

Case no.  
6383-19

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In case no. 6383-19, the **Swedish Prison and Probation Service** (Appellant) v. **AA** (Respondent), the Supreme Administrative Court delivered the following judgment on 24 November 2020.

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## **RULING OF THE SUPREME ADMINISTRATIVE COURT**

The Supreme Administrative Court grants the appeal, overturns the judgment of the administrative court of appeal and affirms the decision of the Swedish Prison and Probation Service.

## **BACKGROUND**

1. Under certain circumstances, a person who has been sentenced to a term of imprisonment not exceeding six months has the possibility to serve the prison sentence outside prison through intensive supervision with electronic monitoring, a so-called ankle bracelet. This requires the sentenced person to apply to serve the sentence in this manner. An application for enforcement outside prison may not be granted where there are special grounds which indicate otherwise.
2. AA was sentenced to a term of imprisonment of one month and applied to serve the sentence by means of intensive supervision with electronic monitoring. During the administration of his application, the Swedish Prison and Probation Service found that AA, who speaks Polish as his native language, neither speaks nor understands Swedish or English to a sufficient extent in order to be able to communicate with the Swedish Prison and Probation Service without the assistance of an interpreter. The Swedish Prison and Probation Service was of the opinion that this entails that there are special grounds which argue against

enforcement by means of intensive supervision with electronic monitoring and denied his application.

3. AA appealed the decision to the Administrative Court in Gothenburg and stated that he can communicate in elementary Swedish, that he has friends who can help him interpret, and that there are also digital means for translation which can be used. The administrative court rejected the appeal explaining that his language difficulties constituted such a special ground which argued against enforcement of the prison sentence outside prison.
4. AA appealed further to the Administrative Court of Appeal in Gothenburg which was of the opinion that the limitations in his language skills did not constitute a special ground to deny enforcement outside prison. The administrative court of appeal accordingly overturned the decisions of the lower instances and remanded the case to the Swedish Prison and Probation Service for continued handling of his application. The administrative court of appeal stated that, in order for deficient language skills to be regarded as a special ground against enforcement outside prison, they must give rise to difficulties in the enforcement of a certain magnitude which, for example, would be the case if the applicant only speaks a language which is quite rare in Sweden. However, according to the administrative court of appeal, the fact that the applicant speaks neither Swedish nor English could not be accepted as one such special ground.

#### **CLAIMS, ETC.**

5. *The Swedish Prison and Probation Service* claims that the Supreme Administrative Court, by way of amendment of the judgment of the administrative court of appeal, is to affirm the decision of the Swedish Prison and Probation Service and states the following.
6. In the event the sentenced person does not speak and understand either Swedish or English but requires an interpreter in his or her contacts with the probation

service, this constitutes a special ground against enforcement outside prison. In connection with enforcement, the sentenced person is controlled by means of electronic monitoring and through irregular home and workplace visits, visits to the probation service and through telephone calls. In addition to this, incident-related monitoring occurs, e.g. when the monitoring equipment indicates that the sentenced person is in violation of an instruction or when the equipment does not work. In these situations, the probation service must be able to immediately contact the sentenced person. It cannot be ensured that an interpreter will be available on these occasions.

7. AA has not submitted a statement.

## **REASONS FOR THE RULING**

### **The question in the case**

8. The question in the case is the meaning to be ascribed to the need for an interpreter in the determination of whether there are special grounds which argue against enforcement of a prison sentence outside prison.

### **Legislation, etc.**

9. It is apparent from section 1 of the Intensive Supervision Using Electronic Monitoring Act (1994:451) that the Act is applicable in the enforcement of a sentence of imprisonment but not, however, imprisonment imposed in accordance with Chapter 28, section 3 of the Criminal Code (probation combined with imprisonment) if the sentenced person is to serve a term of imprisonment not exceeding six months.
10. According to section 2, first paragraph, in those cases referred to in section 1, on application of the sentenced person, a decision may be allowed according to which the prison sentence shall be served outside prison. An application may not

be granted where the sentenced person is in custody or an inmate of a correctional institution for any ground other than to execute the penalty to which the application pertains or where special grounds argue against enforcement outside prison.

11. During the period of time of enforcement outside prison, the Swedish Prison and Probation Service shall, pursuant to section 6, first paragraph, conduct careful supervision of the sentenced person and stay regularly informed of his circumstances. Section 7 states that the sentenced person, during the enforcement, shall keep the Swedish Prison and Probation Service notified regarding circumstances material to the enforcement, upon summons appear before the authority and maintain contact therewith otherwise in accordance with the authority's instructions.

#### **The Court's assessment**

12. The possibility to enforce a prison sentence through intensive supervision using electronic monitoring was initially implemented as a pilot project. Thereafter, this possibility was expanded and extended in order to subsequently be made permanent. In addition, the possibility for intensive supervision was expanded further. It has been repeatedly emphasised during the legislative work that the main rule should be that the person who meets the requirement in terms of the length of the penalty shall be granted enforcement outside prison by means of intensive supervision, and the importance of the fact that the smallest possible number of sentenced persons shall be denied such enforcement has been highlighted (see Government Bill 1993/94:184, p. 33; Government Bill 1997/98:96, p. 114; and Government Bill 2004/05:34, p. 34).
13. According to section 2, first paragraph of the Intensive Supervision Using Electronic Monitoring Act, an application for such enforcement, however, will not be granted if there are special grounds which argue against enforcement outside prison. The assessment of whether there are special grounds is to be made on the

basis of the circumstances in each individual case (HFD 2012 reported case no. 9).

14. The question regarding the significance of language difficulties to the possibility of being granted intensive supervision is addressed in the preparatory works in relation to the sentenced person's participation in such programme activities as may be included as part of the enforcement (Government Bill 1995/96:156, p. 27). It is thereupon stated that, as regards persons who do not have a command of Swedish, it may be left to the probation service, based on the local conditions, to find suitable solutions in terms of the content of the enforcement. It is further stated that intensive supervision presupposes that the probation service's personnel can communicate with the sentenced person, and that it is inevitable that language difficulties may, in exceptional cases, render impossible meaningful enforcement in this form. However, it is also emphasised that, *inter alia*, for reasons of justice, it is an important task of the probation service to attempt to establish the conditions so that persons who do not have a command of Swedish are able to be granted enforcement in the form of intensive supervision.
15. The fact that the sentenced person and the Swedish Prison and Probation Service can communicate with one another is, however, relevant not only as regards the content of enforcement but, also, to an even greater degree, as regards the possibility to carry out supervision of the sentenced person. A condition for the Swedish Prison and Probation Service and the sentenced person to be able to fulfil their obligations in this respect is that they can make themselves understood in their contacts with one another.
16. The Swedish Prison and Probation Service has stated that AA cannot communicate with the personnel of the probation service without the assistance of an interpreter and that, at least in conjunction with incident-related monitoring, when the probation service must be able to come into immediate contact with him, the availability of an interpreter cannot always be ensured. The Supreme Administrative Court finds no cause to question this information.

17. Since the supervision of AA therefore cannot be carried out in the manner presupposed in the Act, there are, in the view of the Supreme Administrative Court, special grounds which argue against enforcement of the prison sentence outside prison. Accordingly, the appeal of the Swedish Prison and Probation Service is granted.

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Justices Henrik Jermsten, Kristina Ståhl, Ulrik von Essen, Helena Rosén Andersson and Mats Anderson have participated in the ruling.

Judge Referee: Emelie Dahlgren.