

SUPREME COURT'S JUDGMENT

delivered in Stockholm on 23 April 2025

Case no.
B 2849-24

PARTIES

Appellant

G.R.

Counsel and public defender: Attorney R.L.

Respondent

Prosecutor General

Box 5553

114 85 Stockholm

THE MATTER

Expulsion

RULING APPEALED

Judgment of the Göta Court of Appeal of 2024-03-26 in case

B 467-24

JUDGMENT

The Supreme Court modifies the judgment of the court of appeal such that the decision regarding expulsion is overturned. In other respects, the judgment of the court of appeal is affirmed.

R.L. shall receive compensation from public funds for the defence of G.R. in the Supreme Court in the amount SEK 7,655. Of the amount, SEK 6,124 relates to work and SEK 1,531 relates to value added tax. The state shall bear the costs.

CLAIMS IN THE SUPREME COURT

G.R. has claimed that he is to be acquitted for two cases of making gross unlawful threats, for gross unlawful threats and obstructing the course of justice and for assault, that the weapons offence is to be assessed as a crime of the normal degree, that the sanction is to be reduced in any case, and that the damages claim is to be dismissed or in any case that the damages are to be reduced. He has further claimed that the action for expulsion is to be dismissed.

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

The Supreme Court has granted the leave to appeal set forth in paragraph 4.

REASONS FOR THE JUDGMENT

Background

1. G.R. is 37 years old. He is a citizen of Chile and came to Sweden when he was just under one year of age. In connection with his arrival, he was granted permanent residence.

2. The district court sentenced G.R. to imprisonment for four years for gross weapon crimes, gross unlawful threats, assault, unlawful threats (three charges), obstructing the course of justice and minor drug crimes. The prosecutor's claim for expulsion was dismissed.

3. The court of appeal has been of the position that two of the unlawful threats are to be assessed as gross crimes and decided that G.R. is to be expelled from Sweden and banned from returning here for a period of ten years, but has reached the same conclusion as the district court regarding all other aspects of the charged acts and regarding the sanction.

4. The Supreme Court has granted leave to appeal on the issue of expulsion.

What is at issue in the Supreme Court

5. The case addresses the conditions for expulsion due to offences when the accused has lived in Sweden since birth or a very young age.

Generally regarding expulsion due to offences

6. Provisions regarding expulsion due to offences are found in Chapter 8 a of the Aliens Act (2005:716). The rules were rendered more stringent in several sections in 2022 with the overall purpose that aliens who commit offences are to be expelled to a greater extent than before (see Government Bill 2021/22:224, p. 26 f.).

7. The legislative amendments entail, among other things, a more stringent requirement regarding the alien's ties to Sweden in order for him or her to be able to avoid expulsion, the penalty value for expulsion due to the gravity of the offence - a term of imprisonment for six months - enshrined in the provision and, the abolition of the requirement of extraordinary reasons for expulsion when the alien has been present in

Sweden for an extended period of time, and the removal of the previous prohibition against expulsion of certain young persons and its replacement with qualified requirements in order for expulsion to be able to take place.

8. The basic condition for expulsion based on offences is set forth in Section 1. Expulsion of someone who came to Sweden as a young person is subject to special conditions pursuant to Section 5. The provisions regarding re-entry bans, including the manner in which the duration of a ban is determined, are found in Sections 10-12. When the conditions for expulsion are present, the determination of whether expulsion will occur and the duration of the re-entry ban shall be subject to a balancing in relation to the alien's ties (see Section 2 and Section 11, second paragraph). The consequences of an expulsion shall be proportionate to the criminal activity and the risk of recidivism in the individual case.

Basic conditions for expulsion

9. An alien may be expelled from Sweden if he or she is sentenced for an offence to a sanction which is more severe than fines (see Chapter 8 a, Section 1, first paragraph of the Aliens Act). In addition, it is necessary that one of the conditions set forth in the first paragraph (1) or (2) is fulfilled.

10. Expulsion may take place if the act is of such type and other circumstances are such that it may be assumed that he or she will continue to engage in criminal activities (first paragraph (1)). The risk of recidivism is to be concrete and there must be a reasonable basis for the assessment that such risk is present. Normally, it is necessary that the alien has previously been convicted for an offence. The risk of recidivism need not pertain to a criminal activity which is the same as the relevant one. (See Government Bill 1993/94:159, p. 12, Government Bill 2021/22:224, pp. 32 and 123, and the "*Expulsion and Domestic Violence*" case, NJA 2019, p. 544.)

11. An expulsion decision may also be based on the gravity of the offence. Expulsion may take place if any of the offences for which the alien is convicted has a penalty value corresponding to imprisonment for six months or if the character of any of the offences is such that the alien should not be allowed to remain in Sweden (first paragraph (2)).

12. In order for there to be a basis for expulsion in accordance with the first part of the first paragraph (2), the penalty value for an individual offence must thus not be less than six months. The connection to the penalty value is now apparent directly from the statutory text. It is the penalty value at which the court has arrived for an individual offence which is relevant, not the sanction to which the alien is sentenced. (See Government Bill 2021/22:224, p. 35 f.)

13. According to the second part of the first paragraph (2), expulsion may also take place where the penalty value is less than six months where the character of an offence for which the alien is convicted is such that the alien should not be allowed to remain in Sweden. Examples of offences possessing such character are, according to the preparatory works, offences which entail attacks on a person's life or health, attacks on liberty or peace and crimes which otherwise have constituted a substantial violation of integrity. Other examples mentioned are offences committed in an honour context, hate crimes and offences against the legal order or other societal interest particularly worthy of protection. The question whether the character of an offence is such that it may itself form the basis of a decision for expulsion may be determined following an assessment in the individual case. In conjunction with the assessment, the penalty value of the offence may also have weight. (See, *ibid.*, Government Bill, p. 37.)

Aliens who came to Sweden as young persons

14. For a person who arrived in Sweden before he or she turned 15 years of age and who has been present here not less than five years when the prosecution is brought, more qualified conditions must be fulfilled in order for expulsion to take place (see Chapter 8 a, Section 5(1) and (2) of the Aliens Act).

15. According to sub-section 1, such a person may be expelled only if he or she is convicted of criminal activities which have a penalty value comparable to imprisonment for not less than two years or criminal activity the character of which is such that he or she should not be allowed to remain in Sweden. Here – as opposed to that applicable in accordance with Section 1, first paragraph (2) – the penalty value for the aggregate criminal activity is relevant. In the same manner as in accordance with Section 1, first paragraph (2), expulsion may take place even in conjunction with lower penalty values where the character of the criminal activity is otherwise such that the alien should not be allowed to remain in Sweden. This expression refers to the same type of criminal activity as in Section 1, first paragraph (2) and, like that applicable in accordance with the provision, it becomes a question of an assessment in the individual case as to whether the character of the criminal activity is such that it may form the basis of a decision for expulsion. The penalty value of the criminal activity may also have weight in these cases.

16. In accordance with sub-section 2 of the section, an additional basis for expulsion is that the alien has recidivated in such a manner that he or she should not be allowed to remain. The wording of the act provides no point of reference for this assessment. The preparatory works state that the court should consider the scope of the criminal activity, the amount of time which has elapsed between the offences, and the gravity and character of

the individual offences. Particular weight should be ascribed to criminal activity of the type which is also relevant in the assessment in accordance with sub-section 1. In the event the individual offences carry high penalty values, fewer cases of recidivism are necessary than where less serious offences have been involved. It need not be a question of recidivism involving criminal activity of the same type, and an assessment shall be made in the individual case as to whether it is a question of such recidivism as may form the basis for expulsion. (See Government Bill 2021/22:224, pp. 57 and 129.)

17. The provisions of Section 5 apply in addition to the general conditions in Section 1. In principle, when Section 5 is applicable, the latter-mentioned section has no independent significance (see, *ibid.*, Government Bill, p. 129). The above means that the risk for future recidivism – which is regulated in Section 1, first paragraph (1), but is not mentioned in Section 5 – cannot be an independent basis for expulsion in respect of the category of persons covered by Section 5. However, this does not prevent consideration of the risk of recidivism in the balancing which is to be carried out in accordance with Section 2 (see paras. 20–31).

18. The qualified requirements applicable in order for expulsion to be able to take place of a person who came to Sweden as a young person and who has been present here for a certain period of time replaces the prohibition against expulsion which previously applied. The preparatory works for the new regime emphasise that there must be high requirements for expulsion in consideration of the prejudice entailed in a removal for such a person and the right to private and family life in accordance with Article 8 of the European Convention (see, *ibid.*, Government Bill, p. 55).

19. Thus, particular consideration shall be given to situations in which an alien has lived in Sweden since birth or has been present here since early

childhood. The precedents of the European Court of Human Rights provide that such conditions do not in themselves exclude the compatibility of an expulsion with the right to private and family life in accordance with Article 8. However, in those cases, there must be very weighty reasons for expulsion. This applies to a particularly high degree where the alien committed the offences as a minor. (See, for example, *Maslov v. Austria [GC]*, no. 1638/03, Sections 70–75, ECHR 2008.)

Balancing between the criminal activity and the ties to Sweden

20. The assessment of whether an alien is to be expelled shall take into account the alien's ties to Sweden. Specific consideration shall be given to the extent to which the alien has established him 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 of the Aliens Act).

21. The statutory section entails that a balancing is to be carried out between the criminal activity forming the basis of the question regarding expulsion and the alien's ties to Sweden. The provision is intended to express the fact that the criminal activity and the consequences entailed in the expulsion for the individual are to be in reasonable proportion. When the court has observed that the basic conditions for expulsion – in accordance with Section 1 or Section 5 – are fulfilled, it shall weigh the reasons which argue for expulsion against the reasons relating to the personal relationships which argue against expulsion. The stronger the reasons for expulsion, the stronger the ties must be in order for expulsion not to occur. The weight to be ascribed to the various circumstances material to the expulsion question may be determined following an overall assessment. (See Government Bill 2021/22:224, pp. 39 f. and 126 f.)

22. As regards the reasons for expulsion, the penalty value of the criminal activity and its character are what carry weight, as well as the risk of recidivism. This entails, among other things, that the higher the penalty value, the stronger the ties must be in order for expulsion not to occur. (See, *ibid.*, Government Bill, p. 127.)

23. In conjunction with the assessment of whether the alien has established him or herself in Swedish society and, thereby, of his or her ties to Sweden, consideration is to be given to, among other things, work conditions, including school attendance and other studies, as well as residential situation. In addition, weight is to be ascribed to the extent to which the alien commands the Swedish language and the manner in which the alien has settled him or herself into society in general. Certain types of offences such as honour-related offences may in themselves suggest inadequate adaptation to Swedish norms and conditions. A person who is involved in repeated criminality or otherwise lives outside regular society should be regarded as weakly established. This may be deemed to be the case particularly in conjunction with criminal activity within the context of criminal networks. (*Cf., id.*, Government Bill, pp. 42, 54 and 125.)

24. Additional conditions to be taken into account are the amount of time spent in Sweden and the age at which the alien came here. In conjunction with the assessment of the ties, however, the actual connections which have been made during the alien's time here are more important than the time itself. A long presence need not entail that the alien's ties are strong. The period of presence as such, however, normally has greater weight as regards a person who came here in their early years than for a person who has been present here only during a later period in life. (*Cf., id.*, Government Bill, pp. 42 and 125.)

25. As regards persons who have lived in Sweden since birth or from a very young age, there must be very weighty reasons for an expulsion to be considered (see para. 19). The starting point must be that such a person has strong ties to Sweden. However, the actual connections which exist are decisive also here. When the weight to be ascribed to the criminal activity is assessed, the qualified conditions set forth in Section 5 constitute the minimum requirements. In conjunction with a balancing to be carried out in accordance with Section 2, it is necessary for someone who has lived in Sweden since birth or from a very young age that the reasons for expelling such person are considerably stronger still in order for expulsion to take place.

26. For the assessment of the extent to which an alien has established him or herself in Swedish society – and thereby his or her ties here – the basis of the alien’s presence in the country and whether he or she is here legally can have weight. A grant of permanent residence suggests a more solid establishment and thereby stronger ties than a grant of temporary residence. In the assessment of the establishment in Sweden, it is also apparent from the preparatory works that consideration is to be given to the alien’s remaining connections to his or her home country. (See, *id.*, Government Bill, pp. 42 and 125.)

27. The assessment of the extent to which the alien has established him or herself in Swedish society is not to be based on particulars but, rather, shall be carried out on the basis of a weighing of all circumstances relating to the alien’s living circumstances. (*Cf.*, *id.*, Government Bill, pp. 43 and 126.)

28. As regards the alien’s family connections, the court is to consider whether he or she has children in Sweden, the status of the relationships in the individual case, and the manner in which they would be affected if the

alien was expelled. Other family relationships are also to be taken into account. Family principally means spouses or co-habitees or, in the event the alien is a minor, his or her parents, but also other family relationships can be considered (*cf.* the “*Foreigner's Period of Stay*” case, NJA 2019, p. 316 para. 19.)

29. In conjunction with the balancing in accordance with Section 2, the right to private and family life pursuant to Article 8 of the European Convention is to be taken into account. The European Court of Human Rights has emphasised the importance of the fact that the decisions of the national courts regarding expulsion are made following a careful balancing of the conflicting interests. When the court’s conclusions are based on such an assessment, it is normally accepted by the European Court of Human Rights if it does not appear arbitrary or obviously unreasonable (see, for example, *Savran v. Denmark [GC]*, no. 57467/15, paras. 188 and 189, 7 December 2021).

30. If a child is affected by a decision regarding expulsion, the Convention on the Rights of the Child is also to be taken into account within the framework of the balancing. This does not mean that the best interests of the child will always be decisive when they collide with other interests. However, the child’s best interests shall be taken into account, investigated and reported, and balanced against the reasons for expulsion.

31. It follows from the aforementioned that the question regarding expulsion is to be determined on the basis of an overall assessment in which the reasons for expulsion are balanced against the alien’s ties to Sweden. It is required that the grounds for expulsion outweigh the opposing interests and that the expulsion is proportionate in light of the offence for which the alien is convicted, any recidivism, and the risk of future recidivism.

Re-entry ban

32. When a court takes a decision to expel based on offences, the court is to couple the decision with a ban excluding the alien from returning to Sweden during a certain period of time or indefinitely (see Chapter 8 a, Section 10, first paragraph of the Aliens Act).

33. The duration of the re-entry ban is to be determined on the basis of the aggregate penalty value of the criminal activity. In the event the penalty value corresponds to a term of imprisonment for less than one year, the re-entry ban is normally established for five years. Where the penalty value is comparable to a term of imprisonment for one year or more, but not two years, the re-entry ban is normally established for ten years. In conjunction with higher penalty values, the re-entry ban is normally not limited in time. (See Section 11, first paragraph.)

34. The duration of the re-entry ban may be determined in a manner other than on the basis of the penalty value where there is cause taking into account the character of the criminal activity and the risk that the alien will engage in continued criminal activity here in Sweden (see Section 11, second paragraph, first sentence). The character of the criminal activity is to be viewed in the same manner as in accordance with Section 1, first paragraph (2) (see para. 13). The risk of recidivism shall be determined in the same manner as in accordance with Section 1, first paragraph (1) (see para. 10). In addition, when the duration of the re-entry ban is determined in a manner other than on the basis of the penalty value, the court is normally to choose one of the levels set forth in Section 11, first paragraph. (See Government Bill 2021/22:224, p. 132 ff.)

35. The courts may even take into account the alien's ties to Sweden and other special circumstances relating to him or her (see Section 11, second paragraph, second sentence). The ties shall be considered to be mitigating

circumstances. The assessment shall take place in the same manner as in accordance with Section 2, and it is primarily when the expulsion entails a more substantial prejudice to the individual that there is cause to choose a re-entry ban of shorter duration. (See, *ibid.*, Government Bill, p. 133.)

36. Other special circumstances refer to such as are related to the alien's person. A typical example is that the alien is a minor (see, *id.*, Government Bill, p. 133).

37. The fact that the alien came to Sweden before he or she reached 15 years of age and has been present here for at least five years should also be viewed as one such special circumstance to be considered in the assessment of the duration of the re-entry ban. This applies to a particularly high degree where the person to be expelled has resided in Sweden since birth or from a very young age.

38. In conjunction with the determination of the duration of the re-entry ban, the court shall carry out an overall assessment in which all relevant circumstances are weighed together. The character of the criminal activity and the risk of recidivism may justify setting the re-entry ban for a longer period of time than that which follows from the penalty value, while ties to Sweden and other special circumstances may justify a re-entry ban of shorter duration than that which follows from the penalty value. The duration of the ban shall be in proportion to, among other things, the consequences of the ban on an alien and his or her family members. (See *id.* Government Bill, pp. 69 f. and 133 f.)

39. Thus, the circumstances which could previously constitute reason to ease the sanction due to the prejudice an expulsion can entail are now to be taken into account in the determination of the duration of the re-entry ban. (See, *id.*, Government Bill, pp. 74 ff. and 138 f.)

The assessment in this case

40. According to the judgment of the court of appeal which, in that respect, has become legally binding, G.R. is to be sentenced for gross weapon crimes, gross unlawful threats on three occasions, assault, unlawful threats, obstructing the course of justice and minor drug crimes. There is no cause to make any assessment of the aggregate penalty value of the criminal activity other than that carried out by the court of appeal. As the court of appeal has found, the sanction should be established as imprisonment for four years.

41. Since G.R. came to Sweden before the age of 15 and has been present here since then, expulsion may take place only if any of the qualified conditions in Section 5 are fulfilled.

42. G.R. is guilty of criminal activities with a penalty value comparable to imprisonment exceeding two years. He has also recidivated in such a manner that the recidivism on its own can form the basis for expulsion. Accordingly, the conditions set forth in Section 5 are fulfilled.

43. In the assessment of whether G.R. should be subject to expulsion, a balancing must be carried out between his ties to Sweden and criminal activities. An expulsion may take place only if it may be deemed proportionate taking into account the criminal activities for which he has now been convicted and for those for which he has previously been convicted (see paras. 20, 21 and 31). His ties to Sweden must be assessed considering all of his living circumstances and balanced against the reasons which argue for expulsion. Given that he has been present in Sweden since early childhood, very weighty reasons for expulsion are necessary in order for such a decision to be able to be taken (see para. 19).

44. The offences for which G.R. has been convicted are serious. They entail attacks on other persons' lives, freedom and peace which have constituted a substantial violation of integrity. The penalty value for the criminal activities is relatively high. In addition, previously – 2019 – G.R. was convicted of offences of the same type and there is a risk of continued criminal activity. These circumstances argue strongly for expulsion.

45. On the other hand, G.R.'s ties to Sweden are to be considered. He came to Sweden with his parents when he was eight months old and was then granted permanent residence. He is currently 37 years of age. He speaks fluent Swedish, has completed primary-secondary school, some upper-secondary school and some vocational training in Sweden and has his own residence. His parents and siblings live here. All of these circumstances weigh heavily against expulsion.

46. As regards G.R.'s living conditions, it is established from the investigation that he was previously the subject of efforts on the part of social services. There is information regarding contact with criminal circles and substance abuse. He is unemployed.

47. The aforementioned circumstances entail that G.R. may be deemed to be weakly established. At the same time, consideration must be given to the fact that he has resided in Sweden essentially his entire life, speaks Swedish and has completed primary-secondary school and certain other education here. In an overall assessment, G.R.'s ties to Sweden must be deemed to be very strong.

48. As regards the remaining connections to Chile, it is established that he has visited the country on a number of occasions, that he speaks Spanish, that his parents have a house in Chile and that he has some relatives there. These connections cannot be ascribed any notable weight in the balancing in accordance with Section 2.

49. Thus, there are compelling reasons which argue both for and against an expulsion. In light of the fact that G.R. has resided in Sweden in principle his entire life, the reasons for expulsion must weigh heavily. The criminal activity for which he has now been convicted, as well as that for which he has previously been convicted, are certainly serious in nature. However, it is not a matter of criminal activity of the severest kind (*cf.*, para. 25). Following an overall assessment to be carried out in a balancing in accordance with Section 2, the conclusion is thus that an expulsion of G.R. would not be proportionate.

50. Accordingly, the decision of the court of appeal to expel G.R. is overturned.

Justices of the Supreme Court Stefan Johansson, Petter Asp, Cecilia Renfors (reporting Justice), Christine Lager and Katrin Hollunger Wågner (dissenting).
Judge referee: Caroline Smith.

DISSENTING OPINION

Justice Katrin Hollunger Wågner dissents and is of the opinion that the decision of the court of appeal to expel G.R. is to be affirmed. She is of the opinion that paragraph 25 and the *Assessment in this case* shall read as follows.

25. As regards persons who have lived in Sweden since birth or from a very young age, there must be very weighty reasons for an expulsion to be considered (see para. 19). In many cases, there is reason to assume that such a person has strong ties to Sweden. However, the actual connections which exist are also decisive here. In conjunction with a balancing which is to be carried out between the criminal activity and the alien's ties to Sweden, the qualified conditions set forth in Section 5 constitute minimum requirements. In order for expulsion of anyone who lives in Sweden since birth or from a very young age to be deemed to be proportionate, it should be required as a rule that he or she is guilty of criminal activity with a higher penalty value than that set forth in Section 5(1).

Assessment in this case

40. According to the judgment of the court of appeal which, in that respect, has become legally binding, G.R. is to be sentenced for gross weapon crimes, gross unlawful threats on three occasions, assault, unlawful threats, obstructing the course of justice and minor drug crimes. There is no cause to make any assessment of the aggregate penalty value of the criminal activity other than that carried out by the court of appeal. As the court of appeal has found, the sanction should be established as imprisonment for four years.

41. Since G.R. came to Sweden before the age of 15 and has been present here since then, he may be expelled only if any of the qualified conditions in Section 5 are fulfilled.

42. The criminal activities committed by G.R. have a penalty value which clearly exceeds two years. He has also recidivated in such a manner that the recidivism on its own can form the basis for expulsion. Accordingly, the conditions set forth in Section 5 are fulfilled.

43. In conjunction with the assessment of whether G.R. is to be expelled, a balancing must be carried out between the criminal activity and his ties to Sweden. An expulsion may take place only if it may be deemed proportionate taking into account the criminal activities for which he has now been convicted, for those for which he has previously been convicted, and the risk of recidivism that exists (see para. 31). Given that he has been present in Sweden since early childhood, very weighty reasons for expulsion are necessary (see para. 19).

44. The offences for which G.R. has been convicted are serious. They entail, among other things, attacks other persons' lives, freedom and peace which have constituted a substantial violation of integrity. The penalty value for the criminal activities is relatively high. In addition, previously – 2019 – G.R. was convicted of offences of the same type. He has previously been convicted a number of times for milder criminal activities such as drug crimes, minor offences, drunk driving, and assault. It is established from the investigation that there is a clear risk for continued criminal activity. These circumstances argue strongly for expulsion.

45. On the other hand, G.R.'s ties to Sweden are to be considered. He came to Sweden with his parents when he was eight months old and was then granted permanent residence. He is currently 37 years of age. He speaks fluent Swedish, has completed primary-secondary school, some

upper-secondary school and some vocational training in Sweden and has his own residence. His parents and siblings live here. These circumstances argue against expulsion.

46. It is established from the investigation that he was previously the subject of efforts on the part of social services. There is information regarding an insecure upbringing involving school absences and contacts with criminal circles. He has serious substance abuse problems. One statement from the Swedish Prison and Probation Service provides that he has values which support criminality, primarily connected to weapons and narcotics, and anti-social attitudes towards public authorities. These circumstances evince that he has lived outside regular society for several years.

47. He is unmarried and has no children. He is unemployed.

48. In conjunction with an aggregate assessment, he may be regarded as weakly established in Swedish society notwithstanding the lengthy period of time spent in Sweden.

49. As regards the remaining connections to Chile, it is apparent that he has visited the country on a number of occasions, that he speaks Spanish, that his parents have a house in Chile and that he has some relatives there.

50. Thus, there are reasons which argue both for and against an expulsion. The most compelling reason against an expulsion is that G.R. has lived in principle his entire life in Sweden. However, the criminal activity for which he has now been convicted, like that for which he has previously been convicted, the existing risk of recidivism, and the fact that he is poorly established in Sweden constitute very compelling reasons to expel him. In an overall assessment, G.R.'s ties to Sweden are not so strong that an expulsion is disproportionate.

51. Accordingly, G.R. should be expelled from Sweden and banned from returning here. The duration of the re-entry ban should be established for ten years. The decision of the court of appeal regarding expulsion and re-entry ban shall thus be affirmed.
