of Essex, Colchester, UK

Correspondence: Sabina Garahan (sgarah@essex.ac.uk)

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ABSTRACT

This article reframes the concept of imminence of suicide risk of mentally ill offenders under Article 2 of the European Convention on Human Rights, which enshrines the right to life. The proposal is based on Article 2 domestic violence jurisprudence which has built its knowledge of lethal risk by reference to relevant expertise. It is argued that by embedding research on the fundamental link between mental health history and future risk of suicide in detention in its case-law, the Court can reflect a better understanding of, and therefore respond more effectively to, risk to life in this area.

1 | Introduction

In its jurisprudence on Article 2 of the European Convention on Human Rights (the Convention), which enshrines the right to life, the European Court of Human Rights (the Court) has developed positive obligations in any situation in which the right to life may be at stake. Although scholars have scrutinised positive obligations more broadly (Güler 2017; Sicilianos 2014; Dickson 2010; McCamphill 2010), the possible extension of States' Article 2 positive obligations to protect the right to life of mentally ill offenders has remained under-explored. This article seeks to fill this gap and to develop a more effective framework than that which is currently in place for preventing suicide and self-harm. It argues that the Court's reframing of the concept of imminence in domestic violence case-law based on two factors—reliance on others for protection of life, and the unpredictability of the violence—could be transferred to the criminal justice sphere to better reflect and thus respond to the reality of suicide risk among mentally ill offenders.

The need to find preventive solutions in addressing suicides and self-harm among offenders is urgent and significant. Suicide remains one of the most common causes of death in detention in many countries, with suicide rates much higher than those among the general population, including in Europe (Mundt et al. 2024; Perugino et al. 2022; Fazel et al. 2017; Hawton et al. 2014; Rabe 2012; Fazel et al. 2011). Post-sentencing custodial measures presently available across the Council of Europe repeatedly prove insufficient in responding to suicide risk, as indicated by the Council's statistics[1] and the Court's case-law (*Jeanty v Belgium* 2020; *Keenan v the United Kingdom* 2001; *Trubnikov v Russia* 2005). Importantly, medical literature flags the presence of often long-standing psychiatric disorders and prior self-harm and suicidal ideation as key factors increasing the risk of suicide in prison (Perugino et al. 2022; Brooker and Monteiro 2022; Duarte et al. 2020; Favril, Yu, et al. 2020; Fazel and Runeson 2020; Pope 2018; Franklin et al. 2017; Chan et al. 2016; Turecki and Brent 2016; Hawton et al. 2014; Fazel et al. 2008; WHO and IASP 2007). The right to life therefore cannot be effectively upheld

under the Convention without an acknowledgement by the Court that mental health history contributes significantly to suicide risk in a way that amounts to imminence. Indeed, knowledge of this imminence already arises at the point of sentencing, not merely once the offender enters custody. The positive duty to prevent the suicide of mentally ill offenders must therefore extend to sentencing bodies. Not only do the latter have the requisite knowledge to trigger a preventive duty to act, but they also dispose of greater powers to deal more effectively with suicide risk than prisons. The necessarily time-constrained nature of in-custody suicide prevention measures, such as suicide watches or isolation, is fundamentally incompatible with the unpredictable nature of suicide threat. Where suicide risk exists, it cannot be effectively managed in places of detention, which are ill-placed to manage the ongoing threat of suicidal ideation.

Limited scholarship exists on the positive obligations of States to stop suicide in custody (Cliquennois et al. 2022; Larralde and Cliquennois 2022; Thoonen and Duijts 2014). Scholars writing in this field note that 'suicide-prevention policies in Europe remain under-researched, in particular in relation to human rights and court cases involving detainees' (Cliquennois et al. 2022). The 'main features of the European case law related to suicide prevention not only in prisons but also in other places of detention … have been overlooked' (Cliquennois et al. 2022). The aim of this article is thus to fill the gap in existing literature through a particular focus on the possible expansion of positive obligations aimed at preventing the self-harm or suicide of mentally ill offenders. To do so, the article starts by analysing the current approach to Article 2 positive obligations as they apply to offenders, by reference to the seminal test in *Osman v the United Kingdom*, in Section 2. Section 3 then considers the only exception to the *Osman* test, namely, the expansion of what constitutes imminent risk in the context of domestic violence, identifying not just one factor behind this, as scholars in the field have done, but two: reliance on others for protection of life, and the unpredictability of the violence. Although scholars have noted the second factor of unpredictable violence (Hedlund 2024; Grans 2023; McQuigg 2022, 2021), the role of the first factor and of the combination of both factors in affecting imminence has not previously been identified in the literature. Section 4 applies lessons learned from the domestic violence case-law to the context of mentally ill offenders. On this basis, Section 4 proposes a possible expansion of positive obligations based on similar shifts in the understanding of imminence of suicide risk. Section 5 considers possible theoretical and practical objections to the proposal. Ultimately, building on prior jurisprudence, this article argues that by embedding research on the fundamental link between mental health history and future risk of suicide in detention in its case-law, the Court can reflect a better understanding of, and therefore respond more effectively to, risk to life in this area.

2 | Suicide Prevention Under Article 2—The Court's Current Approach

Article 2 § 1 of the Convention requires States not only to refrain from the intentional and unlawful taking of life (the negative obligation) but also to take appropriate steps and ensure that appropriate measures are in place to safeguard the lives of those within its jurisdiction (the positive obligation). Positive obligations under the provision will arise in any setting where the right to life may be at stake (*Centre for Legal Resources on behalf of Valentin Câmpeanu v Romania* 2014, para 130), including as a result of suicide (*Keenan v the United Kingdom* 2001, para 93). The scope of Article 2 positive obligations is context-specific (Sicilianos 2014, 127) and varies depending on the origin of the threat and the extent to which the relevant risks were susceptible to mitigation (*Kolyadenko and Others v Russia* 2012, para 161).

The main obligation of States in suicide-related cases is to take preventive operational measures to protect an individual from themselves (*Renolde v France* 2008, para 81). For a positive obligation to arise, in line with the seminal *Osman* test (*Osman v the United Kingdom* 1998, para 116):

> it must be established that the authorities knew or ought to have known at the relevant time of the existence of a real and immediate risk to the life of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.

Two elements of the duty to discharge positive obligations in protecting the right to life arise. First, national authorities must take protective, individualised operational steps to prevent the risk to life materialising (*Kurt v Austria* 2021, para 157). Second, and 'closely related' to the question of whether sufficient operational measures are available to the authorities in responding to a risk to life, is the adequacy of the legal framework (*Kurt v Austria* 2021, para 179). The first step is the trigger needed to assess whether a State had positive duties to act in a given case—a failure to meet this requirement impedes any further assessment (and thus finding) on positive obligations. The article therefore focuses on understanding the individualised operational steps needed to protect against threats to life.

The Court's suicide prevention case-law under Article 2 has focused chiefly on the contexts of deprivation of liberty, both in prison (*Keenan v the United Kingdom* 2001; *Jeanty v Belgium* 2020) and police custody (*Tanribilir v Turkey* 2000); military service (*Varyan v Armenia* 2024; *Mustafa Tunç and Fecire Tunç v Turkey* 2015); psychiatric care (*Fernandes de Oliveira v Portugal* 2019); and immigration detention (*Slimani v France* 2004). The Court has noted that persons in custody are in a vulnerable position and authorities are under a duty to protect them (*Younger v the United Kingdom* 2003; *Salman v Turkey* 2000, para 99). As persons deprived of their liberty, as well as individuals carrying out compulsory military service, are under the exclusive control of the authorities, these authorities are under a duty to protect them, including from self-harm (*Keenan v the United Kingdom* 2001, para 91, on persons in custody; *Mosendz v Ukraine* 2013, para 92, on conscripts). In both spheres, the Court emphasises the need 'not to impose an excessive burden on the authorities, bearing in mind, in particular, the unpredictability of human conduct' (see, on military service, *Nana Muradyan v Armenia* 2022, para 119, and *Varyan v Armenia* 2024, para 88, and on detention, *Keenan v the United Kingdom* 2001, para 90). Whether or not a person survives a suicide attempt does not affect the applicability of Article 2—the

question is whether their life was at real and immediate risk, not about the specific level of injury (*Jeanty v Belgium* 2020, para 59).

The Court requires prison authorities to 'discharge their duties in a manner compatible with the rights and freedoms of the individual prisoner concerned', finding that 'general measures and precautions … ought to be available to diminish the opportunities for self-harm, without infringing personal autonomy' (*Shumkova v Russia* 2012, para 91; *Renolde v France* 2008, para 83). At the same time, the Court recognises that this may not always be possible, finding that '[w]hether any more stringent measures are necessary in respect of a prisoner and whether it is reasonable to apply them will depend on the circumstances of the case' (*Shumkova v Russia* 2012, para 91; *Renolde v France* 2008, para 83).

Osman was not a prison case but arose in the context of risk to life from the criminal acts of a third party. However, the seminal test it sets out for positive obligations continues to apply across any settings where there is a threat to life, including the criminal justice sphere. The *Osman* test speaks of a 'real and immediate risk to the life of an identified individual'. The Court, both in *Osman* and since then, has interpreted this concept of imminence narrowly (Hickman 2002; Gearty 2002, 2001). Consequently, any prior context or events are not taken into account in calculating imminence. In the prison suicide setting, this means that any mental health history or background of self-harm is disregarded as this predates the point at which risk is seen to be immediate (namely, once an offender is already in detention). Consequently, only the actions of prison authorities are reviewed. The Court assesses the adequacy of the steps they took after becoming aware of a suicide risk in custody, which typically include isolation and monitoring of the individual.

The *Osman* case attracted several dissenting judgments which highlighted the causal link between the passivity of the authorities and the death of the applicants' husband and father. The perpetrator, on his arrest, queried the police inaction in preventing his acts of violence by asking 'why didn't you stop me before I did it, I gave you all the warning signs?' (*Osman* 1998, para 57). However, the Court found that there was no 'decisive stage in the sequence of the events leading up to the tragic shooting when it could be said that the police knew or ought to have known that the lives of the Osman family were at real and immediate risk' (*Osman* 1998, para 121). In prison cases, in which the *Osman* test continues to be strictly applied, the Court similarly searches for a 'decisive stage' at which authorities had knowledge of an impending suicide attempt.

In line with the current strict application of *Osman*, only the acts taken by authorities post-custody are considered part of the assessment of whether lethal risk had been adequately mitigated. Requirements imposed by the Court to identify and monitor suicide threat in prison have ranged from intensive supervision with direct visual contact (*Keenan v the United Kingdom* 2001, para 88) to daily medical supervision (*Gagiu v Romania* 2009, paras 56–7), with particular attention paid to the signs and risks of self-harm. The Court tends to find that the authorities did all that was possible within the available scope of measures. Consequently, no Article 2 breach is found. The Court has dealt with a number of such cases, of which *Keenan* is a seminal example.

In *Keenan*, the applicant's son died by suicide while serving a 4-month sentence. This constituted the first judgment in which the Court examined the scope of positive obligations in the context of suicide. Mr Keenan's medical history included symptoms of paranoia, unpredictable behaviour and self-harm. He had been receiving intermittent treatment in the form of anti-psychotic medication for several years. After displaying symptoms of paranoia and aggression following admission to custody, the prison's deputy governor ordered Mr Keenan's segregation in the prison's punishment block on the basis that Mr Keenan was unpredictable and posed a threat to staff. No date seemed to have been given for his release from segregation. He ultimately spent 7 days in segregation, for around 23 hours each day. Although a doctor, the prison chaplain and prison governor visited the segregation unit daily, Mr Keenan had minimal contact with staff and no contact with fellow prisoners during this time. Two weeks later, he died by suicide.

The Court reviewed the claim under Article 2 as well as Article 3, which prohibits torture or inhuman or degrading ill-treatment. The majority found a violation of Article 3 stemming from a lack of effective monitoring of Mr Keenan's condition and the absence of informed psychiatric input into his assessment and treatment (*Keenan v the United Kingdom* 2001, para 116). It was held that imposing 7 days' segregation in the punishment block and adding 28 days to his sentence only 9 days before his planned release date 'may well have threatened his physical and moral resistance' (*Keenan v the United Kingdom* 2001, para 116). This was incompatible with the standard of treatment required in respect of a mentally ill person and attained the threshold of inhuman and degrading treatment or punishment.

By contrast, the judgment was unanimous in finding no violation of Article 2. The Court focused on the question of whether the prison authorities did all that could reasonably be expected of them, having regard to the nature of the risk posed by the applicant's son. As imminence under the *Osman* test is assessed only from the point at which a person is detained, consideration of whether the sentencer assessed the compatibility of detention with Mr Keenan's mental health was excluded. With the focus remaining purely on the acts of prison authorities, it was held that 'on the whole, the authorities responded in a reasonable way to Mark Keenan's conduct' (*Keenan v the United Kingdom* 2001, para 99). This finding stemmed partly from the fact that '[t]he prison doctors, who could have required his removal from segregation at any time, found him fit for segregation' (*Keenan v the United Kingdom* 2001, para 99). By contrast, the same fact of segregation was viewed by the majority as contributing to the undermining of his physical and moral strength amounting to inhuman or degrading ill-treatment in breach of Article 3.

The Court in *Keenan* ultimately found that there was 'no reason', on the day on which the applicant's son killed himself, 'to alert the authorities that he was in a disturbed state of mind rendering an attempt at suicide likely' (*Keenan v the United Kingdom*, 2001, para 99). Although the judgment acknowledged the reality of the risk—'prison authorities knew that Mark Keenan's mental state was such that he posed a potential risk to his own life' (*Keenan v the United Kingdom*, 2001, para 95)—the immediacy of the risk was disputed (*Keenan v the United Kingdom* 2001, para 96):

> [the] immediacy of the risk varied … Mark Keenan's behaviour showed periods of apparent normalcy or at least of ability to cope with the stresses facing him. It cannot be concluded that he was at immediate risk throughout the period of detention. However, the variations in his condition required that he be monitored carefully in case of sudden deterioration.

The applicant's mental health background of chronic problems involving psychosis was insufficient to indicate known suicide risk, with the Court concluding that '[i]t is not known what made Mark Keenan commit suicide' (*Keenan v the United Kingdom* 2001, para 101). On a strict application of *Osman* imminence, the reality of the threat—its presence—is insufficient to amount to imminence. The fact that the threat is both present and ongoing is not seen as entailing its immediacy.

The majority in *Keenan* also notes that '[i]n these circumstances, it is not apparent that the authorities omitted any step which should reasonably have been taken, such as, for example, a fifteen-minute watch' (*Keenan v the United Kingdom* 2001, para 99). Prison authorities indeed tend to use the limited measures available to them in responding to mentally ill detainees' health crises. Alongside this special watch form of monitoring, a Council of Europe White Paper shows that another common response to mentally ill prisoners, among the narrow scope of measures, is the imposition of solitary confinement (Brooker and Monteiro 2022), as shown by the case of *Trubnikov*. Like *Keenan*, *Trubnikov* is emblematic of Article 2 jurisprudence in this area, both in terms of factual background and the Court's findings. The applicant's son, who had a tendency to self-harm when subjected to disciplinary punishment and under the influence of alcohol, was in a punishment cell at the time of his death by suicide, where he was being kept in solitary confinement overnight (*Trubnikov v Russia* 2005). No breach of Article 2 was found because the Court found that the authorities' obligations were discharged through a review of his mental condition at regular 6-month intervals (*Trubnikov v Russia*, para 72). The judgment also concluded that there was no 'manifest omission' on the part of national authorities in providing medical assistance or monitoring Mr Trubnikov's mental and emotional state (*Trubnikov v Russia* 2005, para 76). A 'manifest omission' here would mean a failure to impose a special time-limited watch or solitary confinement, or any other of the limited measures available to prison authorities.

The judgment in *Jeanty v Belgium* provides a further demonstration of the current approach. In *Jeanty*, no breach of Article 2 was established where several suicide attempts were made in pre-trial detention but did not result in a fatality. The fact that the individual had survived the suicide attempts was irrelevant to the applicability of Article 2, which was maintained due to the fact that the risk to life had been real and immediate. As in *Keenan* and *Trubnikov*, the applicant had known psychiatric problems and suicidal ideation. The investigating judge (who ordered the pre-trial detention) was aware of the applicant's well-documented suicidal tendencies and had shared this information with the relevant prison. After arriving in custody, Mr Jeanty made three unsuccessful suicide attempts. This resulted in the removal of all of his personal effects and his placement in a secure isolation cell. On another occasion, he was forced to wear a helmet and handcuffed for a day to prevent him from hitting his head against the wall. The Court considered that, overall, the authorities had done all that could reasonably be expected of them to prevent the risk to Mr Jeanty's life from materialising. Consequently, Article 2 had not been breached.

Overall, this case-law shows how the Court has continued to strictly apply the concept of *Osman* imminence despite mentally ill offenders' well-known history of psychiatric disorders and prior suicide attempts and ideation. The Court has repeatedly found that prison authorities did not manifestly breach their duty in taking preventive steps to protect life. On a strict application of *Osman*, that is unsurprising given the context of the limited scope of measures at those authorities' disposal. A notable exception to *Osman* has, however, emerged in the Court's jurisprudence, in the area of domestic violence.

3 | The Court's Reframed Imminence of Risk in Domestic Violence Case-Law

In the domestic violence field, where an explicit exception to *Osman* has been carved out, the Court has clarified that (*Kurt v Austria* 2021, para 164):

> [t]he existence of a real and immediate risk to life … must be assessed taking due account of the particular context of domestic violence. In such a situation it is above all a question of taking account of the recurrence of successive episodes of violence within the family unit.

The Grand Chamber in *Kurt* held that 'in order to be in a position to know whether there is a real and immediate risk to the life of a victim of domestic violence, the authorities are under a duty to carry out a lethality risk assessment which is autonomous, proactive and comprehensive' (*Kurt v Austria* 2021, para 168). The competent authorities should conduct this risk assessment as soon as a complaint of domestic violence is received (*Kurt v Austria* 2021, para 167). A new understanding of imminent risk has therefore developed in this area of case-law, in recognition of the dynamics of domestic violence. This expansion of the *Osman* test means that the background leading up to lethal risk is taken into account, from the point at which authorities first become aware of the domestic violence.

This expansion of the *Osman* test is based, it is argued, on two key factors, which both affect the Court's understanding of imminence in this field: reliance on others for protection of life, and the unpredictability of the violence. Although scholars have noted the second factor of unpredictable violence (Hedlund 2024; Grans 2023; McQuigg 2022, 2021), the role of the first factor and of the combination of both factors in affecting imminence has not previously been identified in the literature. This is significant as determining the normative justifications for expansion helps to assess how and to what extent imminence may be broadened in other areas. The first of the two factors is the individual's reliance on others to act in order to be protected from the lethal threat. As domestic violence victims require law enforcement or other State intervention to be protected, the threat to life they face persists

until such effective intervention is made; in other words, the threat remains imminent. Second, the trajectory of violence and its unpredictability means the threat can arise at any moment. Both of these elements are used by the Court to justify imposing preventive duties on authorities from the point at which they first become aware of a threat.

With respect to the first element, reliance on others to be protected is recognised by the Court's clarification that 'once the situation has been brought to their attention, the national authorities cannot rely on the victim's attitude for their failure to take adequate measures which could prevent the likelihood of an aggressor carrying out his threats against the physical integrity of the victim' (*Opuz v Turkey* 2009, para 153). In other words, authorities should not 'rely solely on the victim's perception of the risk, but … complement it by their own assessment' (*Kurt v Austria* 2021, para 169). The Court thus shifts the burden of prevention entirely to authorities, in due recognition of the vulnerability of domestic violence victims.

Moreover, effective law enforcement responses are crucial to preventing a risk to life stemming from domestic violence. It is not the reliance itself that justifies the expansion of positive obligations, but the inability of those authorities that are currently relied on to shield against threats to life. The Court has chosen to recognise the reality of inadequate police responses by implicitly viewing a threat to life as enduring until an effective intervention is made. Neither the Court nor scholars writing in this area have hitherto framed this implicit recognition in this way. The identification of this element and its role in maintaining the imminence of risk is significant. It ensures a continuing duty on authorities to take measures needed to protect victims of domestic violence from lethal risk.

With respect to the second element, the trajectory of domestic violence and how the *Osman* test's imminence requirement is to be interpreted, the Court finds that (*Kurt v Austria* 2021, para 175):

> the application of the immediacy standard in this context should take into account the specific features of domestic violence cases … consecutive cycles of domestic violence, often with an increase in frequency, intensity and danger over time, are frequently observed patterns in that context.

Thus 'even if the exact time and place of an attack could not be predicted in a given case', an immediate risk may still be found (*Kurt v Austria* 2021, para 176). In a concurring opinion to the Chamber judgment in *Kurt*, Judge Hüseynov had remarked that 'domestic violence often constitutes not just an isolated incident, but rather a continuous practice of intimidation and abuse' (*Kurt v Austria* 2019, Concurring Opinion of Judge Hüseynov, para 4). This more nuanced recognition of the nature of domestic violence was ultimately reflected in the Grand Chamber judgment. The Court had notably used the Explanatory Report to Article 52 of the Istanbul Convention (The Council of Europe Convention on preventing and combating violence against women and domestic violence) to support its assessment of imminence: 'Article 52 explains that the term "immediate danger" in that provision refers to any situations of domestic violence in which harm is imminent or has already materialised and is likely to happen again' (*Kurt v Austria* 2021, para 175). The repetitive nature of the violence creates temporal immediacy under Article 2 because violent acts may be repeated at any time starting from the point where risk is first identified. There is therefore a real and immediate risk of violence.

Judge Pinto de Albuquerque previously referred to this 'revised *Osman* test' in a separate opinion to *Valiulienė v Lithuania*, arguing that (*Valiulienė v Lithuania* 2013, Concurring Opinion of Judge Pinto de Albuquerque):

> [i]f a State knows or ought to know that a segment of its population … is subject to repeated violence and fails to prevent harm from befalling the members of that group of people when they face a present (but not yet imminent) risk, the State can be found responsible by omission for the resulting human rights violations.

As the Court acknowledges the risk trajectory to be unpredictable, the existence of the risk itself is sufficient to render it imminent. It is not that the risk is present but not yet imminent—it is that the unpredictability of the present risk necessarily entails its imminence.

As shown by domestic violence jurisprudence, it is not the timeline itself that is central to informing imminence but rather the history and recurrence of violence. Although in *Opuz* imminence was found on the basis of repeated and successive episodes of violence, in *Talpis*, despite the gap of 14 months between the initial police intervention and the murder of the applicant's son, an Article 2 breach was established. The fact that the majority considered the *Osman* test to have been met indicates willingness by the Court to expand its understanding of imminence by reference to contextual factors and the build-up of risk to life in certain settings, rather than through a purely chronological lens.[2] By recognising that lethal risk may arise at any point once the threat of domestic violence becomes apparent, the expansion of the *Osman* test allows for a consideration of the relevant background which inevitably contributes to the materialisation of further violence. The judgment in *Talpis* emphasised the need to recall the repetitive nature of domestic violence. The majority emphasised that the police had to intervene twice during the night of the fatal incident and that the police had been in a position to check the perpetrator's police record. The majority subsequently held that the authorities (*Talpis v Italy* 2017, para 122):

> should have known that the applicant's husband constituted a real risk to her, the imminent materialisation of which could not be excluded … the authorities failed to use their powers to take measures which could reasonably have prevented, or at least mitigated, the materialisation of a real risk to the lives of the applicant and her son.

The notion of mitigation was introduced by the landmark judgment in *Opuz* in which the Court held that while it (*Opuz v Turkey* 2009, para 136):

> [could not] conclude with certainty that matters would have turned out differently and that the killing [of the applicant's mother] would not have occurred if the authorities had acted otherwise, it reiterates that a failure to take reasonable measures which could have had a real prospect of altering the outcome or mitigating the harm is sufficient to engage the responsibility of the State.

The introduction of mitigation in the domestic violence sphere is important as it indicates that a direct causal link between the authorities' omission and a fatal or near-fatal incident is no longer required. This significantly lowers the threshold of the *Osman* test—in *Osman*, it was the absence of such a causal link that ultimately resulted in the finding of a non-violation. The Court's review in this field thus no longer relies solely on causal links between specific omissions and harm (Stoyanova 2023, 184). Several dissenting judges in *Kurt* reasoned that (*Kurt v Austria* 2021, Joint Dissenting Opinion of Judges Turković, Lemmens, Harutyunyan, Elósegui, Felici, Pavli and Yüksel, para 39):

> [t]he *Osman* test does not require it to be shown that 'but for' one or other specific failing or omission of the authorities the killing would not have occurred. Rather, what is important, and sufficient to engage the responsibility of the State under Article 2, is that reasonable measures that the domestic authorities failed to take could have had a real prospect of altering the outcome or mitigating the harm.

The assessment of possible risk mitigation with respect to domestic violence signals a move towards the interpretation of the *Osman* test urged by the dissenting judges. Importantly, the sufficiency of mitigation rather than full negation of possible harm shows the Court's willingness to interpret *Osman* flexibly where it finds—as it clearly does in the judgments in *Opuz, Talpis*, and in respect of domestic violence overall—that more can be done to protect life.

In assessing imminence, authorities must now take account of the particular dynamics of domestic violence. In this respect, the Grand Chamber in *Kurt* affirmed that 'special diligence is required from the authorities when dealing with cases of domestic violence' (*Kurt v Austria* 2021, para 166). For Stoyanova, the mention of 'special diligence' indicates that individual cases are viewed through the lens of domestic violence as a broader societal issue (Stoyanova 2023, 184). De Vido agrees that a stricter due diligence standard has emerged with regard to the steps States must take with the aim of preventing this form of violence (De Vido 2017). As per the Court's framing in *Kurt*, '[t]he issue of domestic violence—which can take various forms … transcends the circumstances of an individual case' (*Kurt v Austria* 2021, para 161). The Court speaks of the 'specific nature' of domestic violence (*Kurt v Austria* 2021, paras 165-6; *Volodina v Russia* 2019, para 92), building its understanding of lethality risk in this setting by reference to established expertise. This ranges from findings of the Committee on the Elimination of Discrimination against Women (*Eremia v the Republic of Moldova* 2013) to third-party submissions by expert groups on domestic violence, including GREVIO, the body responsible for monitoring implementation of the Istanbul Convention (*Kurt v Austria* 2021). Importantly, the Grand Chamber clarifies that '[t]his general knowledge of domestic violence and the comprehensive research available in this area must duly be taken into account by the authorities when they assess the risk of a further escalation of violence' (*Kurt v Austria* 2021, para 175).

In summary, the two factors of dependency on others and the unpredictable trajectory of violence have been key to the expansion of imminence in the domestic violence sphere. It is those two factors that reflect a recognition, at Convention level, that more needs to, and indeed can, be done. Importantly, it is the Court's consideration of the wider context and how it affects the imminence of risk, including reference to expert research and materials, that is at the heart of the *Osman* expansion.

4 | Reframing of Imminence in Offender Suicide Prevention

The factors underlying the expansion of Article 2 imminence in the Court's domestic violence case-law offer a fruitful basis for considering how such an expansion could be applied to offender suicide prevention. Although scholars have identified the shift in these cases (Stoyanova 2023; McQuigg 2022; De Vido 2017), the analysis has not been extended to the offender context. This section represents the first attempt in academic literature to determine whether that approach can be used to expand positive obligations to protect the right to life of mentally ill offenders. By adapting its application of *Osman* in domestic violence case-law, the Court has been able to capture the reality of imminence of risk in this area. In recognising that the two key factors giving rise to an expansion of *Osman* in the field of domestic violence also arise in suicide prevention, the *Osman* understanding of imminence can again be reframed and thus become more effective at meeting its preventive goals.

Before transferring the two elements to the criminal justice context, it is worth noting an implicit exception to a strict application of *Osman* which has occurred in the military context and also involves suicide risk. The same two factors driving an expansion of imminence can be identified here. Much of the Court's suicide case-law in the context of military service stems from ill-treatment, harassment or hazing (*Varyan v Armenia* 2024; *Nana Muradyan v Armenia* 2022; *Filippovy v Russia* 2022; *Perevedentsevy v Russia* 2014; and *Abdullah Yılmaz v Turkey* 2008). In *Servet Gündüz*, which related to a conscript's suicide, the Court found that the military authorities should have known that the recruitment and continued enlistment of the individual in the armed forces entailed a real risk to his physical and psychological wellbeing (*Servet Gündüz and Others v Turkey* 2011, para 80). The compatibility of his psychological problems and drug addiction with his fitness to serve in the army had not been examined by the military authorities. The Court held that, prior to the young man's commencement of military service, the relevant authorities should have made greater efforts to determine the extent and

seriousness of the disorders observed in him, in order to establish whether and to what extent his state of health was compatible with military life or likely to entail a risk to his physical and mental well-being (*Servet Gündüz and Others v Turkey* 2011, para 74). This reflects the first factor for expansion - reliance on others for protection of the right to life, tied to the inability of those 'others' (namely, relevant authorities) to protect life. Moreover, the evidence showed that, from the outset of his conscription, and while he was still in the training phase, Ibrahim Serkan Gündüz's psychological problems and drug addiction were not only noted but repeatedly referred to in alarming terms by military authorities (*Servet Gündüz and Others v Turkey* 2011, para 70). The second factor of an ongoing and unpredictable threat of violence was therefore also established.

The Court in *Servet Gündüz* thus implicitly expanded its understanding of *Osman* imminence in the context of suicide prevention where a person at risk of suicide was, first, reliant on others for protection, and second, where ongoing lethal risk was unpredictable due to its source (mental ill-health). This demonstrates not only the possible transfer of these two factors beyond the domestic violence field but also shows that the Court has already conducted such implicit transfer to the context of suicide prevention in the military. The following sections apply the two factors to the context of suicide prevention in the criminal justice sphere. Section 4.1 considers the first element—reliance on authorities for protection of the right to life. Section 4.2 identifies the second element—knowledge of existing suicide risk, which indicates an unpredictable trajectory of further suicide attempts. In applying both elements, the section highlights that effective prevention cannot work without an acknowledgement that mental health history is central in determining the imminence of suicide risk.

4.1 | Reliance on Authorities for Protection of the Right to Life

Suicide remains one of the most common causes of death in detention in many countries, with suicide rates much higher than those among the general population, including in Europe (Mundt et al. 2024; Perugino et al. 2022; Fazel et al. 2017; Hawton et al. 2014; Rabe 2012; Fazel et al. 2011). All international studies have found increased suicide rates among prisoners compared to the general population (Rabe 2012; Fazel et al. 2011). A recent study of global suicide rates in prison, covering 82 jurisdictions across a 20-year period, found that prison suicide rates in Europe were typically considerably higher than in Africa, Asia and the Americas (Mundt et al. 2024). Another study noted that the highest suicide rates were found in Northern European prisons, mostly exceeding 100 suicides per 10,000,000 prisoners each year. Similar numbers were found in France and Belgium (Fazel et al. 2017). Using data for 3906 prison suicides from 24 high-income countries (chiefly Council of Europe States), researchers found an increased risk of suicide among prisoners compared with the general population in all countries (Fazel et al. 2011).

As the above data show, responses by prison authorities are proving inadequate in alleviating the threat of self-harm and suicide in detention. Yet mentally ill offenders, like domestic violence victims, are largely reliant on the authorities for protection of their lives. It is not the reliance itself that justifies the expansion of positive obligations, but the inability of the authorities presently relied upon to adequately respond to the risk to life. The Court therefore needs to reflect two key elements within its case-law—first, the limited availability of in-custody prevention measures, and second, the full range of authorities who have knowledge of the threat.

First, the Court fails to recognise that prison authorities are often unable to effectively respond to suicide risk on account of the limited set of measures available to them. The measures are limited because of the intrinsic nature of the prison setting. As shown by the jurisprudence relating to suicide attempts in custody outlined at Section 2, the scope and effectiveness of the actions that prison administrations can take to both identify and react to suicide risk are confined mainly to monitoring or isolation measures. These actions are constrained to certain time-frames, such as the 15-minute watch found by the Court to be a reasonable step in *Keenan*. The use of isolation, or the placement of a helmet or handcuffs on a person for their own safety, is equally time-limited because it cannot be indefinite (*Jeanty v Belgium* 2020). It is worth recalling here that the Court asks prison authorities to 'discharge their duties in a manner compatible with the rights and freedoms of the individual prisoner' and 'without infringing personal autonomy' (*Shumkova v Russia* 2012, para 91; *Renolde v France* 2008, para 83). Consequently, the measures available to prison authorities are not only limited in terms of the range of measures, but also as regards the time-frame in which they operate. Such measures are fundamentally unable to address the nature of the threat which, as in domestic violence, is unpredictable. In-custody measures are ineffective at responding to what is at its core an unpredictable and ongoing risk, rather than one which can be distilled to a certain, limited time. In-custody management strategies, such as increased staff training, and the policies behind them, have also been shown to be ineffective, with suicides and suicide attempts in many custodial settings having in fact increased (Cliquennois et al. 2022).

Second, a recognition, similar to that made in domestic violence jurisprudence, of the need not only for effective State intervention but also 'special diligence' (*Kurt v Austria* 2021, para 166) would mean that positive duties to prevent suicide and self-harm commence from the point at which these risks become known. Applying the *Osman* test, sentencing bodies 'knew or ought to have known at the relevant time of the existence of a real and immediate risk to the life' (*Osman* 1998, para 116). As information of ongoing suicide risk is available from the point of sentencing, sentencers must act accordingly to prevent the threat from arising. Courts dispose of a wider range of preventive measures than prison authorities and are able to consider both custodial and non-custodial measures by reference to an offender's mental health. On this reframing, to meet a State's positive obligations under Article 2, sentencing bodies must divert from detention those individuals whose suicidal ideation cannot be managed in custody.

Bringing together these two elements—the limited availability of in-custody prevention measures, and the full range of authorities who have knowledge of the threat—leads to a recognition of imminent risk at the sentencing stage. As prison authorities are unable to respond adequately to the threat to life, and States have positive obligations to prevent suicide, a failure to incorporate

the role of sentencing bodies must be seen as a breach of Article 2. In this way, Article 2 standards would reflect the full range of authorities that are relied on, and that can act, to protect a vulnerable offender's life.

4.2 | Knowledge of Existing Suicide Risk

The link between previous self-harm and future risk of suicide is well-established, in both scientific (Duarte et al. 2020; Chan et al. 2016) and policy literature (Brooker and Monteiro 2022; Pope 2018). 'The burden of self-harm in prisoners is substantial' (Hawton et al. 2014)—around 50% of people who die by suicide in prison have a history of self-harm, which increases the risks of suicide in custody between 6 and 11 times (Browne et al. 2023; Ryland et al. 2020; Horton et al. 2018; Hawton et al. 2014; Humber et al. 2013; Fazel et al. 2008). Among 40 risk factors examined in a study, the 'strongest associations with self-harm in prison were found for suicide-related antecedents, including current or recent suicidal ideation … lifetime history of suicidal ideation … and previous self-harm' (Favril, Yu, et al. 2020). A report by the Council for Penological Co-operation of the Council of Europe has found that in most cases 'there are signs or symptoms that are present for a while before the incident, and if that information had been shared in due course a suicide attempt might have been prevented' (Brooker and Monteiro 2022, 18). Indeed, most epidemiological studies suggest that suicide is caused by multiple biopsychosocial factors, some of which occur before imprisonment; of these, a psychiatric disorder is among the most common (Perugino et al. 2022; Favril, Indig, et al. 2020; Fazel and Runeson 2020; Franklin et al. 2017; Turecki and Brent 2016; World Health Organization [WHO]/International Association for Suicide Prevention [IASP] 2007). In delaying the risk assessment until custody, the Court therefore fails to embed within its Article 2 case-law the medical reality that a history of psychiatric disorders and self-harm is integral in determining a future risk of suicide.

As it does in domestic violence jurisprudence, the Court must root its understanding of lethality risk within the previously outlined, already established scientific expertise. The 'comprehensive research available' in assessing the risk of a further escalation of violence (*Kurt v Austria* 2021, para 175) must be central in informing Article 2 imminence. The current application of *Osman* omits mental health history from suicide prevention, despite established scientific research showing this to be a key predictor of ongoing suicide risk. The impacts of this are apparent in key cases on suicide in prison. In *Keenan*, the individual's backgrounds of psychosis and self-harm were insufficient to find an Article 2 violation in the light of his suicide in prison. In *Jeanty*, the applicant's known suicidal ideation was equally insufficient to lead to an Article 2 breach stemming from his repeated suicide attempts in pre-trial detention. In *Trubnikov*, the suicide of the applicant's son in a punishment cell against the background of his self-harm when subjected to disciplinary punishment also did not amount to an Article 2 violation. To better reflect expertise on suicide risk, as with domestic violence, any identified lethal threat should be seen as immediate as its very existence shows that it may reoccur at any time.

The strict application of *Osman* maintains focus on in-custody events to the exclusion of prior incidents or mental health history. This 'narrow conception of suicide' (Larralde and Cliquennois 2022, 22) situates the starting point of prevention too closely to occurrence. In doing so, it fails to consider the period of time prior to detention and whether possibilities for prevention existed at that stage. As such, the Court focuses on prevention of 'immediate risks that are easier to calculate' while ignoring more complex risk factors, such as prison overcrowding and the punitive nature of certain detention regimes (Larralde and Cliquennois 2022, 22–23). These endemic environmental factors in detention increase the risk of suicide in custody. Because mental health disorders are generally overrepresented in prisoners, this places them at an increased risk of suicide (Favril, Indig, et al. 2020). In addition, detention itself creates further risk factors, including separation from family and friends, being subject to the control of prison authorities and, often, dehumanising treatment (Perugino et al. 2022; Pompili et al. 2009), segregation (Zhong et al. 2021; Fazel et al. 2008) and exposure to violence (Marzano et al. 2016).

One proposed solution to ensure that the Court duly notes the role of broader, endemic risk factors in detention is for Article 2 to be read together with Articles 3, 5 and 8 of the Convention to ensure a more holistic approach to suicide prevention (Larralde and Cliquennois 2022; Cliquennois et al. 2022). The Court's review under those provisions permits a more contextual analysis that takes account of the wider challenges of detention and the consequent impact on individual rights—for example, poor prison conditions and overcrowding. On this basis, it has been argued that reading Article 2 together with those provisions would ensure a more nuanced analysis of the risk factors present in custodial settings (Larralde and Cliquennois 2022). However, for the time being at least, this broader harmonious interpretation of the various Convention rights is unlikely to take hold in the Court's case-law. This is because Article 2 positive obligations are rooted in the assumption that there was a suicide risk that was either foreseen by, or at the least foreseeable to, national authorities. The argument that conditions of detention in and of themselves create a suicide risk has already been raised before, and rejected by, the Court. In the 2003 judgment of *Younger*, the Court rebuffed the argument that 'every prisoner should be treated as a real and immediate suicide risk merely by virtue of being a prisoner' (*Younger v the United Kingdom* 2003). The Court also declined to find that a failure to follow national preventive strategies and procedures '[could], in itself, give rise to a violation of Article 2 … in the absence of actual or imputed knowledge' of real and immediate suicide risk (*Younger v the United Kingdom* 2003). A harmonious reading of Articles 3, 5 and 8 together with Article 2 thus remains unlikely to emerge as a solution to gaps in suicide prevention.

The expansion of imminence shown in domestic violence case-law, meanwhile, offers a way to develop positive obligations that are more responsive to the criminal justice sphere. For the majority in *Osman*, the applicants 'failed to point to any decisive stage in the sequence of the events leading up to the tragic shooting when it could be said that the police knew or ought to have known that the lives of the Osman family were at real and immediate risk' (*Osman* 1998, para 121). The application of this strict approach in the prison setting means that as it is generally not possible to identify a 'decisive' moment when an individual may commit suicide, no Article 2 breach can be found. On the current approach, applicants must be able

to point to one 'decisive' moment at which suicide risk was known to be imminent. However, as shown by the scientific literature, it is mental health history, including a background of suicidal ideation, that causes a general and ongoing rather than specifically timed suicide threat. As medical research also demonstrates, the imposition of custody itself in these cases causes the threat to persist or, in fact, to become aggravated. As in the field of domestic violence, there is rarely a 'decisive stage' (*Osman* 1998, para 121) at which the violence can be predicted to occur.

The Grand Chamber in *Kurt* outlined a requirement for States to conduct an 'autonomous, proactive and comprehensive' lethality risk assessment (*Kurt v Austria* 2021, para 168). Competent authorities should conduct this risk assessment as soon as information of lethal risk (here, suicide risk) is available. As the proposal incorporates the role of sentencers within Article 2 preventive duties, it will be incumbent on sentencers to conduct this risk assessment. This will be based on pre-sentence reports detailing an offender's mental health history, and weighing factors for and against detention. In this way, the requirement for the risk assessment to be autonomous, proactive and comprehensive can be met. Courts would be guided to consider whether imposing detention may cause suicide risk and whether an alternative to detention could instead be ordered. This would help to fill the gap that currently exists between, on the one hand, medical knowledge showing that psychiatric disorders and prior self-harm attempts aggravate the risk of suicide in detention, and, on the other, the Court's exclusion of sentencers from Article 2 review. Sentencing decisions would also be guided by competing Convention obligations and whether the objectives of punishment require a period of imprisonment to be ordered. In this respect, Section 5 outlines how possible theoretical and practical objections to the proposal may be overcome.

5 | Overcoming Potential Theoretical and Practical Objections

Two potential obstacles to the proposed expansion of positive obligations in the field of offender mental health may be read as arising from the Court's case-law. These are, first, the balancing sometimes required between Article 2 and competing Convention rights, which includes the positive obligation to sanction criminal wrongdoing (the theoretical objection), and second, the feasibility of State action, entailing two key matters—resourcing and foreseeability (the practical objection).

The first, theoretical objection stems from the development of an 'obligation to punish' (also termed 'coercive human rights') in the Court's case-law, in line with which States are required to criminalise certain behaviours or breaches of human rights (Mavronicola 2024; Pinto 2023; Lazarus 2020; Mavronicola and Lavrysen 2020). This move towards 'coercive human rights' is not accompanied by the introduction of duties to imprison. Nevertheless, any new framework of positive obligations in the field of offender mental health must consider how an obligation to punish certain categories of behaviour can work compatibly with a move towards non-custodial alternatives, where required by an offender's mental health in order to prevent suicide or self-harm.

Existing literature on the Court's positive obligations assists in answering the question of whether a consideration of alternatives to detention undermines the obligation to punish criminal wrongdoing. The obligation to criminalise is understood to mean 'effective punishment', which is 'instrumental to both retributive and deterrent purposes' (Lavrysen 2020, 35–6). Such criminalisation also pursues the goal of deterrence (Cliquennois et al. 2022, 12). De Than identified early on that positive obligations under the Convention create duties to uphold victims' rights (de Than 2003, 182). More recently, these duties have been seen as increasingly coercive obligations to criminalise, with scholars noting the role of victim vulnerabilities (Heri 2021, 2020, 2019; Pinto 2020). For instance, with respect to the criminalisation of domestic psychological violence, Hedlund finds that the Court 'primarily focusses on the victim's vulnerability as well as the public interest in prosecution' (Hedlund 2024, 20). However, as Heri (who writes extensively on this) notes, obligations to criminalise are not limitless (Heri 2020, 140):

> regardless of the vulnerability of victims of domestic violence, states must not necessarily turn to the criminal law and provide for state-assisted prosecution of perpetrators, but have a margin of appreciation in the choice of means. … vulnerability-based reasoning does not require the criminalisation of all acts of physical violence … even against vulnerable victims.

Moreover, the fact that the Court does not generally require criminal law provisions to be in place where the offence does not involve any physical violence, abuse or contact (Lavrysen 2020, 40) indicates a level of discretion accorded to States in determining suitable punishments. An obligation to sanction offenders, including mentally ill offenders, with a custodial sentence to the exclusion of all other kinds of punishment is not therefore established in the case-law, even where criminal law responses are required. The Court does not find that the Convention rights of victims can be upheld only through the detention of offenders. It is the 'availability of a remedy enabling the perpetrator to be identified and brought to justice' that is crucial for both the public interest and victims' rights to be upheld (*Volodina v Russia (No 2)* 2021, para 57), the specifics of which remain within the State's margin of appreciation. Sentencing is generally viewed as an area within the exclusive competence of national criminal courts (*Nikolova and Velichkova v Bulgaria* 2007, para 61). Beyond those circumstances where an obligation to punish is created by competing Convention obligations, such as Article 3 where suspended sentences handed down for ill-treatment of a detainee may be judged inadequate (*Derman v Turkey* 2011, para 28), specific sentencing choices generally fall beyond the Court's remit. The proposal is therefore not contrary to the objectives of punishment but rather fits with the Convention's new coercive human rights duties, nor does it encroach on the bounds of the Court's oversight of national sentencing decisions.

Consequently, the only constraint to be imposed on State action—the practical objection—is one of feasibility, which prohibits the imposition of 'an impossible or disproportionate burden' on national authorities (*Osman* 1998, para 116). Feasibility raises two key matters—the availability of resources, and foreseeability. In

terms of resourcing, Ebert and Sijniensky frame the challenge as (Ebert and Sijniensky 2015):

> [defining] the State's positive obligations in a way that … is attuned to the relevant scenario and strikes a fair balance between the interests of the individual and those of the society at large, also given the potentially far-reaching consequences for policy-making and public budgets.

In this respect, a State would struggle to show that a lack of resourcing which leads to the imposition of detention in place of non-custodial alternatives in fact carries any fiscal savings. The costs of prisons have been shown to far exceed those of non-custodial sanctions in countries across the world (Penal Reform International 2020, 16; Jacobson et al. 2017; UNODC 2007), including on account of indirect healthcare-related costs arising from detention (UNODC 2011, 10). Direct costs include building and administering prisons as well as housing, feeding and caring for prisoners (UNODC 2007, 4). In addition, imprisonment entails expenditure linked to safety and security, infrastructure and equipment, as well as the recruitment, training and salaries of staff (Penal Reform International 2020, 15). According to a study of imprisonment in 10 countries across five continents, the goals of risk management and prevention of further harm can be met at lower cost by the use of alternatives to custody such as electronic monitoring, curfews and supervision (Jacobson et al. 2017, 28). For example, in the United Kingdom, it has been shown that community orders with a Mental Health Treatment Requirement are more cost-effective than detention (Royal College of Psychiatrists 2021). Relevant research on Europe concluded that prison is more expensive than the alternatives in all instances. A 2-year comparative research project analysed statistical and qualitative evidence of the use of alternative measures across eight countries—Italy, France, Greece, Latvia, Poland, Portugal, Spain and the three separate UK jurisdictions (European Prison Observatory 2016). While identifying a need for further quantitative data on the relative costs of non-custodial measures, it nonetheless firmly concluded that 'prison costs more (both directly and indirectly) than alternatives … more than even the most intensively supervised cases' (European Prison Observatory 2016, 25).

Finally, the vehicle for determining foreseeability of risk is the *Osman* test. Within this, the Court is careful to acknowledge the limits on police authorities in enacting operational measures. Although the Court speaks of the 'unpredictability of human conduct' (*Finogenov v Russia* 2011, para 209) in imposing limits on what can be expected of authorities, in the sphere of domestic violence, it has acknowledged that it is that unpredictability and continuing threat of violence that necessitates an expansion of imminence. What is used as a factor to limit positive obligations in *Osman* is therefore used to expand positive obligations linked to domestic violence. Authorities are expected to gather information on risk as soon as it is reported by a victim of domestic violence. Although the behaviour is unpredictable, a greater body of evidence is acquired, which empowers rather than weakens effective responses from the authorities.

In the mental health field, the unpredictability of human conduct is equally mitigated by the fact that that unpredictability is accompanied by access to an offender's mental health history. Thus, as with domestic violence, acknowledging that an ongoing threat is also an imminent one eases the burden on authorities. Here, the relevant authorities are sentencing bodies who have access to the offender's mental health background, including prior self-harm. As previously noted, medical research shows that prior self-harm and a history of psychiatric disorder are significant risk factors for suicide attempts in prison. As explained in Section 4.1, a recognition of risk from the point that it can first be known—at sentencing—also widens the scope of effective measures available to protect life. A body of evidence is already available to sentencers in assessing the mental health of offenders, as shown by Article 2 case-law where a risk of offender suicide was clear to judges. This can be compared with the unforeseen acts of third parties, including acts of terrorism (*Finogenov v Russia* 2011) which are also assessed under Article 2. Sentencers have at their disposal detailed information both of the individual's mental health and the circumstances prevailing in custody, including the availability of treatment. As such, a comprehensive mental health report covering the possible presence of suicidal ideation minimises the unpredictability that could otherwise stifle a turn to preventive measures. The feasibility of the proposed measures is, as a result, maintained.

6 | Conclusion

States across the Council of Europe continue to display alarmingly high rates of self-harm and suicide attempts in places of detention. The article proposes that by embedding research on the fundamental link between mental health history and future risk of suicide in detention in its case-law, the Court can reflect a better understanding of, and therefore respond more effectively to, risk to life in this area. This requires a reframing of the concept of imminence of risk under the *Osman* test, which triggers a State's preventive duties. The only exception to the *Osman* test can be seen in the explicit expansion of imminence in the context of domestic violence. The article identifies not just one factor behind this, as scholars in the field have done, but two: reliance on others for protection of life, and the unpredictability of the violence. The implicit expansion of imminence based on these two factors is also identified in case-law dealing with suicide prevention in the military. In transferring the factors to the criminal justice sphere, the article has shown that sentencers have both the knowledge of an offender's mental health history, including prior self-harm, and the capacity to act to prevent a possible suicide in detention by imposing alternative measures. In line with the proposed framework, Contracting States and the Court must view the failure by sentencers to impose an alternative to detention as a Convention breach where in-custody measures would prove insufficient for mitigating a risk to life. In doing so, the Court—and States through application of its case-law—would begin to plug the gaps in protection of vulnerable offenders, which persist across the European human rights space with devastating consequences.

Endnotes

[1] The CPT's findings show the scale of the problem—'Annual Reports' (Council of Europe 2025) https://www.coe.int/en/web/cpt/annual-reports.

[2] See however the partly dissenting opinion of Judge Spano, who queried the immediacy of the risk—*Talpis v Italy* 2017, Partly Dissenting Opinion of Judge Spano, para 6.

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