

SUPREME COURT'S JUDGMENT

delivered in Stockholm on 23 April 2025

Case no.
B 7807-24

PARTIES

Appellant

O.C.

Counsel and public defender: Attorney V.B.

Respondent

Prosecutor General

Box 5553

114 85 Stockholm

THE MATTER

Expulsion

RULING APPEALED

Judgment of the Svea Court of Appeal of 2024-09-23 in case

B 7253-24

JUDGMENT

The Supreme Court modifies the judgment of the court of appeal such that O.C. is banned from returning to Sweden for a period of 10 years. Violations of the ban can entail a term of imprisonment not exceeding one year.

In other respects, the judgment of the court of appeal is affirmed.

V.B. shall receive compensation from public funds for the defence of O.C. incurred in the Supreme Court in the amount of SEK 35,685. Of the amount, SEK 28,548 relates to work and SEK 7,137 relates to value added tax. The state shall bear the cost.

CLAIMS IN THE SUPREME COURT

O.C. has claimed that the Supreme Court is to overturn the claim for expulsion or, in any case, limit the amount of time of the re-entry ban.

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

REASONS FOR THE JUDGMENT

Background

1. O.C. is 19 years old. He is registered as stateless and was born and raised in Sweden. He was granted permanent residence in 2009.
2. The district court sentenced O.C., who was 17 years old at the time of the act, for murder to imprisonment for seven years and expelled him. The re-entry ban was indefinite.
3. The court of appeal has been of the position that the sanction should be established as imprisonment for six years and ten months.

4. The court of appeal has also decided that O.C. shall be expelled from Sweden and prohibited from returning here.

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, O.C. is to be sentenced for murder. The court of appeal has found that the penalty value corresponds to imprisonment for life and established the sanction as imprisonment for six years and ten months. There is no cause to make any assessment of the penalty value of the criminal activity other than that carried out by the court of appeal.

41. Since O.C. was born in Sweden and thus came here before the age of 15 and has been present here his entire life, expulsion may take place only if any of the qualified conditions in Section 5 are fulfilled.

42. O.C. 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. The Swedish Migration Agency has stated that O.C.'s parents and older siblings are citizens of Gambia and also that, being registered as stateless, he may be deemed to be a citizen of Gambia. It is established from the investigation that there is a Gambian passport for O.C., issued 16 March 2023. The police authority has examined the passport and determined that it is genuine. The Swedish Migration Agency has stated that there are no general or individual impediments to enforcing an expulsion to Gambia.

44. The Supreme Court shares the assessment that there is no impediment to enforcing an expulsion (*cf.* Chapter 8 a, Section 3 of the Aliens Act).

45. In the assessment of whether O.C. 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 was born in Sweden, very weighty reasons for expulsion are necessary in order for such a decision to be able to be taken (see para. 19).

46. The criminal offence for which O.C. has now been convicted is particularly serious; it involves a planned and well organised murder committed as part of a violent gang conflict. It is established from the investigation that O.C. is part of a criminal group which also includes his brother, and that one motive for the murder was to prevent his brother from

being murdered. There is a substantial risk of continued criminal activity of the same serious kind. O.C. has been previously convicted of, among other things, gross theft, robbery and minor weapons offences. The reasons for expulsion are very compelling taking into account these facts.

47. On the other hand, O.C.'s ties to Sweden are to be considered. He was born and raised here and was granted permanent residence when he was four years old. He is currently 19 years old. O.C. has his mother and nine-year-old sister and several older siblings here. He speaks Swedish and has completed some part of primary-secondary school. Above all, the fact that he has lived his entire life in Sweden argues strongly against an expulsion. To this is to be added that he has his closest family here.

48. As regards O.C.'s living conditions, it is established from the investigation that, during his upbringing, there has been great concern for his social contacts and the criminality. He is regarded as having a criminal lifestyle and has returned to criminal patterns following attempts to break them. O.C. has been the subject of efforts on the part of social services and compulsory care. He has fled the residences in which he was placed, and delinquency has otherwise occurred. The trend has been described as negative and the available efforts as insufficient. He has not completed primary-secondary school.

49. These circumstances show that O.C. lives outside regular society. Notwithstanding the fact that he has lived his entire life in the country, in an overall assessment he may be regarded as weakly established in Swedish society.

50. Regarding O.C.'s connections to Gambia, it may be noted that he has never visited the country and that the family is not believed to have any relatives there. He can speak the country's language, Wolof, to a certain degree.

51. Thus, there are reasons which argue for and against an expulsion. A very compelling reason against expulsion is that O.C. was born and raised in Sweden and that he was a minor when he committed the act for which he is now convicted. In addition, he is young, only 19 years of age, he has his family here, and the connections with Gambia are weak. The particularly serious criminal activities for which he is now convicted and the fact that he is deeply involved in criminal gang activities, however, weigh heavily on the other side of the scale.

52. O.C. has stated that an expulsion would be in conflict with the Convention on the Rights of the Child since it would entail that his nine-year-old sister would not be able to meet and maintain contact with him. This fact cannot be given any weight in the assessment of whether he is to be expelled.

53. The overall assessment to be made leads to the conclusion that the reasons for expulsion are sufficiently weighty that – notwithstanding O.C.’s strong ties to Sweden – it is proportionate.

54. Accordingly, O.C. shall be expelled from Sweden and banned from returning here. The penalty value for the act corresponds to a term of imprisonment exceeding two years. According to Chapter 8 a, Section 11 of the Aliens Act, the starting point is then that the re-entry ban is not to be limited in time. When the duration of the re-entry ban is determined, however, consideration shall be given to O.C.’s ties to Sweden. As set forth in the above (para. 47), his ties to Sweden are very strong. Particular consideration shall be given to the fact that he was born here. Against this background, it cannot be deemed proportionate to decide on an indefinite re-entry ban. The duration of the re-entry ban should be established at ten years.

55. The decision of the court of appeal shall be modified in accordance herewith.

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

DISSENTING OPINION

Justice Katrin Hollunger Wågner dissents regarding the formulation of paragraph 25 and is of the opinion that it should 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).
