



January 2023

This Factsheet does not bind the Court and is not exhaustive

## Cannabis-based medication

**Article 8 (right to respect for private and family life, home and correspondence) of the [European Convention on Human Rights](#)** provides that:

*"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 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."*

In order to determine whether the interference complained of was necessary in a democratic society and a fair balance was struck between the different interests involved, the European Court of Human Rights examines whether the interference was in accordance with the law, pursued a legitimate aim or aims and was proportionate to the aim(s) pursued.

### **[A.M. and A.K. v. Hungary \(applications nos. 21320/15 and 35837/15\)](#)**

4 April 2017 (Chamber decision on the admissibility)

The applicants, who both had serious health conditions which they submitted could be alleviated by cannabis-based medication, complained under Article 8 of the Convention that domestic legislation providing a legal avenue for requesting individual permission to import such medication lacked legal certainty<sup>1</sup>.

The Court declared the applications **inadmissible** as being manifestly ill-founded, finding that it could not infer that the legislative avenue existing in Hungarian law was inaccessible, not foreseeable in its effects or was formulated in such a way as to create a chilling effect on doctors wishing to prescribe such medication. It noted in particular that the applicants had failed to show that their doctors or any other medical professionals were of the opinion that their respective conditions required or were suitable for treatment with cannabis-based medication. The applicants had also not indicated whether treatment using cannabis-based medication had ever been discussed with their doctors or refused by them. Nor had they provided anything to indicate that either of them had ever tried to avail themselves of the legal procedure available in Hungary with a view to obtaining such medication lawfully. No evidence had lastly been adduced to show that any doctor in Hungary had ever been prosecuted for prescribing cannabis-based medication or had ever refused to do so for fear of prosecution.

See also: [Á.R. v. Hungary \(no. 20440/15\)](#), Committee judgment of 17 October 2017.

### **[Thörn v. Sweden](#)**

1 September 2022 (Chamber judgment)

This case concerned the conviction and fine issued to the applicant 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

<sup>1</sup>. The marketing of cannabis-based medication was not authorised in Hungary and possession and use of cannabis remained illegal. However, under domestic law a person wishing to use a medication which had no marketing authorisation could apply – on the basis of a medical prescription issued by a doctor – for an individual import licence.

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 held that there had been **no violation of Article 8** (right to respect for private life) of the Convention in the present case, finding, overall, 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 ("margin of appreciation"). The Court, in particular, found it established that the conviction of the applicant 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 the applicant from criminal liability in this case had violated his right to respect for private life. The Swedish 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 lastly noted that it had received no information on the particular impact of the punishment on the applicant, and that the domestic courts had licensed a prescription for a cannabis-based drug for the applicant in 2017 while the criminal proceedings had been pending.

## Texts and documents

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See in particular:

- [Guide on Article 8 of the European Convention on Human Rights – Right to respect for private and family life, home and correspondence](#), prepared by the Court's Registry
  - "[Health](#)" Factsheet
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