SUPREME COURT'S
JUDGMENT

delivered in Stockholm on 20 March 2026

Case no.
B 9278-24

PARTIES

Appellant

Prosecutor-General

Box 5553

114 85 Stockholm

Respondent

A.K.

Counsel and Public Defender: Attorney M.B.

THE MATTER

Expulsion

RULING APPEALED

Judgment of the Svea Court of Appeal of 2024-11-08 in case B 11042-24

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JUDGMENT

The Supreme Court sets aside the judgment of the court of appeal and decides instead that A.K. is expelled from Sweden and is banned from returning here for a period of five years.

Violations of the ban can entail a term of imprisonment not exceeding one year.

M.B. shall receive compensation from public funds for the defence of A.K. in the Supreme Court of SEK 15,708. Of the amount, SEK 9,516 relates to work, SEK 3,050 relates to outlays and SEK 3,141.5 relates to value added tax. The state shall bear the cost.

CLAIMS IN THE SUPREME COURT

The Prosecutor-General has claimed that the Supreme Court shall expel A.K. and prohibit him from returning to Sweden for a period of five years.

A.K. has opposed modification of the judgment of the court of appeal.

REASONS FOR THE JUDGMENT

Background

1. A.K., who is a citizen of Latvia, was indicted for having unlawfully taken from a shop goods valued at SEK 6,395 on 24 July 2024. The Prosecutor claimed that A.K. was to be expelled from Sweden and prohibited from returning here for a period of five years.

2. The district court sentenced A.K. for theft to imprisonment for one month but rejected the claim for expulsion. Following the district court's judgment, A.K. declared satisfaction with the judgment in so far as

pertained to the penalty imposed. The Prosecutor appealed the judgment as it pertained to expulsion.

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

What is at issue in the Supreme Court

4. The case concerns the conditions for expelling an EEA citizen who has been repeatedly found guilty of less serious property offences.

The legal regulation concerning expulsion of EEA citizens

5. An alien may be expelled from Sweden, *inter alia*, if he or she is sentenced for an offence to a sanction which is more severe than fines and 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 in Sweden (see Chapter 8 a, Section 1 of the Aliens Act, 2005:716). In the assessment, the Court shall take into account the alien's ties to Sweden and whether there are impediments to enforcing the decision (see Chapter 8 a, Sections 2 and 3 and Chapter 12, Section 1).

6. Expulsion of an EEA citizen may only occur on grounds of public policy and security and, in addition, the requirements of certain specific provisions are to be fulfilled (see Chapter 8 a, Section 6 which refers to Chapter 8, Sections 12–14). The provisions are intended to implement the so-called Free Movement Directive.[1] Accordingly, they shall be interpreted

[1] Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No. 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC.

in accordance with the Directive and ascribed the purport following from Union law.

7. Pursuant to Chapter 8, Sections 12 and 13, which principally correspond to articles 27(1), 27(2) and 28(1) of the Free Movement Directive, expulsion may only take place if the alien's personal conduct represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Previous criminal convictions may not in themselves constitute grounds for taking such measures. Economic ends may not form grounds for the decision. Furthermore, a proportionality assessment shall be conducted taking into account the alien's age, state of health, family and economic situation, and social and cultural integration into Sweden. Consideration shall also be given as to how long the alien has resided in Sweden and links with the country of origin.

8. The possibility to expel EEA citizens with regard to public policy is a derogation from the fundamental principle of freedom of movement and is to be interpreted strictly (see, among others, the judgment of the Court of Justice of the European Union, C-441/02, *Commission v. Germany*, ECLI:EU:C:2006:253, para. 34).

9. The question whether repeated less serious criminality may form the basis for expulsion arose in a case before the Court of Justice of the European Union involving a preliminary ruling. The case concerned a man who, from an early age, repeatedly had committed theft and narcotics offences. The Court noted that expulsion cannot be ordered automatically following a criminal conviction or on general preventative grounds but, rather, only if such a measure is justified because the personal conduct of the person concerned indicates a specific risk of new and serious prejudice to the requirements of public policy. The question posed was answered such that expulsion of a person who has been the subject of several criminal

convictions was not precluded to the extent the relevant person's behaviour constitutes a genuine and sufficiently serious threat to a fundamental interest of society. It was for the national court to determine whether that was the case. (See judgment of the Court of Justice of the European Union, C-349/06, *Polat*, ECLI:EU:C:2007:581, paras. 11, 35 and 39.)

10. With reference to, among other things, that ruling, the Commission has stated in guidance to the Free Movement Directive that repeated less serious criminality may represent a threat to public policy despite the fact that any single crime, taken individually, would be insufficient to represent a sufficiently serious threat. When assessing the existence of the threat to public policy in these cases, account shall be taken of the nature of the offences, their frequency, and the damage or harm caused. The threat to public policy must exist at the moment the question is to be reviewed.[2]

11. The penalty provision regarding theft is intended to preserve respect for ownership. The protection of this right is one of the fundamental interests of society. Offences which involve an assault on ownership may thus form the basis of decisions for expulsion even of EEA citizens. (See the "*Shop Theft on Datavägen*" case, NJA 2014, p. 415, para. 23.)

12. The requirement that the alien's behaviour constitutes a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society must normally be deemed to entail that there are compelling reasons to assume that there is a risk of future criminality and that this criminality attains a certain level from the perspective of seriousness. However, both of these conditions cannot be applied wholly

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[2] Commission Notice of 22 December 2023 – Guidance on the right of free movement of EU citizens and their families, C/2023/1392, p. 60 f.

independently of one another. Even if the risk pertains to less serious criminality, the requirement must be able to be deemed fulfilled where the reasons for assuming that the alien will continue to commit offences are very compelling. This applies in particular where there is a risk that the alien will commit repeated offences. (*Cf.* the "*Smuggling on M/S Wawel*" case, NJA 2018, p. 491, para. 16.)

13. The determination of the risk of continued criminality may not be conducted in a standardised way but, rather, is to be based on the alien's personal behaviour. As set forth in Chapter 8, Section 12, prior previous convictions may not in themselves constitute grounds for expulsion. An individualised assessment must thus be made as to whether there is a sufficient threat to public policy. Previous convictions can then constitute a basis for such an assessment.

Re-entry ban

14. A decision to expel is to be coupled with a re-entry ban, the duration of which is determined on the basis of the penalty value of the criminality. Where the penalty value corresponds to a term of imprisonment for less than one year, the re-entry ban is normally established for five years. (See Chapter 8 a, Sections 10 and 11.)

The assessment in this case

15. A.K. has been convicted of theft to imprisonment for one month. During the last ten years, he has been convicted on a great many occasions for similar criminality. In total, there have been 17 convictions. On 13 occasions, the sanction was imprisonment not exceeding two months. The period between the convictions has at no time exceeded two years and, in most cases, was less than one year.

16. According to A.K.'s own information, he has not resided in Sweden but, rather, has travelled between Sweden and Latvia. He has stated that he has sought work within the construction industry but has had difficulty obtaining employment since he cannot speak Swedish. As regards the period following the most recent conviction, he has stated that he has obtained temporary employment as a carrier for a transportation company and has been accepted to study Swedish for immigrants.

17. It may be noted that A.K., on many occasions over a long period of time, has committed theft crimes when he has been present in Sweden. The regular recidivism is to be ascribed to his personal behaviour. What has come to light regarding the period following the most recent offence entails no material change having occurred in his way of life.

18. For these reasons, the risk that A.K. will continue to commit repeated thefts in Sweden must be deemed very great. Even if each of the offences are less serious, they constitute an attack on ownership. Accordingly, expulsion is justified with regard to public policy. His behaviour must be deemed to represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.

19. A.K. has an adult son in Latvia. In addition, he has a girlfriend and a minor daughter who reside there. He has no real ties to Sweden. What has come to light regarding the status of his health and healthcare contacts here is insufficient to outweigh the reasons for expulsion. There is no impediment to enforcement.

20. In summary, the conditions for expelling A.K. have been met. The duration of the re-entry ban should, based on the penalty value, be set at five years. The judgment of the court of appeal shall be set aside in accordance herewith.

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Justices of the Supreme Court Agneta Bäcklund, Eric M. Runesson, Cecilia Renfors, Anders Perklev (reporting Justice) and Erik Sjöman participated in the ruling.
Judge referee: Amanda Landell.