



SUPREME COURT OF NORWAY

On 8 April 2024, the Supreme Court's Appeals Selection Committee composed of Justices Falkanger, Noer and Hellerslia made, in

HR-2024-647-U, (case no. 24-030985STR-HRET), criminal case, appeal against judgment:

A (Counsel Herman Sveen Michalsen)

B (Counsel Pamela Kajic-Piplica)

C (Counsel Torgeir Tønsager Falkum)

v.

The Public Prosecution Authority

this

DECISION :

- (1) B, born 00.00.1966, A, born 00.00.1988, and C, born 00.00.1968, have appealed against Borgarting Court of Appeal's judgment of 21 December 2023 in case no. 23-104594AST-BORG/01. The appeal from B concerns the application of the law, the procedure, the sentence and the confiscation. The appeal from A concerns the application of the law, the procedure and the sentence. The appeal from C concerns the application of the law and the procedure.
- (2) *The Supreme Court's Appeals Selection Committee* notes that an appeal to the Supreme Court cannot proceed to a hearing without leave from the Appeals Selection Committee. The Committee can only grant such leave when the appeal concerns issues whose significance exceeds beyond the current case, or it is for other reasons particularly important to have the case tried in the Supreme Court, see section 323 subsection 1 first and second sentence of the Criminal Procedure Act.
- (3) One of the contentions in the appeals is that the Court of Appeal's permission to present as evidence materials acquired by foreign police authorities from the encrypted messaging service Sky ECC, is based on an error of law. A reference is made to the conditions set out in the Supreme Court judgment HR-2022-1314-A paragraph 26, in particular condition (ii) that the defendant has a right to access to all information that has been gathered. The defendants argue that it is not sufficient that they have received access to the decrypted materials forwarded to the Norwegian police authorities.

- (4) Regarding this, the Court of Appeal expresses the following on page 12 of its judgment:

“Against this background, the Court of Appeal trusts that all decrypted materials associated with a Sky-ID, deemed relevant to Norway, were sent to Kripos [the National Criminal Investigation Service] and the Norwegian police. The same materials were also forwarded to the prosecution authorities upon request in connection with the criminal case. Based on the information received by the Court of Appeal, there is no evidence that decrypted materials related to Sky-IDs in our case have not been sent to the Norwegian police. As the Court of Appeal sees it, Norwegian police officers involved in the work at Europol have not had access to Sky ECC materials beyond those included in the criminal case documents. To the extent additional relevant decrypted materials exist, that have not been captured by searches, it must be assumed that Norwegian police have not had access to more information than the defence counsel in the criminal case.

Consequently, the Court of Appeal finds that condition (ii) regarding the defendant’s right to access all the information gathered is also met in the case.

The Court of Appeal also cannot see that the process of searching in Chat X for relevant materials and the forwarding thereof to Kripos are contrary to the defendants’ right to a fair trial, see Article 6 of the ECHR. The Norwegian police have not had access to more evidence from Sky ECC than the defence counsel. The possibility that further relevant information exists in the Sky ECC materials in the JIT countries’ database has to do with findings of fact, and is not a basis for excluding as evidence the presented Sky ECC materials.

As for the issues related to the reliability of the evidence, the Court of Appeal finds that these issues are covered by the significance of the lack of access to the entire evidence chain. This must be decided individually in the findings of fact, see the reference to HR-2022-2125-U above, and does not provide a basis for excluding evidence.”

- (5) The Committee cannot see that the application of the law demonstrated here by the Court of Appeal is incorrect, see the Supreme Court rulings HR-2022-1314-A paragraph 26 and Rt-2005-1524 paragraphs 16-21.
- (6) There is also no other basis for granting leave to appeal.
- (7) Therefore, the Appeals Selection Committee unanimously finds that there is no sufficient reason for allowing the appeals to proceed to the Supreme Court, see section 323 of the Criminal Procedure Act. Leave to appeal is thus not granted.

C O N C L U S I O N :

Leave to appeal is not granted.

Ragnhild Noer
(sign.)

Aage Thor Falkanger
(sign.)

Thom Arne Hellerslia
(sign.)