

SUPREME COURT'S JUDGMENT

delivered in Stockholm on 29 December 2025

Case no.
B 1865-25

PARTIES

Appellant

M.H.

Counsel and Public Defender: Attorney A.S.

Respondent

Prosecutor-General

Box 5553

114 85 Stockholm

THE MATTER

Expulsion

RULING APPEALED

Judgment of the Svea Court of Appeal of 2025-02-05 in case

B 17441-24

JUDGMENT

The Supreme Court affirms the judgment of the court of appeal.

The Supreme Court affirms the court of appeal's secrecy order.

A.S. shall receive compensation from public funds for the defence of M.H. in the Supreme Court of – correctly calculated – SEK 9,913. Of the amount, SEK 7,930 relates to work and SEK 1,983 relates to value added tax. The state shall bear the cost.

CLAIMS IN THE SUPREME COURT

M.H. has claimed that the Supreme Court shall overturn the decision regarding expulsion.

The Prosecutor-General has opposed modification of the judgment of the court of appeal.

REASONS FOR THE JUDGMENT

Background

1. M.H., who is a citizen of Somalia, applied for asylum in Sweden in December 2014. At that time, he was 21 years of age. In March 2016, he was granted a permanent residence permit and recognition of refugee status in Sweden.

2. In December 2024, the district court sentenced M.H. for gross unlawful threats, gross weapons crime and causing bodily injury to imprisonment for six years and six months. The gross weapons crime consisted of M.H., who had taken drugs, was in unlawful possession of a loaded pistol in a public place and in a criminal environment in which it could typically be assumed to be used for criminal purposes.

3. In the examination of the expulsion question, the district court concluded that the criminal activity was to be regarded as particularly serious within the meaning of Chapter 4 a, Section 4, first paragraph (1) of the Aliens Act (2005:716). The district court further found that it would entail serious danger to public order and security to allow M.H. to remain in Sweden. His ties to Sweden, which principally consisted of having children here, were not deemed to constitute an impediment to expulsion. M.H. was accordingly expelled from Sweden with a ban on re-entry.

4. The court of appeal has affirmed the judgment of the district court.

What is at issue in the Supreme Court

5. The case concerns the conditions for expulsion for a crime when the sentenced person is a refugee and, in particular, where a gross weapons crime is such a particularly serious crime as is referred to in Chapter 8 a, Section 4 of the Aliens Act.

Basic conditions for expulsion due to crimes

6. An alien may be expelled from Sweden if he or she is sentenced for a crime to a sanction which is more severe than fines. However, expulsion may occur only if the act is of such type and other circumstances are such that it may be assumed that the alien will continue to engage in criminal activity here in Sweden or where any of the crimes for which the alien is convicted has a penalty value corresponding to imprisonment for six months or if the character of the crimes is such that the alien should not be allowed to remain in Sweden (See Chapter 8 a, Section 1, first paragraph of the Aliens Act).

7. When a court considers whether an alien is to be expelled, it shall take into account the alien's ties to Sweden. Specific consideration shall be given to the extent to which the alien has established himself or herself in

Swedish society, whether the alien has children in Sweden, and which other family relationships the alien has here. (See Chapter 8 a, Section 2).

8. Consideration shall also be given as to whether the alien, due to the provisions in Chapter 12 of the Aliens Act, cannot be sent to a particular country or whether there are particular impediments to executing the decision (see Chapter 8 a, Section 3).

9. Chapter 8 a, Sections 4–7 of the Aliens Act contains special provisions regarding expulsion of persons who belong to certain categories of persons (see Chapter 8 a, Section 1, second paragraph). Such a category is an alien who is a refugee and requires refuge in Sweden (see Chapter 8 a, Section 4, first paragraph).

Expulsion of a refugee due to crimes

10. An alien who is a refugee and requires refuge in Sweden may be expelled only where the alien has committed a particularly serious crime and it would entail serious danger to public order and security to allow him or her to stay in Sweden or where the alien has engaged in activities in Sweden or abroad that have entailed a danger to national security and there is reason to assume that he or she would continue such activities here (Chapter 8 a, Section 4, first paragraph of the Aliens Act).

11. The general conditions in Chapter 8 a, Sections 1–3 of the Aliens Act shall be examined also for persons who have the status of refugee. Where the requirements of Chapter 8 a, Section 4, first paragraph (1) are met, the provisions of Chapter 8 a, Section 1 will regularly also be met. Accordingly, what is prescribed in Section 1 does not normally have any independent relevance in the examination of whether a refugee is to be expelled because he or she has committed a particularly serious crime.

12. It follows from the general conditions for expulsion that an assessment is to be made regarding the alien's ties to Sweden or where the presence of impediments to execution prevent his or her expulsion from the country. Given that the circumstances which, pursuant to Chapter 8 a, Section 4, must be present in order for the expulsion of a refugee to be pertinent, the impediments to execution will only prevent expulsion if the persecution threatening the alien in the other country entails danger for the life of the alien or is otherwise of a particularly severe nature (see Chapter 12, Section 2, second paragraph, second sentence).

13. The provisions regarding expulsion of refugees are based on Sweden's commitments under the UN Convention Relating to the Status of Refugees of 1951, the Geneva Convention (see Government Bill 2021/22:224, p. 51). According to the Convention, the prohibition against the expulsion of a refugee which is otherwise prescribed in the Convention does not apply in respect of a refugee who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community in the country (see Article 33(2)).

14. The provisions of Chapter 8 a, Section 4 of the Aliens Act were given their current wording on 1 August 2022, and are, in substance, consistent with what previously applied. The preparatory works state that the threshold for what should be a particularly serious crime in case law has normally been regarded as a crime for which the alien has been sentenced to a lengthy term of imprisonment. (See Government Bill 2021/22:224. pp. 22, 51 and 128; *cf.* case NJA 1981, p. 1246 and case NJA 1991, p. 203.)

15. The expression, *particularly serious crime*, is used, in addition to Chapter 8 a, Section 4, also in other provisions of the Aliens Act. Chapter 4, Section 3, second paragraph (1) states that an alien may be denied a declaration of refugee status if he or she, by virtue of a particularly serious

crime, has shown that it would entail serious danger to public order and security to allow him or her to stay in Sweden. Comparably, Chapter 4, Section 5 b, second paragraph states that a declaration of refugee status may be revoked where the person who has been granted such status has committed a particularly serious crime. The Migration Court of Appeal has examined the purport of *particularly serious crime* in accordance with these provisions (see, among others, cases MIG 2021:9 and MIG 2025:3).

The EU Qualification Directive

16. The provisions of Chapter 4 of the Aliens Act containing the expression, *particularly serious crimes*, have their counterpart in the EU Qualification Directive,¹ which has been implemented in Swedish law and is based on the Geneva Convention. Accordingly, the expression is to be interpreted in light of the purport following from Union law.

17. In the judgment, *Staatssecretaris van Justitie en Veiligheid*, C-402/22, EU:C:2023:543, the European Court of Justice has stated its position regarding the conditions for denying a declaration of refugee status in accordance with the Directive due to the fact that the alien has committed a particularly serious crime (*cf.* Chapter 4, Section 3, second paragraph (1) of the Aliens Act).

18. It is apparent from the judgment that the matter must involve an individual crime which is to be regarded as particularly serious. Thus, it is not the aggregate criminal activity that is to be assessed. The individual crime must be regarded as of an exceptionally high degree of seriousness

¹ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast).

and seriously undermine the legal order of the community concerned. The assessment is to be made of all specific circumstances of the case concerned. (See paras. 37, 39 and 40 of the judgment.)

19. The European Court of Justice has stated that, in the assessment of the degree of seriousness, account must be taken of both the “penalty provided for” (which may be understood as the scale of penalties for the crime) as well as the penalty imposed, the nature of that crime, any aggravating or mitigating circumstances, whether or not that crime was intentional, the nature and extent of the harm caused by that crime and the procedure applied to punish it (see para. 48 of the judgment).

20. The Court has emphasised in particular that, amongst the relevant criteria, the penalty provided for under the criminal legislation of the Member State concerned is of particular importance, without however being decisive in itself (see para. 31 of the judgment).

21. Accordingly, the assessment of whether a crime is sufficiently serious shall, in light of the circumstances in the individual case, be made on the basis of certain assessment criteria. The criteria may be said to be an expression of the circumstances which characterised a crime of such degree of seriousness that it is normally deemed to be particularly serious.

Particularly serious crimes in conjunction with expulsion in accordance with Chapter 8 a of the Aliens Act

22. The regime in Chapter 4 of the Aliens Act regarding when refugee status may be denied and when a declaration of refugee status may be revoked is, as mentioned, rooted in Union law in the Qualification Directive. This is not the case for expulsion due to crimes in accordance with Chapter 8 a. The expression, *particularly serious crime*, in the context of refugees, however, has a common origin in the Geneva Convention.

Accordingly, it should be interpreted in a uniform way based on the manner in which it is treated within Union law and in international refugee law according to the Geneva Convention.

23. The considerations made by the legislature in the determination of the scale of penalties for the crime may serve as guidance in the assessment of whether a crime is particularly serious. In this way, a connection can be made to that which has been asserted by the European Court of Justice as a particularly important assessment criterion regarding what constitutes a particularly serious crime (see para. 20).

24. The expression, *particularly serious crime*, in the Aliens Act has, as stated, its origins in international refugee law. It does not have the same purport as the domestic classification degree, particularly serious, which exists for certain types of crimes, e.g. particularly serious assault or particularly serious weapons crimes.

25. As regards the additional requirement that it would entail serious danger to public order and security to allow the alien to stay in Sweden, it should, according to the European Court of Justice, be seen as a separate, cumulative requirement of demonstrated danger to the community (see the judgment of the European Court of Justice in *Commissaire général aux réfugiés et aux apatrides*, C-8/22, EU:C:2023:542). In practice, this means that a particularly serious crime must be of such character that the crime signals a danger to the community of the type and that – together with other circumstances – the conclusion may thereby be drawn that it would entail serious danger to public order and security to allow the alien to stay in the country.

More specifically regarding serious weapons crimes

26. As regards serious weapons crimes, it may be observed that access to firearms often constitutes a prerequisite for serious violent crimes to occur, and that situations involving violence entail a risk of significantly more onerous consequences if a firearm is present. The increased access to and use of firearms within criminal environments has been deemed to be a growing and very serious social problem. (See, *inter alia*, Government Bill 2013/14:226, p. 34 and Government Bill 2017/18:26, p. 11 f.)

27. The view of the legislature on the gravity of the criminal activity is reflected in the formulation of the scales of penalties. The scale of penalties for gross weapons crimes has been rendered more stringent on several occasions and, as late as in 2024, the scale of penalties was changed for gross weapons crimes from a minimum term of imprisonment of two years and not more than five years to a minimum term of imprisonment of four years and not more than seven years. The legislature was of the opinion, in brief, that more severe punishments are necessary for crimes which render gross violence possible (see Government Bill 2023/24:33, pp. 20 and 22). The scale of penalties for particularly serious weapons crimes is a term of imprisonment of not less than six years and not more than ten years.

The assessment in this case

28. According to the judgment of the court of appeal, which has become legally binding in that respect, M.H. is to be sentenced for gross unlawful threats, gross weapons crimes and causing bodily injury, gross crime. There is no reason to make any assessment of the aggregate penalty value other than that carried out by the court of appeal. As the court of appeal found, the sanction imposed should be a term of imprisonment of six years and six months.

29. Since M.H. has a declaration of refugee status, he can be expelled only if any of the qualifying conditions in Chapter 8 a, Section 4 of the Aliens Act are fulfilled. As far as M.H. is concerned, the conditions pursuant to Chapter 8 a, Section 4, first paragraph (1) are triggered. This means that he can be expelled only if he has committed a particularly serious crime and it would entail serious danger to public order and security to allow him to remain here.

30. M.H. has been sentenced for, among others, a serious weapons crime. Based on the legislature's considerations in the formulation of the scale of penalties for the crime, the starting point is that such crime is to be assessed as being particularly serious within the meaning of the Aliens Act. No reason for assessing the crime in any other manner has come to light. This means that the serious weapons crime committed by M.H. is such a particularly serious crime as is referred to in Chapter 8 a, Section 4, first paragraph (1) of the Aliens Act.

31. A serious weapons crime is itself a crime which is a threat to fundamental social interests in that access to firearms often constitutes a prerequisite for other serious violent crimes to occur, and that situations involving violence entail a risk of significantly more onerous consequences if a firearm is present. The character of the crime taken together with other circumstances regarding the relevant criminal activity leads to the conclusion that it would entail serious danger to public order and security to allow M.H. to stay in Sweden.

32. Taking into account the serious criminal activity in which M.H. has engaged, the presumption is that he is to be expelled. No highly compelling reasons – which go beyond the interference which an expulsion regularly entails for those who have children in the country – have come to light. M.H.'s ties to Sweden therefore do not constitute an impediment to his expulsion.

33. A supplemental statement has been obtained in the Supreme Court from the Swedish Migration Agency. It is apparent from the statement that it is difficult to state the extent to which the individual risk of persecution which was deemed to exist for M.H. when he came to Sweden more than ten years ago will continue if he is expelled to Somalia today. The uncertainty regarding this matter is enhanced by the fact that a number of years will pass before execution of the expulsion decision becomes a reality. Thus, at present, it cannot be determined if, at the time the question of execution arises, there will be any such impediment to execution as referred to in Chapter 12, Section 2, second paragraph, second sentence of the Aliens Act.

34. Accordingly, M.H. shall be expelled from Sweden with a ban on re-entry. The re-entry ban shall be indefinite.

35. Accordingly, the judgment of the court of appeal is affirmed.

Justices of the Supreme Court Anders Eka, Dag Mattsson, Malin Bonthron, Stefan Reimer (reporting Justice) and Johan Danelius participated in the ruling.

Judge Referee: Catrine Manne Rutberg.