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Computerization of the Judiciary – Submission of Electronic Signatures for Documents by Participants in Remote Meetings – part two

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Abstract

The presented study refers to the process of deepening the scope of computerization of the judiciary and digitization of judicial proceedings in civil cases. In this context, in its second part, it addresses, in addition to the formal aspects of the creation of a digital environment that allows electronic signatures for documents by participants in remote sessions, issues relating to the matter of electronic signatures and areas of their use, including presenting the mechanism and obligation to validate the use of such a form of signature. Defines the legal effects of the signature on the material and procedural levels. It presents a spectrum of cases in civil proceedings in which the conditions already exist in which it is possible to use an electronic signature for the validation of procedural actions by participants in remote hearings, so that the course of proceedings contributes to increasing the efficiency and effectiveness of court proceedings.

Keywords

computerization of the judiciary, electronic signature, accessibility, efficiency, security

Handwritten Signature vs. Selected Forms of Electronic Signatures in Outline

In order to make complete use of the regulations pertaining to the remote hearing and the electronic record made in the course of it, it is necessary to supplement and link the solutions already available in the direction of implementing and safely using as equivalent to a handwritten electronic signature.

Various formats of electronic signatures and advanced electronic signatures are currently being used to electronically sign documents. The binding of a document in electronic form can be done with an electronic signature assigned by the court system in which the electronic document was created, a trusted signature, a personal signature, an advanced electronic signature or a qualified electronic signature. Court information and

communication systems, when signing electronic documents, should provide technical support for at least several formats of electronic signature.

Handwritten Signature

In legal terms, a handwritten signature is a signature made physically, personally by a person, usually to confirm the authenticity of a document, consent or will. It is unique and has legal significance and should exhibit individual and repetitive characteristics. Such a signature should express at least the name and the ability to identify the submitter by verifying the elements that most fully individualize him. The signature may be abbreviated, it does not have to be legible. The signer may use several types of signatures, or their simplified forms, used, depending on the circumstances, interchangeably, provided that at the same time there is another method of confirming identity ¹.

Competing with the traditional form of signature is becoming the widespread submission of statements and approval of actions in documents by remote electronic signature, especially where the submission environment is managed by a public trust service provider, such as a court.

Equipping participants in civil judicial proceedings with the ability to use one of the available forms of electronic signatures during a remote meeting would consist in posting an electronic form of the document in the ICT system, and the signing of the document would take place in real time, during the remote meeting, using the functionality of this computer system, which makes it possible to move away in this scheme of conducting a case from stating procedural actions with signatures in the form of handwritten signatures.

Electronic Signature

An electronic signature is the equivalent of a handwritten signature in its digital form. It means data in electronic form, which are attached or logically linked to other data in electronic form, and which are used by the signer as a signature. These are data in the electronic layer, which, in combination with other data, serve to identify the person from whom it comes and confirm the authenticity of the electronic document on which it is applied. It considers the signer to be the person who makes the electronic signature. The data used to create an electronic signature shall be considered the unique data that the signer uses to create an electronic signature. An electronic signature device shall be considered to be the configured software or configured hardware that is used to create an electronic signature. An electronic signature certificate is considered to be an electronic attestation that assigns the data used to validate an electronic signature to a person and confirms at least the name or alias of that person.

The signer of an electronic document should use an electronic signature for this activity, and it should be possible to verify the signature affixed to such

¹ Article 78 § 1 of the Civil Code; Judgment of the Supreme Court - Civil Chamber of December 4, 2019, I CSK 495/18; Judgment of the Court of Appeal in Białystok - 1st Civil Division of January 28, 2021, I AGa 105/20; Judgment of the Court of Appeal in Białystok - 1st Civil Division of June 3, 2020, I ACa 684/19; Decision of the Supreme Court of June 17, 2009, IV CSK 78/09, Supreme Court ruling of March 23, 1932, III 1 Rw 515/32, Zb. Urz. of 1932, item 67; Supreme Court resolution of December 30, 1993, III CZP 146/93.

a document. This entails the necessity for the court to have data enabling such verification. This is because only after proper verification of the submitted signature, the court has the authority to determine whether the formal requirements for recognizing the validity of a procedural action have been met ².

Legal Effect Of Electronic Signature

The legal effect of electronic signatures in its various forms is legally equivalent to a handwritten signature . In order to maintain the electronic form of a legal act, two prerequisites are required to be fulfilled together, i.e. the submission of a declaration of intent in electronic form and the affixing of this declaration with a qualified electronic signature. A document bearing a qualified electronic signature should be considered signed and producing legal effects if the electronic signature was made within the validity period of the certificate relating to that electronic signature ³.

Electronic Signature Validation

In order to ensure that electronic signatures are legally recognized on a par with signatures made in an environment over which the user has complete control, remote electronic signature service providers should use specific management procedures and specific administrative security procedures, use reliable systems and products, including secure electronic communication channels, to guarantee the reliability of the electronic signature environment and the use of this environment under the exclusive control of the public authority and the signer. Authentication in an ICT system requires the use of a trusted profile, personal profile, or other means of electronic identification issued in an electronic identification system. Certification of signature-creation devices should be carried out by authorities responsible for broadly defined state security, and should apply to system hardware and software used to manage signature-creation data created, stored or processed within the signature-creation device and to protect such data.

Validation serves to achieve the above objectives. Indeed, an electronic signature can only be considered to be validly created if it can be effectively verified and confirmed as valid, and whether or not the signature created is based on a valid certificate. However, the validation process cannot be replaced by the mere statement of the signature issuer ⁴.

² Judgment of the Supreme Administrative Court of August 19, 2021, III FSK 3122/21; Judgment of the Supreme Administrative Court of March 18, 2021, III FSK 3155/21; Judgment of the National Appeal Chamber of March 1, 2022, KIO 356/22; Judgment of the Supreme Administrative Court of March 18, 2021, III FSK 3155/21.

³ Article 61 § 2 of the Civil Code, Article 781 of the Civil Code, Judgment of the Regional Court in Warsaw - 5th Civil Appeals Division of October 28, 2024, V Ca 1262/24; Judgment of the Supreme Court - Labor and Social Insurance Chamber of April 11, 2024, II PSKP 86/22.

⁴ Judgment of the National Appeal Chamber of December 17, 2021, KIO 3521/21; Judgment of the National Appeal Chamber of March 14, 2022, KIO 457/22; W. Iwaniec, Electronic document format and validation of qualified electronic signatures, "Zamówienia Publiczne Doradca" 2023, no. 5, p. 25.

Examples of the Forms of other Available Electronic Signatures

We can distinguish the following examples of other available forms of electronic signatures: personal signature⁵, trusted signature⁶, mCitizen Profile⁷. The common feature of the listed forms of electronic signature is that their correct and effective submission is equivalent in legal effect to the outlining of a handwritten signature on a document.

Area of Application

The reported incompleteness and inconsistency of the tools presented at the moment causes a kind of pragmatic deficit, which is particularly evident during the court's proceedings in remote sessions and the electronic minutes taken during them.

It is possible to shape the remote session in such a way that it does not exclude for the participants who are absent from the court building, in the situation of the need to provide signatures, or written approval of a procedural action, the option to use one of the forms of electronic signature, with their compliance and fulfillment of the imposed requirements and security guarantees. In these cases, the digital platform of the electronic signature service during a remote session will be an ICT system, in which the court will make the service available to its stakeholders through an access point on the Internet, while complying with a set of organizational and technical requirements, and which will allow the introduction and exchange of electronic data and documents between the court and participants in court proceedings, as well as other ICT systems in use⁸.

The palette of procedural situations possible thanks to this activation is wide, and the current regulations provided for in the substantive and procedural laws do not prevent the introduction of suggested improvements using the courts' ICT systems and the designation of settling certain types of cases through the electronic signature service⁹.

⁵ Act of August 6, 2010 on identity cards (Journal of Laws of 2022, item 671 – consolidated text); Act of February 17, 2005 on the computerization of the activities of entities performing public tasks (Journal of Laws of 2024, item 1557 – consolidated text); Regulation of the Minister of Internal Affairs and Administration of February 26, 2019, on the electronic layer of the identity card (Journal of Laws of 2022, item 1431 – consolidated text); Judgment of the Court of Justice of March 21, 2024, C-61/22, Annulment of Regulation (EU) 2019/1157 of the European Parliament and of the Council on enhancing the security features of Union citizens' identity cards and residence documents (RL v Landeshauptstadt Wiesbaden).

⁶ Regulation of the Minister of Digital Affairs of June 29, 2020, on trusted profiles and trusted signatures (Journal of Laws of 2023, item 2551 – as amended).

⁷ Act of May 26, 2023, on the mObywatel application (Journal of Laws of 2024, item 1275 – as amended).

⁸ Decision of the Supreme Administrative Court of April 21, 2022, II GZ 105/22.

⁹ Announcement of the Minister of Justice of March 5, 2024, on technical standards for software and hardware requirements necessary to participate in a remote hearing (Journal of Laws of 2024, item 82); A. Fruk, E-hearing in civil proceedings – standardization or destabilization? The ten commandments of changes to Article 151 of the Code of Civil Procedure introduced by the 2024 amendment, "Monitor Prawniczy" 2024, no. 9.

Civil procedure as it exists sets forth the normative basis for holding a remote meeting, using e - Minutes, conducted with the use of video and audio transmission devices between participants in a public hearing who may be outside the court building, and under which conditions exist for the approval of the court's procedural actions and the submission of statements using the signatures of the persons participating in them. This applies in particular:

1. cases decided in conciliation proceedings¹⁰,
2. cases in which the parties express their willingness to conclude a settlement agreement¹¹,
3. cases on statements of inheritance acquisition, in the situation of submitting a statement of acceptance or rejection of the inheritance¹²,
4. performing activities in the framework of judicial assistance, including at the request of foreign courts and authorities, and taking evidence in civil or commercial cases in the framework of cooperation between courts of the Member States of the European Union, and other foreign courts and authorities¹³,
5. preparation of a record of the oral filing of the claim¹⁴,
6. motions made at the hearing for the granting of exemption from court costs, or for the appointment of an ex officio lawyer or other oral request¹⁵,
7. certain actions performed by the consul, for the purposes of ongoing legal proceedings, at the request of a Polish citizen, a foreigner, or a public administration body in the Republic of Poland or a public administration body in another country, in particular, with regard to certifying the handwriting of the signature and hand sign¹⁶,

¹⁰ Article 184 kpc – 185 § 2 of the Code of Civil Procedure.

¹¹ Article 10 of the Code of Civil Procedure; Article 158 § 1 of the Code of Civil Procedure; Article 205⁶ of the Code of Civil Procedure; Article 205⁸ § 2 of the Code of Civil Procedure; Article 223 § 1 of the Code of Civil Procedure; Article 479^{30a} § 1 and 2; Article 479^{52a} § 1 and 2 in conjunction with Article 479^{30a} of the Code of Civil Procedure; Article 479^{63a} § 1 and 2 in conjunction with Article 479^{30a} of the Code of Civil Procedure; Article 479^{85a} § 1 and 2 in conjunction with Article 479^{30a} of the Code of Civil Procedure); Z. Miczek, Concluding court settlements during so-called remote hearings, "Palestra" 2024, no. 5, p. 47.

¹² Article 1012 of the Civil Code, Article 640 of the Code of Civil Procedure and the following.

¹³ A. Budniak-Rogala A., Conducting evidence using means of remote communication pursuant to Article 235 § 2 of the Code of Civil Procedure and the implementation of the principle of immediacy – comments in the context of the amendment to the Code of Civil Procedure of July 10, 2015 – part 2, "Prawo Mediów Elektronicznych" 2017, no. 3; Regulation (EU) 2020/1783 of the European Parliament and of the Council of November 25, 2020, on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (taking of evidence) (recast) (OJ EU L No. 405 p. 1); Regulation (EU) 2023/2844 of the European Parliament and of the Council of December 13, 2023 on the digitization of judicial cooperation and access to justice in civil and commercial matters having cross-border implications and on judicial cooperation and access to justice in criminal matters having cross-border implications and amending certain acts in these areas (OJ EU L No. 301, p. 2844).

¹⁴ Article 466 of the Code of Civil Procedure.

¹⁵ Article 151 § 2–9 of the Code of Civil Procedure, Article 235 § 2–3 of the Code of Civil Procedure, Article 235¹ of the Code of Civil Procedure, Act of July 7, 2023, amending the Act—Code of Civil Procedure, Act -- Law on the System of Common Courts, the Act -- Code of Criminal Procedure and certain other acts (Journal of Laws of 2023, item 1860, as amended).

¹⁶ P. Czubik, Closing the catalog of notarial activities of consuls provided for in Article 28 of the Consular Law Act – an error by the national legislator, "Problemy Współczesnego Prawa Międzynarodowego, Europejskiego i Porównawczego" 2019, no. 17; M.A. Panek, Performing notarial acts by consuls of the Republic of Poland in the context of legal security of citizens, "Zeszyty Prawnicze Biura Analiz Sejmowych" 2019, no. 3.

8. czynności w zakresie notarialnych poświadczeń podpisów¹⁷, which could be carried out, without the involvement of the aforementioned officers, within the framework of a remote meeting and using e - Protocol and electronic signature regulations.

At the same time, in view of the accessibility thus created and the further expansion of the spectrum of options for holding remote court hearings, some of the civil law's procedural regulations continue to limit or exclude their full and effective use.

This applies, in particular, to all those provisions which stipulate that procedural statements of the parties or participants in the proceedings made at remote sessions must be included in the minutes of the hearing or session, or constitute an appendix thereto, and then be confirmed by the signatures of the persons participating in these procedural actions of the court. The above stands in opposition to the assumptions accompanying the so-called “de-localization” of court proceedings, especially those referring to simplification and facilitation of case recognition, for in such situations, when a court document will require a signature, without guaranteeing and securing an electronic signature service for its participants, this will still force the presence of those involved in the court building, or will result in the necessity of a protracted and staged procedure of signature and multi-entity exchange of documents produced in this way.

Thus, the need for the legislator to intervene by implementing and improving digital solutions for activities in civil proceedings has materialized, particularly in those areas where procedural rules allow procedural activities to be conducted in open session or hearing, and in the course of these activities the issue of the submission of signatures on documents by the parties, or participants in the proceedings, present remotely will arise ¹⁸.

Examples of Cases in Civil Proceedings in which it is Possible to Use Electronic Signatures for the Approval of Procedural Actions by Participants in Remote Meetings

An area where it should already be guaranteed for the participants in the meeting to be able to provide a real-time signature in electronic form when deciding a case at a remote meeting using e - Minutes, in those situations where the need or conditions arise for approving material or procedural actions by affixing a signature to a document, are in particular:

1. conciliation proceedings,
2. cases in which a court settlement is possible,

¹⁷ Articles 28–29 of the Act of June 25, 2015, Consular Law (Journal of Laws of 2023, item 1329 – consolidated text); Articles 87–88 of the Act of February 14, 1991, Notarial Law (Journal of Laws of 2024, item 1001 – consolidated text); Resolution of the Supreme Court – Civil Chamber of November 8, 2019, III CZP 26/19; decision of the Provincial Administrative Court in Gliwice of February 12, 2007, I SA/GI 1512/06; judgment of the Court of Appeal in Łódź - 1st Civil Division of October 2, 2015, I ACa 431/15; K. Szczecina, Status of a document with a signature recognized by a notary as handwritten, “ius.focus” 2020; decision of the Regional Court in Krakow - 2nd Civil Appeals Division of March 19, 2015, II Ca 2318/14; judgment of the Supreme Court - Civil Chamber of January 18, 2013, IV CSK 269/12.

¹⁸ M. Łobocka-Szok, Admissibility of granting power of attorney under the Code of Civil Procedure in the form of an electronic document within the meaning of Article 781 § 1 of the Civil Code, “Monitor Prawniczy” 2024, no. 9.

3. proceedings in which benefits for acceptance or rejection of the inheritance are filed,
4. court meetings for the implementation of judicial assistance activities.

This is because the common denominator of the aforementioned proceedings is that in these cases a protocol is drawn up, in which the statements made by their participants need to be confirmed by signatures.

Conciliation Proceedings

Conciliation is a proceeding that leads to the regulation of civil cases of a certain category by means of a court settlement leading to the settlement of a dispute occurring between its parties¹⁹.

All the provisions on legal transactions apply to the settlement agreement²⁰.

Minutes of the Court Meeting in Conciliation

Minutes shall be taken of the conciliation session of the district court. If there was a settlement, its warp shall be incorporated into the minutes or included in a separate document as an appendix to the minutes and stated by the signatures of the parties. Inability to sign the settlement agreement shall be stated in the minutes²¹. Currently, the document covering the content of the settlement agreement is not part of the minutes of the conciliation meeting, but is an appendix to the minutes. If the settlement agreement is incorporated into the minutes, the parties sign the minutes, and if the settlement agreement is an appendix to the minutes, the parties sign the appendix. The inability of a party to sign the settlement agreement and the reason for it must be stated in the minutes²². The court, after examining the settlement in terms of its legality, principles of social intercourse or whether it is aimed at circumventing the law, expresses its position on the admissibility of the settlement by including its warp in the minutes of the meeting and making it available for signature by the parties²³.

¹⁹ Article 184 et seq. of the Code of Civil Procedure, Supreme Court resolution of November 18, 2015, III CZP 60/15, "Orzecznictwo Sądu Najwyższego – Izba Cywilna" 2016, no. 11, item 126; resolution of 26 February 2014, III CZP 117/13, "Orzecznictwo Sądu Najwyższego – Izba Cywilna" 2014, no. 12, item 123; Supreme Court resolution of 28 March 2014, III CZP 3/14, "Orzecznictwo Sądu Najwyższego – Izba Cywilna" 2015, no. 2, item 16.

²⁰ Article 355 of the Code of Civil Procedure; Supreme Court resolution of October 21, 2005, III CZP 75/05, "Biuletyn Sądu Najwyższego" 2005, no. 10, p. 8; resolution of the General Assembly of the Supreme Court of 15 July 1974, "Kwartalnik Prawa Publicznego" 1974, no. 2; A. Marciniak (ed.), Code of Civil Procedure. Volume I. Commentary. Articles 1–205, 1st edition, (Commentary on Article 184 of the Code of Civil Procedure) Warszawa 2019; judgment of the Court of Appeal in Poznań - 1st Civil Division of September 30, 2020, I ACa 630/20. A court settlement replaces a notarial deed. - Decision of the Supreme Court - Civil Chamber of January 8, 2002, I CKN 753/99, decision of the Supreme Court - Administrative, Labor and Social Insurance Chamber of September 14, 2000, I PKN 510/00.

²¹ Article 185 § 3 of the Code of Civil Procedure

²² Act of July 4, 2019, amending the Act - Code of Civil Procedure and certain other acts (Journal of Laws of 2019, item 1469, as amended).

²³ Resolution of the Supreme Court of June 18, 1985, III CZP 28/85, "Orzecznictwo Sądu Najwyższego – Izba Cywilna" 1986, no. 4, item 48; A. Marciniak (ed.), Code of Civil Procedure. Volume I. Commentary. Articles 1–205, 1st edition. Commentary on Art. 185 of the Code of Civil

Court Settlements

In cases in which settlement is permissible, the court shall strive in every state of the proceedings to settle them amicably, in particular by urging the parties to mediation²⁴. The conclusion of a court settlement is a legal act in which two components overlap, i.e., material legal, because the consensual statements made by the parties are material legal acts aimed at producing effects in the field of substantive law, and procedural, because the statements made by the parties are at the same time procedural statements aimed at ending the trial by discontinuing the proceedings²⁵. The operative part of the settlement agreement reached before the court shall be either incorporated into the record of the hearing or included in a separate document forming part of the record and stated by the signatures of the parties. The inability to sign the settlement agreement is stated by the court in the minutes²⁶.

Proceedings for Filing a Declaration of Rejection of the Inheritance

Polish law formally provides two ways to make a declaration of rejection of the inheritance. Orally, during court proceedings into the record, or in writing with a certified signature²⁷. According to procedural regulations, the record of the reception of the oral statement should be signed by the declarant²⁸.

Court Assistance

In cases provided for by laws, courts are obliged to perform individual judicial actions at the request of other courts and other bodies, including evidentiary actions, to the extent provided for in the laws on civil procedure. Courts are obliged to provide judicial assistance also at the request of foreign

Procedure, Warszawa 2019; decision of the District Court for Łódź-Widzew in Łódź – Family and Juvenile Division of July 16, 2015, V RC 497/14; I. Wolwiak, Appropriate application of the provisions on proceedings to independent proceedings regulated in the Code of Civil Procedure, "Monitor Prawniczy" 2021, no. 8; I. Gil, Amendment to the Code of Civil Procedure - changes introduced by the Act of July 4, 2019, and other acts - comparative table with commentary, "Monitor Prawniczy" 2020, no. 6; J. Jerzykowski, Out-of-court dispute resolution, "Zamówienia Publiczne Doradca" 2019, no. 11; Order of the District Court for Łódź-Widzew in Łódź V Family and Juvenile Division of October 15, 2015, V RC 505/14.

²⁴ Articles 917–918 of the Civil Code, Article 10 of the Code of Civil Procedure, Article 210 § 2² of the Code of Civil Procedure.

²⁵ Article 918 of the Civil Code, judgment of the Supreme Court - Civil Chamber of January 13, 2021, III CSKP 21/21; judgment of the Supreme Court - Civil Chamber of October 3, 2019, I CSK 301/18; judgment of the Supreme Court - Civil Chamber of April 16, 2002, V CKN 953/00, decision of the Supreme Court - Civil Chamber of June 14, 2005, V CK 691/04; judgment of the Supreme Court - Civil Chamber of December 8, 2010, V CSK 157/10.

²⁶ Article 223 § 1 of the Code of Civil Procedure.

²⁷ Supreme Court ruling – Extraordinary Control and Public Affairs Chamber of May 26, 2021, I NSNc 76/21, Supreme Court ruling – Civil Chamber of July 2, 2015, V CSK 641/14, "Monitor Prawa Bankowego" 2016, nr 11, s. 50; resolution of the Supreme Court - Civil Chamber of November 22, 2013, III CZP 77/13.

²⁸ Article 641 of the Code of Civil Procedure, Article 158 of the Code of Civil Procedure, Articles 1018–1019 of the Civil Code, Article 79(9) and Article 92(1)(8) of the Notary Code – decision of the Regional Court in Łódź – Third Civil Appeals Division of May 9, 2019, III Ca 376/18.

authorities and courts. In the minutes of the court sessions drawn up, the actions of the participants in the session shall be stated with their signatures²⁹.

Conclusions

The minimization of situations, beyond those necessary and indispensable for guaranteeing the right to a court and preserving the right to active participation in the proceedings and the exercise of the right of defense, in which presence at the court premises is required for the effective performance of actions producing effects in the sphere of substantive and procedural law is a current and expected demand. In view of the dynamically progressing computerization of society, its mobility and the cross-border nature of cases, the availability of the settlement of legal disputes at a distance should be guaranteed to those expressing such a willingness and readiness, and without any detriment to the organization of the work of the courts, as well as the quality, reliability, and efficiency and speed of the recognition of cases. Electronic court proceedings have already become firmly established in the minds of justice stakeholders and are an effective alternative to the traditional case management format. Using the experience already gained from the digitization of courts makes it possible to expand the horizon of implementing digital solutions to other areas of their operation. The organization of a digital space that allows participants in remote sessions to sign documents in the presented categories of cases alone will have a positive impact on improving the effectiveness and efficiency of court proceedings, as well as on accessibility to the court and the facilitation of proceedings, in addition to reducing the costs of the justice system and reducing the time it takes to resolve cases.

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²⁹ Act of July 27, 2001, Law on the System of Common Courts (Journal of Laws of 2024, item 334 – as amended); USP regulations Regulation of the Minister of Justice of June 18, 2019. Regulations on the operation of common courts (Journal of Laws of 2024, item 867 – as amended) Order of the Minister of Justice of June 19, 2019 on the organization and scope of activities of court secretariats and other court administration departments (Journal of Laws of the Ministry of Justice of 2019, item 138, as amended).

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