

Appeals Selection Committee of the Supreme Court of Norway - Decision

"Unofficial translation from Norwegian for information only. Legal authenticity remains with the original Norwegian version."

- INSTANCE:** Appeals Selection Committee of the Supreme Court of Norway - Decision [Unofficial translation from Norwegian for information only].
- DATE:** 2009-08-26
- PUBLISHED:** HR-2009-1692-U
- KEYWORDS:** Seizure of domain names.
- ABSTRACT:** Like the Court of Appeal, the Appeals Selection Committee of the Supreme Court found that the expression "objects" ["ting"] in Section 203 of the Criminal Procedure Act encompasses domain names. The domain names in the case could thus be made subject to seizure pursuant to Section 203 of the Criminal Procedure Act, cf. Section 35 and Section 37b of the General Civil Penal Code. Even if the web pages would still have been available through the IP address after the domain names were removed from operation, their availability would be substantially reduced. It was therefore not unnatural to regard the association of the domain names to websites with criminal content as the instrument for a criminal offence. (Abstract from Lovdata [legal information service in Norway])
Citations: [LOV-1902-05-22-10-§35](#) (Strl [straffeloven - the General Civil Penal Code]), [LOV-1902-05-22-10-§37b](#) (Strl), [LOV-1981-05-22-25-§203](#) (Strpl [straffeprosessloven - the Criminal Procedure Act])
- HISTORY:** Oslo District Court TOSLO-2009-31043 - Borgarting Court of Appeal LB-2009-95464 - Supreme Court HR-2009-1692-U, (Case no. 2009/1396), criminal case, appeal against decision.
- PARTIES:** I: A (Defence attorney Morten Furuholmen) versus the Public Prosecuting Authority. II: B (Defence attorney Øystein Storrøvik) versus the Public Prosecuting Authority.
- AUTHOR** Lund, Flock and Indreberg.

Citations in the text: [LOV-1981-05-22-25-§208](#) (Strpl [straffeprosessloven - the Criminal Procedure Act]), [LOV-1981-05-22-25-§388](#) (Strpl)

(1)

The issue in the case is whether domain names can be made subject to seizure pursuant to Section 203 of the Criminal Procedure Act [straffeprosessloven], cf. Section 35 and Section 37b of the General Civil Penal Code [straffeloven].

(2)

After a petition by the Public Prosecuting Authority, Oslo District Court [Oslo tingrett] passed a decision on 16 December 2008 regarding seizure pursuant to Section 203 of the Criminal Procedure Act, in a criminal case against inter alia B and A, with the following conclusion:

- "1. The prosecuting authority may seize the domain names: www.e-zone.no, www.escortekontakt.no, www.joyzone.no, www.zoneforlag.no, www.pornidol.no, www.crimezone.no, www.eskortekontakt.no, www.xxxzone.no, www.pornidol.no and www.trykkformidling.no, by ensuring that these domain names are temporarily removed from operation until a final and legally enforceable decision is passed with a prospective enforcement in the criminal case.
2. Employees at Zone forlag (publishing house) NUF or others may not make changes in Paragraph 1 except in accordance with a decision of the court or the public prosecuting authority. "

(3)

The decision of the district court was appealed by the accused pursuant to Section 208 Subsection 1 of the Criminal Procedure Act. After oral proceedings concerning the issue of seizure, Oslo District Court passed a decision on 23 April 2009 with the following conclusion:

"The seizure is upheld as determined in Oslo District Court's decision of 16.12.2008."

(4)

A and B appealed the decision to Borgarting Court of Appeal, which on 26 June 2009 passed a decision (LB-2009-95464) with the following conclusion:

"The appeals are dismissed. "

(5)

A and B have appealed the decision of the Court of Appeal. The appeals concern the application of law. A argues that:

(6)

The Court of Appeal has incorrectly assumed that Section 203 of the Criminal Procedure Act, cf. Section 35 and Section 37b of the General Civil Penal Code, provides authorization for seizure of domain names.

(7)

A disputes that the concept of "objects" as it is to be interpreted in Section 203 of the Criminal Procedure Act and Section 35 and Section 37b of the General Civil Penal Code can also include domain names. A domain name can be understood as allocation of an address on the Internet, like a street address or a telephone number. Whether a right of property exists depends on whether one has any entitlement to the identifying name that is used in the domain pursuant to the background rules of law. No evidence has been presented to indicate that the domain name www.e-zone.no has value with respect to the law of property.

(8)

Domain names fall outside electronic information included in the concept of "objects".

(9)

A further disputes that the domain names "are deemed to be liable to confiscation", cf. Section 203 of the Criminal Procedure Act.

(10)

It is incorrect for the Court of Appeal to assume that the domain name www.e-zone.no can be said to be used in connection with a criminal offence. The closeness that is required to make it possible to state that the domain name is the instrument for the criminal act is not present. The web page is available even if the domain name is removed from operation. Therefore, if one wishes to stop the content of the web page, the server on which the content resides must be seized.

(11)

It is disputed that the other nine domains can be seized pursuant to Section 37b of the General Civil Penal Code. There is nothing in the character of the domain names that creates a risk that they will be used for a criminal offence owing to their nature.

(12)

The threshold for application of Section 37b of the General Civil Penal Code is high; cf. case law. Even if Section 37b of the General Civil Penal Code in principle provides authorization for confiscation of objects before the criminal offence has taken place, more is then required than loose assumptions that the criminal action may take place.

(13)

The following statement of defence is entered:

"1. The seizure is set aside. "

(14)

B supports *A*'s submissions. The same statement of defence is entered.

(15)

The prosecuting authority has responded and states, in brief:

(16)

When interpreting the term "objects" in Section 203 of the Criminal Procedure Act, the significance of rights and objects being equalized in the General Civil Penal Code is emphasized, as well as the fact that the institution of seizure is intended to secure the claim for confiscation. The context in the provisions must carry considerable weight in the interpretation.

(17)

The access to seizure in criminal procedure must be wider than that in civil law, since the institution of seizure is intended to secure several different interests, such as, inter alia, a claim for confiscation.

(18)

The domain name is closely associated with the criminal offence.

(19)

The question of *whether* confiscation is to take place, cf. Section 37b of the General Civil Penal Code, is not relevant at the securing stage.

(20)

The following statement of claim is entered:

"The appeals are dismissed."

(21)

The Appeals Selection Committee of the Supreme Court comments that the competence of the committee is limited to reviewing procedure and the interpretation of statutory provisions by the Court of Appeal; cf. Section 388 No. 2 and No. 3 of the Criminal Procedure Act.

(22)

Objects that are deemed to be liable to confiscation may be seized until a legally enforceable judgment is passed; cf. Section 203 second sentence first alternative of the Criminal Procedure Act, cf. first sentence. The issue in the case is firstly whether domain names can be regarded as "objects" in this connection.

(23)

All computers on the Internet have their own IP address, which consists of four series of figures. Domain names have been introduced to provide a more user-friendly alternative to these IP addresses. Domain names consist of a varying number of segments, but in Norway they usually have the form enterprise-name.no. They are used inter alia in web addresses (<http://www.enterprise-name.no>).

(24)

All domains directly within the .no domain must be registered with Norid (the Norwegian registry for Internet domain names). Through registration, the applicant receives the right to use the domain name in line with the terms and conditions of Norid's domain name policy. The party that first registers a domain name receives the right to use it.

(25)

The report ".no eller aldri" [".no or never"] presented in March 2002 by a working group appointed by the Ministry of Transport and Communications states the following, inter alia, regarding the significance of domain names:

"Today, use of Internet and domain names is associated with great commercial value, and it is increasingly important for individuals, enterprises and authorities to have access to interesting domain names. Domain names are an especially important resource for enterprises and organizations that wish to use the Internet to increase their competitiveness and earnings. This is because domain names often reflect company names, trademarks, projects and other types of identification and affiliation (for example, part of a larger group of companies). In this way, domain names obtain an important function as a distinctive feature. The domain name can be used actively for marketing and profiling of an enterprise's sales strategy - one or more products, a cooperative effort, an international campaign, or similar. Further, domain names can be

used to focus marketing/profiling on a particular customer segment or a target group delimited by language, or in the development of tailored and personalized Internet services, which may be the future for electronic commerce aimed at consumers.

For enterprises and organizations, it will be attractive to hold domain names that are easy for users to remember, or that it is natural to search for when one is looking on the Internet for a specific web page, information, etc. Holding a web page that receives many hits is an effective way to market oneself. In this way, certain domain names may represent great financial value."

(26)

In other words, the holder of a registered domain name has an exclusive right of use to an asset that may have financial value. The fact that the registration itself does not have any significance for rights that are already established, for example to a trademark, does not change this.

(27)

The similarity that domain names have to other assets such as trademarks supports the premise that domain names can be seized. In addition to this comes the need to be able to stop a domain name from functioning to prevent criminal offences from continuing. Norid does not undertake any control of the content of websites; nor does it have any mandate to react to websites that may appear to violate the law; it is up to the police and the judicial system to do this.

(28)

Against this background, the committee has concluded that the Court of Appeal did not interpret the legislation incorrectly when it concluded that the expression "objects" in Section 203 of the Criminal Procedure Act encompasses domain names.

(29)

Neither is it incorrect when the Court of Appeal has assumed that domain names "are deemed to be liable to confiscation" pursuant to Section 203 of the Criminal Procedure Act, cf. Section 35 and Section 37b of the General Civil Penal Code. Even though a web page will still be available through the IP address after the domain name has been removed from operation, it follows from the reasons for using domain names that the availability will be substantially reduced. It is therefore not unnatural to see the association of the domain name with a website with criminal content as the instrument for a criminal offence, as the appellants argue.

(30)

Nor can it be seen that the Court of Appeal has assumed a threshold that is too low in its evaluation of whether confiscation pursuant to Section 37b of the General Civil Penal Code can be undertaken. It has found that there exists a "concrete and obvious risk" that the domain names in question may be used for a future criminal offence. The committee cannot review the specific assessment of the Court of Appeal.

(31)

Against this background, the appeals are to be dismissed.

(32)

The decision is unanimous.

Conclusion:

The appeals are dismissed.

[Contents](#)

The database was last updated on 7 September 2009