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

THIRD SECTION

DECISION

Application no. 29688/09
Thomas ISAKSSON against Sweden
and 3 other applications
(see list appended)

The European Court of Human Rights (Third Section), sitting on 8 March 2016 as a Chamber composed of:

Luis López Guerra, *President,*
Helena Jäderblom,
George Nicolaou,
Helen Keller,
Branko Lubarda,
Pere Pastor Vilanova,
Alena Poláčková, *judges,*

and Stephen Phillips, *Section Registrar,*

Having regard to the above applications lodged on the various dates indicated in the appended table,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

1. A list of the applicants is set out in the appendix.

2. The Swedish Government ("the Government") were represented by their Agent, Ms G. Isaksson of the Ministry for Foreign Affairs.

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. In February 2008 the applicants, who are all Swedish citizens, were indicted on charges of having committed, *inter alia*, aggravated drug offences and aggravated violation of the Act on Trade in Medicinal Products (*lagen (1996:1152) om handel med läkemedel m.m.*, hereafter "the 1996 Act"). According to the prosecutor, during the period from 1 January 2003 to 30 January 2007, in Stockholm and the county of Skåne, the applicants and three other defendants had, together and in consultation, created a business on three different websites on the internet through which they had sold medicinal products illegally for a total amount of at least 28.8 million Swedish kronor (SEK), approximately 3 million euros (EUR) of which products for an amount of at least SEK 9.6 million, approximately EUR 1 million, constituted narcotic drugs.

5. The first and second applicants were accused of having been responsible for the business. The first applicant had operated from Sweden while the second applicant had operated mainly from Thailand. They had allegedly controlled the other defendants' actions, received orders from customers all over the world and forwarded these to the persons responsible for the distribution of the medicinal products, including the narcotic drugs. According to the prosecutor, they had also been involved in company acquisitions to facilitate the web trade of medicinal products and credit card payments. The first and second applicants had also participated in the creation of the websites where the medicinal products, including the narcotic drugs, had been sold and opened bank accounts for payments received for the products. The third applicant, who had operated from Sweden, was accused of having created, administered and dealt with customer contacts for two of the websites through which the medicinal products and narcotic drugs had been sold. In relation to the charges for aggravated drug offences, he was also accused of having promoted narcotic drug trafficking by illegally holding and forwarding payments for narcotic drugs. The fourth applicant was accused of having created one of the internet sites used for the trading of the medicinal products and the narcotic drugs and of having administered and dealt with customer contacts on all three internet sites.

6. Legal representatives were appointed to the applicants, who denied the charges. The applicants and their co-defendants argued, among other things, that Swedish courts did not have jurisdiction in the case as no medicinal products had ever been physically present in Sweden and nothing had been sold to persons in Sweden. The medicinal products had been acquired outside of Sweden and sold to people in various countries but never in Sweden. In their view, their business had been lawful and they had not committed any criminal offence under Swedish law.

7. On 4 April 2008, following a main hearing which lasted 14 days, the Attunda District Court (*tingsrätten*) convicted the applicants of aggravated drug offences and sentenced them to between two and seven years'

imprisonment. In so far as concerned its jurisdiction, the District Court first noted that the Swedish Narcotics Penal Act (*Narkotikastrafflagen (1968:64)*) was applicable also to crimes committed outside of Sweden for which reason the alleged drug offences were covered by that Act. It then noted that several of the alleged activities had taken place in Sweden, such as offering the medicinal products, including the narcotic drugs, for sale from Sweden and establishing the contacts between sellers and buyers from Sweden. These activities were, in the court's view, sufficient to find that the alleged crimes had been completed in Sweden. Therefore, it had jurisdiction to try this charge. The court proceeded to find that the applicants had been involved in the activities as specified by the prosecutor and that they had known that it was illegal and in breach of Swedish law.

8. However, the District Court acquitted the applicants of the second charge as it found that the 1996 Act was not applicable in the present case as no medicinal products had passed through Sweden and the business had not been aimed at consumers in Sweden. According to the court, the State's monopoly to trade with medicinal products in Sweden had therefore not been breached.

9. The applicants as well as the prosecutor appealed against the judgment to the Svea Court of Appeal (*hovrätten*). The prosecutor argued, *inter alia*, that the applicants should also be convicted of aggravated violation of the 1996 Act. The applicants submitted *inter alia* that the appellate court should dismiss the charges against them or, alternatively, that the charges for aggravated drugs offences should be rejected. They maintained that Swedish courts lacked jurisdiction and that they had not committed any criminal offence under Swedish law.

10. On 2 July 2008, following a main hearing, the Court of Appeal upheld the lower court's conviction of aggravated drug offences for the first and second applicants. It aquitted the third applicant of that charge as it did not find that he had been aware that medicinal products classified as narcotic drugs had been sold on the internet sites. Lastly, it altered the fourth applicant's conviction to complicity to aggravated drug offences. However, the appellate court also convicted the first and second applicants of aggravated violation of the 1996 Act and the third and fourth applicants of complicity to aggravated violation of the 1996 Act. The first and second applicants were sentenced to eight years' imprisonment, the third applicant was given a probationary sentence and a fine of SEK 10,800 and the fourth applicant was sentenced to two years and six months' imprisonment.

11. The appellate court found that since the first applicant, who had had the leading role in the business, had operated from Sweden and the other defendants had taken part in the same business, all their actions should be deemed as having been committed in Sweden. Consequently, the court had jurisdiction to consider the acts and Swedish law was applicable. As regards the charge of aggravated violation of the 1996 Act, the appellate court noted

that the business had been large scale, comprising sales of at least SEK 19,200,000. Since the 1996 Act prohibited sales of medicinal products by others that the Swedish State, or a legal entity in which the State had decisive influence, the court found that the applicants had violated the Act as specified by the prosecutor in the indictment. The Court of Appeal further noted that it did not consider that convicting the defendants would be in breach of either the principle of legality when applying the 1996 Act in its wording before it was amended on 1 May 2006, or any EC laws or regulations.

12. The applicants and two of their co-defendants appealed against the judgment to the Supreme Court (*Högsta domstolen*), maintaining their claims.

13. The Supreme Court granted leave to appeal concerning the question whether what the Court of Appeal had found proven in relation to each of the defendants under the charges of aggravated violation of the 1996 Act meant that the prerequisites to convict them under that Act were fulfilled. The question of leave to appeal for the remainder of the case was adjourned.

14. On 5 December 2008, the Supreme Court gave judgment, answering the question in the affirmative, namely, that the prerequisites to convict the applicants under the 1996 Act were fulfilled in the present case. In view of its finding, it refused leave to appeal for the remainder of the case. The Supreme Court first noted that the prosecuted activities of the defendants, that is the running of the retail business during the specified time, were to be seen collectively and hence be considered as one crime, even though they comprised several acts carried out at various times where each act was sufficient to be considered a crime of itself. The main question was then whether the activities could be considered to have been performed in Sweden. Agreeing with the Court of Appeal, the Supreme Court found that this was the case since some of the acts had been carried out in Sweden and Sweden therefore had jurisdiction to try the charge in its entirety in accordance with the principle of ubiquity and Chapter 2, Articles 1 and 4 of the Penal Code (*Brottsbalken (1962:700)*). As regards the acts of complicity, such acts should be considered to be committed not only where they were performed, but also where the main act had been committed. The Supreme Court hence concluded that the Swedish courts had jurisdiction to try the charges against the applicants.

15. The Supreme Court then turned to consider whether the applicants and their co-defendants had violated Swedish law, namely the 1996 Act. Here, the court noted that the 1996 Act was primarily directed at regulating the trade of medicinal products in Sweden and that it had to establish whether it was applicable when neither the products nor the buyers were physically present in Sweden, that is when the trade was based in Sweden but directed against foreign markets. In deciding this, the court had regard to the rapid development of the technical means of trading over national

borders and the interest to protect the health and safety of consumers, also outside of Sweden. It further took into account the Act on Electronic Trade and Other Information Society Services (*lagen (2002:562) om elektronisk handel och andra informationssamhällets tjänster*, hereafter "the Electronic Trade Act") which was based upon the EU directive 2000/31/EC of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ("the Directive on Electronic Commerce"). The directive established the subjective territoriality principle in that Member States should ensure that services emanating from within their territories complied with national provisions applicable in that State. The Supreme Court noted that the subjective territoriality principle was an established principle applicable to various areas. It further concluded that retail trading of medicinal products was not, as such, covered by the scope of the Electronic Trade Act. Even though marketing and ordering of medicinal products via internet did, in fact, fall under the Act, actual deliveries of medicinal products were not covered by the scope of the Act. Having regard to the above as well as to the interest to protect the health and safety of consumers, avoid that Sweden be considered as a suitable base for irresponsible large-scale medicinal trade and that there did not appear to exist any formal or other circumstances directly contradicting that the subjective territoriality principle was applicable, the Supreme Court concluded that the 1996 Act was applicable and that the defendants had breached it as found by the Court of Appeal.

16. The third applicant requested the Supreme Court to re-open the case on 19 May 2009. He claimed *inter alia* that section 4 of the 1996 Act in its wording before it was amended on 1 May 2006, referred to a repealed ordinance (the Medicinal Products Ordinance, *Läkemedelsförordningen (1962:702)*) and that therefore, he could not have foreseen that the acts he was convicted of were illegal. The request was rejected by the Supreme Court on 20 October 2009 since it found that the applicant had not shown any such new circumstance that would justify a re-opening of the case.

B. Relevant domestic law and practice

1. The 1996 Act

17. The provisions applied in the present case were laid down in the 1996 Act. It may be noted that the 1996 Act was replaced, on 1 July 2009, by a new Act on Trade in Medicinal Products (*lagen (2009:36) om handel med läkemedel* – hereafter referred to as "the 2009 Act").

18. Section 4 of the 1996 Act provided, inter alia, that retail trade of medicinal products should be conducted by the State or by a legal entity, appointed by the Government, in which the State had a decisive influence.

Between 1970 and 1 July 2009 the state owned company Apoteket AB had exclusive rights to sell medicinal products in Sweden.

19. In its wording until 1 May 2006, section 4 of the 1996 Act referred to retail trade in "items that are covered by the now repealed Medicinal Products Ordinance (1962:701)" and one other Act. However, through a legislative amendment this was changed and, as from 1 May 2006, section 4 instead referred to the Medicinal Products Act (*Läkemedelslagen (1992:859)*) and Regulation (EC) No. 726/2004 of the European Parliament and of the Council of 31 March 2004.

20. According to section 11 of the 1996 Act, a person who intentionally or negligently violated section 4 should be sentenced to a fine or imprisonment not exceeding one year, unless the act was punishable under the Penal Code. It further provided that minor offences should not be punishable and that an intentional violation that had been conducted as a professional activity, concerned a considerable quantity or value, or otherwise was of a particularly dangerous nature, should be subject to imprisonment not exceeding two years.

21. With the entry into force of the 2009 Act, on 1 July 2009, the pharmacy market was deregulated to allow actors other than Apoteket AB the right to sell medicinal products to the general public. However, an authorisation and special permit from the Medical Products Agency is required to sell medicinal products to the general public.

2. The Narcotics Penal Act

22. Section 1 of the Narcotics Penal Act provides *inter alia* that any person who unlawfully either transfers narcotics, acquires narcotics for the purpose of transfer, or procures, processes, packages, transports, keeps or in some other similar way handles narcotics that are not for personal use, or offers narcotics for sale, keeps or conveys payment for narcotics, mediates contacts between seller and buyer or takes any other such measure, if the procedure is designed to promote narcotics traffic, shall, if he or she has acted with intent, be sentenced for drug offences to imprisonment for not more than three years.

23. According to section 3 of the Act, in case of an aggravated offence, the sentence shall be imprisonment of at least two years and at the most ten years.

24. The Supreme Court has applied the Narcotics Penal Act to criminal acts committed abroad without this having constituted an issue per se (NJA 1971 p. 321 and NJA 1983 p. 425). This approach has also been confirmed in legal doctrine (see for instance, Jareborg, *Allmän kriminalrätt* [General criminal law], p. 242).

3. Jurisdiction and the principle of legality

25. The regulations regarding the jurisdiction of Swedish courts in criminal cases and the applicability of Swedish penal laws are laid down in Chapter 2 of the Penal Code. Chapter 2, Article 1 of the Code provides that crimes committed in Sweden shall be adjudicated in accordance with Swedish law and by a Swedish court. The same applies when it is uncertain where the crime was committed but grounds exist for assuming that it was committed in Sweden.

26. According to Chapter 2, Article 4 of the Penal Code a crime is deemed to have been committed where the criminal act was perpetrated and also where the crime was completed or, in the case of an attempt, where the intended crime would have been completed. According to the preparatory works to the Penal Code (see NJA II 1948 p. 162) and Swedish case-law (the Supreme Court case NJA 1993 p. 292, as well as the Court of Appeal case RH 2000:84), as soon as a part of a crime has taken place within the realm, the criminal act in its entirety is to be considered to have been perpetrated in Sweden (the principle of ubiquity).

27. In the case of complicity to a crime, it is considered that the location of the criminal act is determined by both the act of complicity and the main act. An accomplice acting from abroad will be deemed to have committed a crime within the country, if he is aiding a main perpetrator to carry out or complete a crime in Sweden (see, for example, Holmqvist *et al*., *Brottsbalken, En kommentar* [Commentary to the Penal Code], p. 2:41).

28. Application of penal provisions by analogy is prohibited according to Chapter 1, Article 1 of the Penal Code. Penal provisions should be prescribed by law. In a judgment of 12 July 1994 (NJA 1994 p. 480) the Supreme Court stated that there were no impediments to interpret penal provisions in accordance with the recognised principles for interpretation of the law. However, such an interpretation had to be made cautiously.

29. The penal law principle of legality also embodies a general requirement that a penal provision should be sufficiently clear and precise. It should be possible to foresee the application of a penal provision to a reasonable extent and it should be compatible with the grounds and purpose of the penal provision.

COMPLAINTS

30. The applicants complained under Article 7 of the Convention that they had been convicted without any basis in Swedish law and that the domestic courts had lacked jurisdiction. The third applicant also complained that section 4 of the 1996 Act, as in force until 1 May 2006, referred to a

repealed Ordinance which was also in breach of Article 7 of the Convention.

THE LAW

A. Joinder of the applications

31. The Court considers that, in accordance with Rule 42 § 1 of the Rules of Court, the applications should be joined, given their similar factual and legal background.

B. Complaint under Article 7 of the Convention

32. The applicants claimed that their convictions violated the principle of legality. They invoked Article 7 of the Convention, which read as follows:

> "1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. ..."

1. The parties' submissions

(a) The Government

33. The Government contended that the applications were manifestly ill-founded. They submitted that the domestic courts, when convicting the applicants of the offences, had interpreted and applied national law. In doing so, they had been bound by the principle of legality as expressed in Swedish law, including the Convention, and had acted within their margin of appreciation. Hence, according to the Government, the convictions had sufficient legal basis in domestic law and there had been no flagrant non-observance or arbitrariness in the application of the law. They further considered that the acts of which the applicants had been convicted constituted offences defined with sufficient clarity and foreseeability in Swedish law as envisaged by Article 7.

34. They added that, in so far as concerned the first, second and fourth applicants' convictions of drug offences, these applicants should have been able to foresee that the commission of the acts would make them criminally liable in Sweden since the Narcotics Penal Act was applicable both to crimes committed in Sweden and abroad. Moreover, since the trading in the narcotic drugs had been carried out on a large scale though a professional business, the applicants should have proceeded with a high degree of caution when conducting their activities and should have consulted legal

advice. Had they done so, they would have appreciated the consequences which their actions would entail. Instead, it was obvious that they had been indifferent to this fact.

35. The Government further argued that the acts committed by the applicants in Sweden had been crucial to the commission of the crime as whole and that the domestic courts therefore had had jurisdiction to try the charges against the applicants. They fully endorsed the findings of the appellate courts as to the questions of jurisdiction and applicability of Swedish law.

36. In relation to the charges under the 1996 Act, the Government acknowledged that there had been a need for legal guidance and interpretation by the Supreme Court in relation to the issue of internet pharmacies, as a common way to trade medicinal products. However, they stressed that one of the primary tasks of the Supreme Court was to resolve problems of interpretation of domestic legislation, to develop case-law and to provide guidance on the application of the law. In doing so in the present case, the Supreme Court had clarified the scope of the 1996 Act in a manner that was both foreseeable and consistent with the essence of the offence. According to the Government, the 1996 Act had been clearly worded and had not involved the interpretation of ambiguous or vaguely worded language. Nothing in the wording of the 1996 Act had excluded the application to the acts and it had thus not been applied extensively or by analogy by the Supreme Court, or by the Court of Appeal which had reached the same conclusions. Here the Government noted that the judgments by both appellate courts had been unanimous.

37. Regarding the third applicant's specific complaint, the Government noted that even though the ordinance to which the 1996 Act had referred up until 1 May 2006 had been repealed, it had still been readily available. It had thus been possible to discern what medicinal items the penal provision had covered and, consequently, what had constituted a criminal act. The amended legislation had not lacked sufficient legal basis in domestic law or failed to satisfy the requirements of accessibility and foreseeability because of the reference to a repealed ordinance.

(b) The applicants

38. The applicants maintained that the case revealed a violation of Article 7 of the Convention since the acts for which they had been convicted had not constituted crimes against Swedish law and the courts had not had jurisdiction to try the charges against them. The acts had not been committed in Sweden and had not targeted any Swedish interests. The medicinal products had never passed through Sweden and it had not been possible for Swedish customers to purchase the products. The Swedish courts had found that Swedish law should be applied without taking into

consideration whether or not the medicinal products had been legal in the countries where they had been bought and sold.

39. As concerned the question of jurisdiction, the applicants stressed that a number of the acts included in the indictment had taken place outside of Sweden. According to Chapter 2, Article 5 of the Penal Code, Swedish courts only had jurisdiction to try an indictment concerning acts that had taken place abroad if a mandate to prosecute had been issued by the Government. No such mandate had been issued in the applicants' case. Thus, the Swedish courts had not had jurisdiction to examine the case against them.

40. The applicants further claimed that in order for the courts to convict them of violations against the Narcotics Penal Act and the 1996 Act, it had been required that the acts would have been criminal also in the countries where they had purchased, stored, transported, advertised or sold the medicinal products, including the narcotic drugs. No evidence had been presented during the proceedings to show that this had been the case. The applicants had purchased the products legally and their revenues from the business had been deposited into foreign bank accounts. The websites had been situated on servers located outside of Sweden and they had been designed to prevent Swedish and other Nordic customers to place orders.

41. Moreover, they submitted that the 1996 Act had been aimed to regulate sales of medicinal products on the Swedish market only. In their view, Swedish courts should not override the rules and regulations in those countries where the applicants had sold the products. They considered it to be obvious that crimes against the 1996 Act could not be committed on foreign territory and it had not been possible for them, based on the wording of the 1996 Act, to foresee that their actions had been criminal.

42. As concerned the conviction of aggravated drug offences, the first, second and fourth applicants submitted that the products had not required a prescription in the countries where they had been sold and, furthermore, had not been classified as narcotic drugs in the countries where they had been purchased or where the customers had lived. They had therefore not committed any drug offences.

43. Last, the applicants submitted that the Supreme Court had made an extensive interpretation of the 1996 Act and reached its conclusion by way of analogy with the Directive on Electronic Commerce, in violation of Article 7 of the Convention.

44. The third applicant further argued that there had also been a violation of Article 7 on account of the repealed ordinance referred to in section 4 of the 1996 Act. Since the ordinance had been repealed, he could not know which products fell under the Act and thus which products were illegal to sell. Consequently there had been no clarity or foreseeability.

2. The Court's assessment

45. The Court notes at the outset that the guarantee enshrined in Article 7, which is an essential element of the rule of law, occupies a prominent place in the Convention system of protection, as is underlined by the fact that no derogation from it is permissible under Article 15 of the Convention in time of war or other public emergency. It should be construed and applied, as follows from its object and purpose, in such a way as to provide effective safeguards against arbitrary prosecution, conviction and punishment (see *Del Río Prada v. Spain* [GC], no. 42750/09, § 77, ECHR 2013, and *Vasiliauskas v. Lithuania* [GC], no. 35343/05, § 153, 20 October 2015).

46. Accordingly, it embodies, in general terms, the principle that only the law can define a crime and prescribe a penalty (*nullum crimen, nulla poena sine lege*) (see *Kokkinakis v. Greece*, 25 May 1993, § 52, Series A no. 260-A). While it prohibits in particular extending the scope of existing offences to acts which previously were not criminal offences, it also lays down the principle that the criminal law must not be extensively construed to an accused's detriment, for instance by analogy (see *Kononov v. Latvia* [GC], no. 36376/04, § 185, ECHR 2010, and *Achour v. France* [GC], no. 67335/01, § 41, ECHR 2006-IV).

47. When speaking of "law" Article 7 alludes to the very same concept as that to which the Convention refers elsewhere when using that term, a concept which comprises statute law as well as case-law and implies qualitative requirements, notably those of accessibility and foreseeability (see, among other authorities, *Del Río Prada*, cited above § 91; *Cantoni v. France*, 15 November 1996, § 29, *Reports of Judgments and Decisions* 1996-V, and *E.K. v. Turkey*, no. 28496/95, § 51, 7 February 2002). An individual must know from the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it, what acts and omissions will make him criminally liable and what penalty will be imposed for the act and/or omission committed (see, *Cantoni*, cited above, § 29). Furthermore, a law may still satisfy the requirement of "foreseeability" where the person concerned has to take appropriate legal advice to assess, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see, *Achour*, cited above, § 54, and *Cantoni,* cited above, § 35).

48. The Court has also acknowledged in its case-law that however clearly drafted a legal provision may be, in any system of law, including criminal law, there is an inevitable element of judicial interpretation. There will always be a need for elucidation of doubtful points and for adaptation to changing circumstances. Again, whilst certainty is highly desirable, it may bring in its train excessive rigidity and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose

interpretation and application are questions of practice (see, for example, *Kafkaris v. Cyprus* [GC], no. 21906/04, § 141, ECHR 2008, and *Vasiliauskas*, cited above, § 155). The role of adjudication vested in the courts is precisely to dissipate such interpretational doubts as remain (see, *Cantoni*, cited above, § 32).

49. Turning to the present case, the Court initially observes that it is not its task to rule on the applicants' individual criminal responsibility, that being primarily a matter for the assessment of the domestic courts, but to consider, from the standpoint of Article 7 § 1 of the Convention, whether the applicants' acts constituted offences defined with sufficient accessibility and foreseeability by Swedish law.

50. The Court notes that the indictment concerned sales of medicinal products, including narcotic drugs, on three specified internet sites during a specific period of time. It had thus been formed so as to constitute one single crime, consisting of several separate acts, under the Narcotics Penal Act and the 1996 Act, respectively, which was accepted by the national courts. The Court finds no reason to question this approach by the domestic courts, noting that the relevant legal provisions (sections 1 and 3 of the Narcotics Penal Act and sections 4 and 11 of the 1996 Act) were clear and encompassed the acts attributed to the applicants.

51. The national courts further found that as long as an act, constituting a part of a crime, had been committed in Sweden, Swedish courts had jurisdiction to try the crime in its entirety. This followed from the principle of ubiquity and Chapter 2, Articles 1 and 4 of the Penal Code, as indicated in the preparatory works and set out in case-law from well before the time period relevant in the present case (see paragraph 26 above). Moreover, as regards complicity to a crime, it was established that the location of the criminal act was determined both by the act of complicity and by the main act. Having regard to the rather substantial material, in legal provisions, case-law, preparatory works and legal doctrine, supporting the national courts finding that the alleged crimes could be considered to have been committed in Sweden and that Swedish courts therefore had jurisdiction, the Court finds the domestic courts' conclusions in this regard both convincing and foreseeable for the applicants. In this respect, it reiterates that the applicants, if in doubt, could have been expected to obtain legal advice to assess the consequences which their actions could entail. This is in particular so in relation to persons carrying on a professional activity, like the applicants in the present case, who are used to having to proceed with a high degree of caution when pursuing their occupation. They can on this account be expected to take special care in assessing the risks that such activity entails (see, *Cantoni*, cited above, § 35). Thus, since the applicants knew that trading with medicinal products, including narcotics drugs, were prohibited in Sweden and they intended to set up a business trading with

such products, they should have familiarised themselves with the legislation and case-law in this domain and could also have sought legal advice.

52. Turning to the crimes under the Narcotics Penal Act, for which the first, second and fourth applicants were convicted, the Court first notes that the District Court as well as the Court of Appeal found it clear that their actions violated the Act and the Supreme Court found no reason to grant leave to appeal concerning that issue. As it is not the task of the Court to rule on the applicants' individual criminal responsibility, it does not question the domestic courts' findings that these three applicants committed the acts included in the indictment with the required intent. Moreover, the Court finds that the wording of the relevant provisions in the Narcotics Penal Act is clear and does not require interpretation of ambiguous or vaguely worded language. It does not exclude its application to the acts in question in the present case. Thus, since the Court has already accepted that the applicants' acts, including those of complicity, could be considered as having been committed in Sweden and thus fall within the Swedish courts' jurisdiction, it concludes that the application of the Narcotics Penal Act was sufficiently clear and was foreseeable to the applicants.

53. In so far as concerns the application of the 1996 Act, the Court observes that the Supreme Court was faced in the present case with a new situation in which it had to take a stand for the first time on the issue of trade with medicinal products directed at foreign markets. However, as noted above, Article 7 of the Convention cannot be read as outlawing the gradual clarification of the rules of criminal liability through judicial interpretation from case to case, provided that the resultant development is consistent with the essence of the offence and could reasonably be foreseen (see *Vasiliauskas*, cited above, § 155, with further references).

54. Indeed, in the present case, the Supreme Court granted leave to appeal specifically to consider the question whether what the Court of Appeal had found proven in relation to each of the defendants under the charges of aggravated violation of the 1996 Act meant that the prerequisites to convict them under that Act were fulfilled. The Supreme Court answered this question in the affirmative after having made an in-depth and detailed examination of the matter. It thus fulfilled its role as a highest domestic court giving guidance and interpreting legal provisions in the light of new developments and taking into account recognised legal principles, case-law, legal doctrine as well as EU regulations and the underlying purpose of the legal provisions in question.

55. In particular, the Supreme Court noted that the wording of the relevant provisions in the 1996 Act did not exclude an application to trade of medicinal products outside the Swedish market, even though its primary focus was the domestic market. It further considered the very rapid developments that had taken place in the technical development of internet, and the possibilities to conduct trade across national borders, which carried

with it that trade conducted from one state could, to a greater or lesser extent, also be directed at consumers in other states, through mail order sales. Since the basis for regulating trade of medicinal products was the safety and health of individuals, the Supreme Court considered that this protective aspect was no less relevant in relation to foreign markets. It could thus be motivated to maintain the requirements that applied under Swedish law for those conducting trade on Swedish territory even if the trade was directed at other markets. In this respect, it also considered that the subjective territoriality principle, which was an established principle applicable to various related areas, could also be applied in relation to the 1996 Act. It noted that its application could avoid Sweden being considered a suitable base for irresponsible large-scale medicinal trade. It finally found no formal or other circumstances that directly indicated that the subjective territoriality principle should not be applied in respect of the 1996 Act.

56. In the Court's view, the Supreme Court made a careful and balanced examination of the matter before it and allowed for an adaptation to changing circumstances, namely the development of the internet and the possibility to easily trade over borders, including with products where there was a public interest to protect the safety and health of individual persons, not only in the country where the company operated from but also in other countries where customers resided. The Court finds no indication that the Supreme Court made an analogous interpretation of the relevant provisions or otherwise made an arbitrary assessment. In this regard, the Court stresses that it will not question the national courts' interpretation of domestic law unless there has been a flagrant non-observance or arbitrariness in the application of the said provisions (see, *inter alia*, *Custers and Others v. Denmark*, nos. 11843/03, 11847/03 and 11849/03, § 84, 3 May 2007, and *Huhtamäki v. Finland*, no. 54468/09, § 52, 6 March 2012).

57. Having regard to all of the above, the Court finds that the applicants were able to foresee, if necessary with the help of legal advice, that their actions could lead to criminal liability under the Narcotics Penal Act and the 1996 Act.

58. Moreover, as concerns the third applicant's complaint relating to the reference to a repealed ordinance in Section 4 of the 1996 Act as in force until 1 May 2006, the Court observes that the reference was clear (see paragraph 19 above) and that the repealed ordinance was readily available to be consulted. There can thus have been no difficulties for the third applicant to obtain and comprehend the content of the ordinance.

59. It follows that the applications as a whole are inadmissible for being manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 31 March 2016.

Stephen Phillips
Registrar

Luis López Guerra
President

APPENDIX

No	Application No	Lodged on	Applicant Date of birth Place of residence	Represented by
1.	29688/09	28/05/2009	**Thomas ISAKSSON** 07/06/1968 Kristianstad	Reine NELSON
2.	29766/09	02/06/2009	**Magnus SALKOJÄRVI** 07/07/1968 Märsta	Björn HURTIG
3.	38097/09	02/06/2009	**Jan ERIKSSON** 11/03/1966 Vallentuna	
4.	54568/11	02/06/2009	**Per SUNDQVIST** 02/08/1970 Enköping	