



Sweden correctly enforced drugs controls in medical-cannabis case

In today's **Chamber judgment**¹ in the case of [Thörn v. Sweden](#) (application no. 24547/18) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned the conviction and fine issued to Mr Thörn for a cannabis offence. He asserted that he had been taking the drug for pain relief, but did not have a prescription to that effect. He had been confined to a wheelchair since 1994 following breaking his neck in a traffic accident, with many pain-related issues in the years since. At the time, medical cannabis was available in Sweden, ordinarily for the treatment of multiple sclerosis.

The Court, noting that no information had been provided regarding the impact on Mr Thörn of his sentence, and the willingness of the authorities to authorise prescription cannabis-based medication while awaiting his trial, found in particular that the authorities had correctly balanced Mr Thörn's need to alleviate pain and the wider need to control drugs. They had acted within their wide discretion.

A legal summary of this case will be available in the Court's database HUDOC ([link](#))

Principal facts

The applicant, Andreas Thörn, is a Swedish national who was born in 1978 and lives in Västerås (Sweden).

In 1994 Mr Thörn broke his neck in a traffic accident and as a result had to use a wheelchair permanently. He suffered from cramps and pain in consequence. He had little success in having these secondary conditions treated, and his state of health eventually worsened, leading to depression. As a last resort, doctors suggested methadone, which the applicant refused to take owing to the side-effects he had previously suffered from opiates.

Mr Thörn read that cannabis could be useful for people in his situation. In Sweden, medical cannabis, sold under the trade name Sativex, was used for treating multiple sclerosis. As Sativex was not covered by standard medical insurance (*högkostnadsskydd*), it would have been very expensive for Mr Thörn.

He elected to grow his own cannabis at home instead, ultimately taking 0.2 grammes with his coffee in the mornings and evenings, which led to an increased quality of life and his being able to return to work full time.

On 22 April 2015 Mr Thörn was charged with two offences: a narcotics offence consisting in the manufacture and possession of narcotics, and a minor narcotics offence consisting in the use of narcotics. He argued that he had been using the cannabis for medical reasons. He was acquitted by the Västmanland District Court later that year, with the court in particular finding that the applicant

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

had been in an “emergency situation”. The prosecutor appealed, and the first-instance judgment was overturned by the Svea Court of Appeal. Mr Thörn was given a suspended prison sentence and fined 1,170 Swedish kronor.

According to Mr Thörn, he was on sick leave three quarters of the time after his conviction.

He appealed to the Supreme Court, which altered the appellate verdict. The Supreme Court ruled that necessity was not a legitimate defence when reaching its verdict in the applicant’s case. In particular, it found that an act committed out of necessity could not normally be exempt from liability if it ran counter to the balancing exercise that had been carried out in drafting the relevant legislation in the applicant’s case, that is to say the laws on the control of narcotics and the system for approving and licencing medicines. The Supreme Court took instead the applicant’s motivation of pain relief into account in his sentencing, recategorising his act as a minor offence, setting aside the suspended sentence and reducing the fine by more than half.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), the applicant complained about his conviction for manufacturing narcotics.

The application was lodged with the European Court of Human Rights on 17 May 2018.

Judgment was given by a Chamber of seven judges, composed as follows:

Marko **Bošnjak** (Slovenia), *President*,
Péter **Paczolay** (Hungary),
Alena **Poláčková** (Slovakia),
Erik **Wennerström** (Sweden),
Raffaele **Sabato** (Italy),
Lorraine **Schembri Orland** (Malta),
Ioannis **Ktistakis** (Greece),

and also Renata **Degener**, *Section Registrar*.

Decision of the Court

The Court found it established that the conviction of Mr Thörn and his fine of approximately 520 euros had entailed an interference with his right to respect for his private life, and that his actions had been carried out in order to help him function better in his everyday life.

On the question of whether that interference had been “necessary in a democratic society”, the Court reiterated that the case at issue did not concern either the legality of the production or consumption of cannabis, but rather whether not excluding Mr Thörn from criminal liability in this case had violated his right to respect for private life. The Supreme Court had held that even if he had acted out of necessity and his actions had not posed a risk to others, those actions had nevertheless been unjustifiable under the law. Effectively his personal circumstances had been taken into account only in sentencing. The Court noted that it had received no information on the particular impact of the punishment on Mr Thörn, and that the domestic courts had licensed a prescription for a cannabis-based drug for Mr Thörn in 2017 while the criminal proceedings had been pending.

Overall, the Court held that in striking the particular balance between the applicant’s interest in having access to pain relief and the general interest in enforcing the system of control of narcotics and medicines, the Swedish authorities had acted within their wide discretion (“wide margin of appreciation”).

There had therefore been no violation of the Convention.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.