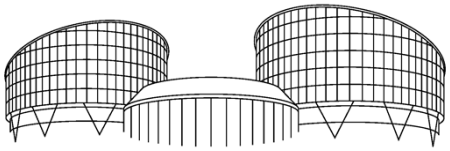

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF THÖRN v. SWEDEN

(Application no. 24547/18)

JUDGMENT

Art 8 • Private life • Applicant's conviction and fine for manufacturing cannabis for personal treatment of chronic pain, without prescription, within State's wide margin of appreciation

STRASBOURG

1 September 2022

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Thörn v. Sweden,

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

Marko Bošnjak, *President,*
Péter Paczolay,
Alena Poláčková,
Erik Wennerström,
Raffaele Sabato,
Lorraine Schembri Orland,
Ioannis Ktistakis, *judges,*
and Renata Degener, *Section Registrar,*

Having regard to:

the application (no. 24547/18) against the Kingdom of Sweden lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Swedish national, Mr Andreas Thörn ("the applicant"), on 17 May 2018;

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

the parties' observations;

Having deliberated in private on 5 July 2022,

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

INTRODUCTION

1. The application concerns a complaint under Article 8 of the Convention relating to proceedings in which the domestic courts imposed a fine of approximately 520 euros (EUR) on the applicant for having produced and used cannabis, which was classified as a narcotic in the domestic legislation, for the purpose of pain relief, but without a prescription to do so.

THE FACTS

2. The applicant was born in 1978 and lives in Västerås. He was represented by Mr Y. Djuanvat, a lawyer practising in Hudiksvall.

3. The Government were represented by their Agents, Mr A. Engman and Ms H. Lindquist, of the Ministry of Foreign Affairs.

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

5. In 1994 the applicant had broken his neck in a traffic accident and been confined to a wheelchair. He suffered from cramping and severe pain on account of his injuries and had visited numerous doctors and tried several pain treatments, but in vain. In 2010 his condition worsened and he succumbed to deep depression. In 2012 he was hospitalised several times on account of debilitating pain. Several types of pain medication were prescribed, but they had little effect. Ultimately, the doctors suggested

methadone. The applicant refused to take methadone on account of the negative side effects he had experienced after having been prescribed other opiates in the past.

6. The applicant had read online that cannabis might be helpful for pain relief and found out that it offered excellent pain relief with very few side effects. Medical cannabis (sold under the name Sativex) was available in Sweden but generally only for persons suffering from multiple sclerosis. The applicant had tried Sativex but found it less effective for pain relief than other forms of cannabis. Sativex was, in any event, not covered by the "high-cost protection insurance", a social policy which ensured that individuals did not have to pay more than a certain amount for the medicine they needed. Accordingly, Sativex would have been very expensive.

7. The applicant thus began growing cannabis for his own consumption. When he began using cannabis, his quality of life improved significantly: he started working full-time, took care of his family and managed to live a relatively normal life. He was taking approximately 0.2 grams of cannabis in the mornings and evenings with his coffee.

8. On 22 April 2015 the applicant 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 acknowledged that he had grown and consumed cannabis for almost two years but submitted that he needed it for medical reasons.

9. On 27 August 2015 the Västmanland District Court (*tingsrätten*) acquitted the applicant. It found that he had tried everything that the Swedish public healthcare system could offer for pain relief except Sativex. The monthly cost of a Sativex prescription was exceptionally high and it was unreasonable to expect the applicant, given his personal and financial situation, to be able to afford Sativex. Producing cannabis had been the only possibility for the applicant to live a normal life. The court found that the applicant had been in an emergency situation and that his actions could not be regarded as unjustifiable. His actions accordingly had not constituted a crime and he was thus cleared of all charges. This outcome was reached after voting. The professional judge voted against the acquittal and presented her dissenting opinion, finding that the applicant had not been in an emergency situation.

10. On 31 March 2016 the Svea Court of Appeal (*hovrätten*), on an appeal by the public prosecutor, quashed the District Court's judgment, convicted the applicant as charged and sentenced him to a suspended prison sentence and 90 day-fines of 130 Swedish kronor (approximately EUR 13) each. It found that the applicant had not been in an emergency situation as he had been offered alternative treatment by the health services, even if the drugs available to him were expensive or had negative side effects. One of the judges voted against the outcome and gave her dissenting opinion.

11. After the criminal conviction, the applicant's quality of life worsened and he was on sick leave 75% of the time.

12. The applicant was granted leave to appeal to the Supreme Court (*Högsta domstolen*). On 20 November 2017 the Supreme Court altered the Svea Court of Appeal's verdict so that the applicant was only being convicted of manufacturing narcotics, since the offences of possessing or using narcotics were found to be legally subsumed by that offence. Moreover, in the circumstances of the case, the Supreme Court classified the offence of manufacturing narcotics as a minor offence only. The Supreme Court also set aside the suspended sentence and reduced the number of day-fines imposed from 90 to 40.

13. On the topic of necessity, the Supreme Court noted that, according to the Criminal Code, an act committed out of necessity only constituted an offence if, in view of the nature of the danger, the damage caused to others, and the other circumstances, it was unjustifiable (see paragraph 34 below). Necessity would exist when a danger threatened life, health, property or some other, important interest that was protected by the legal order. The Supreme Court also noted that the defence of necessity did not require an initiated or impending attack on a protected interest. A situation of necessity could already exist at an earlier stage, when the danger was imminent or relatively so. Reference was made to a Supreme Court judgment in which it had been found that the provision on necessity could not be applied to an uncertain future danger. The Supreme Court stated, furthermore, that despite the fact that the provision on necessity was primarily aimed at emergency situations, it was not to be ruled out that it could be applied in other cases, such as where there was a more continuing situation of danger.

14. As to the facts of the case before it, the Supreme Court stated that as a consequence of his spinal injury the applicant had severe pains of a near chronic nature. The interest in being free from pain was a type of interest that could lead to the applicability of the provision on necessity. The severe pain was to be considered as an interference in his interest in his health.

15. The fact that the applicant's condition was chronic and that the act in question, growing cannabis, could only in the long term contribute to relieving the interference in his interest in his health, did not exclude that the act had been committed out of necessity. It was another matter that the nature of the situation of necessity – having regard to the fact that a criminal offence could seldomly be an acceptable manner to deal with a long-term problem – could affect the assessment of whether the act was allowed.

16. The Supreme Court went on to note that freedom from responsibility generally required that the act had been intended to safeguard an interest of significantly greater importance than the interest sacrificed as a result of it. The absence of any other way of safeguarding the interest was normally also a requirement. Even if the danger could have been averted without recourse to committing the act out of necessity; however, the act could still be

justifiable, specifically when it would have required disproportionate effort or sacrifice to avert the danger in some other way.

17. According to the Supreme Court, it followed from the aim of the provision on necessity that freedom from responsibility in principle required that the situation had been unforeseen in such a way that it had not been possible for the legislature to have considered it. The Supreme Court took this to mean that the legal context in which an act was undertaken was of major importance to the assessment of it, and that it was in principle not justifiable to rely on necessity to deviate from the kinds of balancing of interests that had already been made in the legislation.

18. Through the laws on the control of narcotics and the system for approving and licencing medicines, the legislature had performed a balancing exercise between the interest in providing access to effective pain relief and the interest in the control of narcotics. The legislature had thereby also provided for the manner in which the interest in access to pain relief should be managed and had established a system for the controlled distribution of narcotics for medicinal use. An act which constituted a narcotics offence and which was carried out in order to relieve pain was therefore defensible only exceptionally, for example in an emergency situation where immediate access to ordinary health services was lacking.

19. Against the above background, the act under consideration in the case before the Supreme Court could not be allowed by virtue of the provision on necessity. It was another matter that it was understandable that the applicant had given priority to his legitimate interest in freedom from pain over society's interest in the control of narcotics.

20. The Supreme Court stated that there were certain possibilities in domestic law for finding that a criminalised act had nonetheless been allowed, additional to those that followed from the Criminal Code. However, the case before it presented a conflict of interests typical of those examined under the provision on necessity. For those reasons there was no room to consider that the act did not attract liability on the grounds of any other – unwritten – rule exempting it from liability.

21. The Supreme Court went on to state that the applicant had known that he had been growing cannabis with the intention of using it without a doctor's prescription. For intent to have been present with regard to the fact that the drugs had been intended for what was termed as "abuse" within the meaning of the law, it was not required that the applicant himself classified the intended use as "abuse". Accordingly, the applicant had intentionally produced drugs for the purpose of abuse.

22. The applicant had admitted that he knew that the act was an offence under the Criminal Code and the provision in that Code on the relevance of ignorance of the law therefore did not apply. Nor could the provision regulating situations where a person had acted out of necessity, but done more than what the situation had permitted, allow the Supreme Court to take into

account the fact that the applicant's act, if viewed overall, could appear, in a way, excusable.

23. In accordance with the above, the Supreme Court stated that the applicant's act of producing narcotics accordingly entailed an offence. As to possession and use, he should be convicted only to the extent that it concerned narcotics other than those he had produced himself (see paragraph 12 above).

24. The Supreme Court went on to state that the act of which the applicant was guilty, producing narcotics in order to abuse them, was highly atypical. It had not been a matter of producing narcotics to be used for intoxication purposes and the narcotic actually produced had had a limited capacity to lead to intoxication.

25. The motivation had instead been to achieve pain relief in a situation where the applicant, as a consequence of a major accident, suffered from very serious pain and where the health services, in spite of repeated attempts, had not succeeded in helping with pain relief. The narcotics produced had had a low level of THC and were to be deemed to be of limited interest for any person seeking intoxication, and the risk of the narcotics ending up in the hands of others had been virtually non-existent.

26. The Supreme Court stated that for less serious narcotics offences there were usually no grounds for, for other reasons, differentiating between acts that concerned the same amounts of the same narcotics. Accordingly, the tables that existed with amounts and types of narcotics formed a better starting-point in such cases, than in cases concerning larger amounts of narcotics, with respect to the classification of the offence as well as the sentencing.

27. Having regard to the circumstances in the preceding paragraph, viewed in conjunction with the fact that the applicant was producing a relatively modest amount exclusively for self-medication, the precise amount produced could not have a noteworthy impact on what could be considered a fair punishment for the act. The tables referred to in the preceding paragraph were therefore, in this case, not to be given any great importance.

28. On the basis of an overall assessment and taking into account that imprisonment would not constitute a fair punishment, the Supreme Court found that the act was to be considered as a minor offence.

29. In accordance with the foregoing considerations, a fine would constitute a fair punishment of the offence. Having regard to the atypical nature of the act and the provisions relating to the necessity defence, a fair punishment had to be considerably below the minimum term of imprisonment.

30. The Supreme Court went on to note that during the spring of 2017, the applicant had been licensed to be prescribed the medicine Bediol, which was cannabis-based. This licencing did not entail that new rules had been enacted or that general decisions had been made that affected the assessment of the offence with which the applicant had been charged. The question of what

would constitute a fair punishment could not be affected by a particular licence having been granted to the applicant after the act in question. The fact that he had received that licence nonetheless entailed a certain acknowledgement of the conflict of interests in which he had found himself. The issuing of the licence had been based on an assessment of the conflicting interests in a manner that correlated in part to the assessment that the applicant himself had carried out. This fact was to be given some importance in the final decision on the sentence.

31. Even though, because of the circumstances, the seriousness of the act warranted only the imposition of fines, the reasons of fairness in this case could not be considered such as for it to be manifestly unreasonable to impose a penalty in view of them. They should, however, lead to a reduction in the amount of day-fines.

32. Based on an overall assessment, and taking into account what a fair punishment would be and the extenuating circumstances, the Supreme Court sentenced the applicant to 40 day-fines.

RELEVANT LEGAL FRAMEWORK

33. Under section 1 § 1(2) of the Drug Offences Act (*Narkotikastrafflagen*, 1968:64), it is a punishable offence to manufacture narcotics intended for substance abuse. This provision covers the cultivation of narcotic plants. "Substance abuse" means, according to settled interpretation, consumption that is not based on a properly issued prescription. The possession and use of narcotics is punishable under section 1 § 1(6) of the same Act. According to the case-law of the Supreme Court, a person who uses narcotics bought for personal use should only be sentenced for possession, and a person who manufactures narcotics and then possesses or uses those narcotics should only be sentenced for manufacture. Section 2 of the Drug Offences Act provides that a narcotics offence may be considered a minor narcotics offence taking into account the nature and amount of narcotics as well as other circumstances.

34. Section 4 of Chapter 24 of the Swedish Criminal Code (*Brottsbalken*, 1962:700) provides that an act committed out of necessity only constitutes an offence if, in view of the nature of the danger, the damage caused to others, and the other circumstances, it is unjustifiable. Under the second paragraph of this provision, necessity exists when a danger threatens life, health, property or some other, important interest that is protected by the legal order.

35. For a medicine to be marketed in Sweden, it must first be authorised and registered by the competent authorities. As an exception to that rule, under section 10 of Chapter 4 of the Medicinal Products Act (*Läkemedelslagen*, 2015:315), authorisation may also be granted if there are special grounds for doing so. It follows from section 17 of Chapter 2 of the Medicinal Products Ordinance (*Läkemedelsförordningen*, 2015:458) that

such reasons can include the existence of a special need in the health and medical services. The law currently in force replaced the 1992 Medicinal Products Act (*Läkemedelslagen*, 1992:859) and the 2006 Medicinal Products Ordinance (*Läkemedelsförordningen*, 2006:272). However, the new law contained no substantial amendments with regard to the relevant provisions on exceptional authorisations. Applications for the relevant authorisations are examined by the Swedish Medical Products Agency and its decisions can be appealed to the Administrative Court. The said legislation implements, *inter alia*, Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency.

THE LAW

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

36. The applicant complained that his conviction had entailed a breach of his right to respect for his private life as provided in Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

37. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

38. The applicant maintained that he did not contest the Government's legitimate interest in drug control and policing. He stated that he agreed with the Government that his conviction had entailed an interference in his right to respect for his private life under Article 8 of the Convention.

39. According to the applicant, the question was whether a fair balance had been struck under the said provision between his individual interest in living a life free of pain, on the one hand, and the pressing social need of drug

control, on the other. He also contested that the interference his conviction had entailed had pursued a legitimate aim. In particular, he adduced statements from experts in order to demonstrate that his use of cannabis had not posed any threats to his health and which in his assessment showed that the alleged harms relating to cannabis use pointed to by the Government were clearly exaggerated and not entirely factual, and argued that an interference to prevent the consequences of cannabis use, which in his view were only theoretical, was neither necessary in a democratic society for the protection of health nor had it pursued the legitimate aim of protecting health.

40. The applicant also argued that the margin of appreciation to be afforded to the Government should be a narrow one, as he emphasised that the matter in issue concerned only his individual punishment, not the broader question of drug control. For the applicant, it had been a matter of his existence.

41. The Government stated that they did not dispute that the applicant's conviction could amount to an interference with his right to respect for his private life within the meaning of Article 8 the Convention. However, the interference had been justified under the terms of Article 8 § 2. It was undisputed that it had been in accordance with the law and it had, in the Government's view, pursued several of the legitimate aims enumerated in that provision. It had also been "necessary in a democratic society" in order to achieve those aims.

42. According to the Government, the overarching question in the case was whether a fair balance had been struck between, on the one hand, the applicant's individual interest in cultivating cannabis for personal use in order to alleviate his severe pain and, on the other, the general public interest in drug control. They stated that the issue was not whether a different solution might have struck a fairer balance, but whether, in striking the balance where they did, the domestic authorities had exceeded their wide margin of appreciation.

43. The Government found it pertinent to emphasise that, according to research, there was a long list of negative consequences and injuries related to the use of cannabis, and they mentioned several examples. The domestic authorities had taken measures to prevent the use of cannabis, as well as other narcotics, and to provide care to those who needed it. At the same time, there was intensive research on the possible healing effects of cannabinoids and other cannabis derivatives, which, according to the Government, was one of the reasons why in recent years society had gained greater knowledge about the harmful effects of cannabis. To this could be added that illegal cannabis trafficking was a harmful activity associated with organised crime in Sweden.

44. The State therefore had a vital interest in controlling, *inter alia*, cannabis, and the Swedish legislation on narcotics control, including the Drug Offences Act and the Medicinal Products Act, were intended to satisfy the public interests of preventing disorder or crime, protecting lives and health,

and thus protecting the rights and freedoms of others. The Government also pointed out that Sweden had ratified the 1961 United Nations Single Convention on Narcotic Drugs and was under relevant obligations stemming from that Convention. They emphasised that the instant case did not concern "medical cannabis" but unlicenced cultivation of cannabis intended for self-medication purposes, without any control by the authorities.

45. With regard to the proportionality question, a wide margin should be afforded to the State in this case. Narcotics control was of vital interest to Sweden, the authorities had had to strike a balance between competing interests and there was no consensus among the member States of the Council of Europe as to how the consumption of cannabis should be controlled. On a general level, the Government considered that the provisions of the Drug Offences Act sufficiently balanced society's interest in narcotics control to protect, *inter alia*, lives and health, and the individual's right to physical integrity and personal autonomy. To that effect, the system for approving and licensing medicines had created a system for the controlled distribution of narcotics for medicinal purposes, including for pain relief. The regulations in place aimed to strike a balance between conflicting public and private interests and were proportionate and no more far-reaching than was reasonable for the purposes of controlling the use of narcotics in society and protecting, among other interests, people's lives and health. On an individual level, too, the measures taken in the present case had been proportionate. The applicant had, owing to the specific circumstances of his case, been sentenced only to a very low number of day-fines for a minor narcotics offence. The Supreme Court's judgment undoubtedly showed that that court had made a full and thorough examination of, *inter alia*, the conflict of interests in issue. Accordingly, the Supreme Court had made a proportionality assessment, as required by the Convention, by taking account of the applicant's personal circumstances and the mitigating circumstances in the case, by classifying the offence as minor and by imposing a very low number of day-fines as a penalty.

2. The Court's assessment

(a) General principles

46. The Court reiterates that matters of healthcare policy are in principle within the margin of appreciation of the domestic authorities, who are best placed to assess priorities, use of resources and social needs (see, among other authorities, *Vavřička and Others v. the Czech Republic* [GC], nos. 47621/13 and 5 others, § 274, 8 April 2021; and *Hristozov and Others v. Bulgaria* (nos. 47039/11 and 358/12, § 119, ECHR 2012 (extracts), with further references). Furthermore, the Court has held that, as the national authorities are in principle better placed than the international judge to appreciate what is in the public interest on social or economic grounds, the Court will

generally respect the legislature's policy choice unless it is "manifestly without reasonable foundation". The Court has also held that where there is no consensus within the member States of the Council of Europe, either as to the relative importance of the interest at stake or as to the best means of protecting it, particularly where the case raises sensitive moral or ethical issues, the margin will be wider (see, for instance, *Abdyusheva and Others v. Russia*, nos. 58502/11 and 2 others, §§ 111-12, 26 November 2019, and the references therein).

47. The Court also reiterates that a right to health as such or to a specific treatment sought by an applicant are not among the rights guaranteed under the Convention or its Protocols. The Court has however examined applications regarding refusals to access specific treatments or medicines from the angle of "private life" under Article 8 of the Convention, the interpretation of which covers notions of personal autonomy and quality of life (see, *inter alia*, *Abdyusheva and Others*, cited above, § 111; *Hristozov and Others*, cited above; and *Durisotto v. Italy* (dec.), no. 62804/13, 28 May 2014). In its case-law, the Court has emphasised that a person's bodily integrity concerns the most intimate aspects of one's private life, and that compulsory medical intervention, even if it is of a minor importance, constitutes an interference with this right (see, for example, *Vavřička and Others*, cited above, § 276).

48. Lastly, the Court reiterates that its fundamentally subsidiary role in the Convention protection system has an impact on the scope of the margin of appreciation. The Contracting Parties, in accordance with the principle of subsidiarity, have the primary responsibility to secure the rights and freedoms defined in the Convention and the Protocols thereto, and in doing so they enjoy a margin of appreciation, subject to the supervisory jurisdiction of the Court. Through their democratic legitimation, the national authorities are, as the Court has held on many occasions, in principle better placed than an international court to evaluate local needs and conditions (see, *inter alia*, *M.A. v. Denmark* [GC], no. 6697/18, § 147, 9 July 2021; see also Protocol No. 15, which entered into force on 1 August 2021).

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

(i) Existence of interference and legitimate aim

49. The Court observes that the parties agree that the conviction of the applicant for manufacturing narcotics and the punishment imposed on him, a fine of approximately EUR 520, entailed an interference with his right to respect for his private life and, considering that the acts for which he was convicted had been carried out in order to assist the applicant in functioning better in his everyday life, finds that, in the particular circumstances of the present case, to be sufficiently established. Although the instant case concerns the imposition of a fine (see for example, *mutatis mutandis*, *Gillberg*

v. Sweden [GC], no. 41723/06, §§ 64-74, 3 April 2012), the Court has in this context regard to its case-law in cases concerning the inability of patients to access certain medical treatments which it has examined under Article 8 of the Convention (see, for example, *Durisotto* and *Hristozov and Others*, both cited above). The Court moreover finds that it cannot be called into question that the interference was in accordance with the law, namely the Drug Offences Act and the Criminal Code (see paragraphs 33-34 above), and that it pursued the legitimate aims of "the prevention of disorder or crime" and "the protection of health or morals" as set out in Article 8 § 2 of the Convention.

(ii) Necessity of the impugned interference

50. The remaining question is whether the interference was "necessary in a democratic society" within the meaning of Article 8 § 2 of the Convention.

51. In examining that question, the Court observes at the outset that there is nothing in the materials submitted to it demonstrating that the applicant made any arguments relating to Article 8 of the Convention in the course of the domestic proceedings or that any of the domestic authorities examined the requirements of that provision of its own motion. Firstly, there is no information to suggest that the domestic courts were invited to assess whether the prohibition on possession or cultivation of cannabis, including for persons who claim that they need cannabis for medicinal reasons, might as such run counter to Article 8 or any other provisions of national or international law with related content. Secondly, while the domestic courts examined the applicant's defence that he had acted out of "necessity" and that his acts had not been otherwise "unjustifiable" in the sense that those criteria, set out in section 4 of Chapter 24 of the Criminal Code (see paragraph 34 above), were to be interpreted and applied, there are no indications that those authorities were requested to interpret or apply those criteria in the light of Article 8 or in any other manner to expand the necessity defence in Swedish law in order not to come to a result contrary to the Convention.

52. Given the characteristics of the domestic proceedings as stated in the preceding paragraph, the Court notes that the case now before it is not one concerning whether the prohibition on either production or consumption of cannabis either for those in need of it for medical purposes or any other users might impinge on the right to respect for private life. The issue to be examined is whether the domestic authorities violated the applicant's right to respect for his private life when not exempting him from the general criminal liability that would normally attach to the acts in issue relating to the production and consumption of what was classified as narcotics in domestic law, on the basis of the grounds that he had invoked.

53. In the specific case before it, the Supreme Court concluded that the applicant might have acted out of necessity, but that his act had in any event been unjustifiable within the meaning of the Criminal Code, notably because

his behaviour had been regulated by the existing domestic legislation on the control of narcotics and on approving and licensing medicines, and thus contrary to the balancing of interests that had already been carried out by the legislature. It was not to such situations that the necessity defence in Swedish law applied (see paragraphs 17-19 above).

54. It follows from the foregoing that in so far as the domestic courts may at all be said to have carried out a balancing exercise with regard to the applicant's conviction as such, it was effectively limited to pointing out that the matter had been legislated for and therefore fell outside the scope of the provision on the necessity defence in Swedish law (see paragraphs 17-19 above). The individual circumstances of the applicant's case were instead taken into account when deciding on the punishment, at which point the Supreme Court made an overall assessment of the circumstances of the case (see paragraphs 24-32 above).

55. The question before the Court is, in contrast to the foregoing, whether, viewing the domestic proceedings as a whole, the authorities struck a sufficiently fair balance between the competing interests. As to that concrete balancing exercise, the Court perceives that the authorities' interest in the applicant's specific case was principally to ensure the observance and enforcement of the domestic legislation relating to narcotics and medicines, whereas the applicant's interest lay in finding a way to alleviate his pain. However, the case did not concern the freedom to accept or refuse specific medical treatment, or to select an alternative form of treatment, which is vital to the principles of self-determination and personal autonomy (see *Jehovah's Witnesses of Moscow and Others v. Russia*, no. 302/02, § 139, 10 June 2010), but unlicenced production and use of narcotics. As indicated above (see paragraphs 46 and 48), the domestic authorities had a wide margin of appreciation in the circumstances.

56. The Court notes in that respect that the Supreme Court did not call into question the applicant's submissions about his pain and that the cannabis that he had produced had helped against it (see, for example, paragraphs 19, 25, 27 and 29 above). Nor does it appear to have called into question that the medicines that the applicant otherwise had access to were either less effective at alleviating his pain, had side-effects that he reasonably wished to avoid, or were costly (see paragraph 6 above).

57. At the same time the Court notes that the Supreme Court, for the reasons indicated in the preceding paragraph, found it understandable that the applicant had turned to cultivating and using cannabis and that the offence was in a way excusable (see, for example, paragraphs 19 and 23 above). It also took into account that the case was not one concerning a situation where there had been any particular risk of dissemination of narcotics and also in that context that the cannabis in question did not contain high levels of THC (see paragraph 25 above). The Supreme Court therefore classified the applicant's act as only a minor offence and set the fine at approximately

EUR 520, which was less than what would normally be considered a fair punishment for an offence involving the amount of cannabis in issue in the applicant's case (see paragraphs 26-28 above).

58. As appears from the above, the Supreme Court took the applicant's interest in finding effective pain relief into account and reflected it principally in setting the fine at the level that it did. No information has been provided to the Court to indicate that the applicant lacked the means to pay the fine that was ultimately imposed on him or that paying it would for other reasons be particularly burdensome to him (contrast, for example, *Lacatus v. Switzerland*, no. 14065/15, §§ 107-10, 19 January 2021). Furthermore, no information has been provided to the Court about any other negative consequences of the punishment, for example with regard to registration of the offence. In that context, it is relevant to the Court's overall assessment that although the authorities of the respondent State punished the applicant for his unauthorised cannabis production, they also licenced a prescription for him of a lawful medicine that was apparently effective in alleviating his pain in the spring of 2017, while the domestic proceedings concerning the cannabis offence were pending (see paragraph 30 above).

59. The Court emphasises that the issue to be determined is not whether a different, less rigid, policy might have been adopted (see, *mutatis mutandis*, *Vavřička and Others*, cited above, § 310). Rather, it is whether, in striking the particular balance that they did 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 remained within their wide margin of appreciation. Against the above background, the Court does not find that those authorities overstepped that margin, and it follows that there has been no violation of Article 8 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 1 September 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener Registrar	Marko Bošnjak President