

CASE NOTE: POLAND

CASE CITATION:
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NAME AND LEVEL OF COURT:
**Resolution of the Polish
Supreme Court**

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Although an appeal may be lodged by facsimile, the appeal will only have legal effect if, after transmission, it is signed personally by the person lodging the appeal, which is a formal requirement of an appeal.

Facts

Andrzej M. was sentenced by the Regional Court. He prepared and signed an appeal and sent it by facsimile. Due to the fact that Polish law requires an appeal to be signed personally by the person lodging the appeal, he was summoned to fulfill this requirement within seven days, otherwise his appeal would be rejected. Despite the summons, he did not personally sign the facsimile copy of the appeal after sending it, and argued that his appeal was signed as the law requires before it was sent by facsimile transmission. This argument was not accepted. He lodged a complaint with the District Court, and the court decided to refer the matter to the Supreme Court, posing the question that where an appeal is signed and then sent by facsimile transmission, whether the document received by the court may be regarded as signed personally as required by the article 119 § 1 pkt 4 of the Polish Code of Criminal Procedure (CCP). The District Court pointed out that the development of communication technology obliges the courts to accept new forms of communication and to give them legal effect, but on the other hand, a different attitude is possible bearing in mind the safeguards provided by a handwritten signature.

Opinion of the Supreme Court

The Supreme Court observed that under the provisions of article 428 § 1 of the CCP, the appeal must be in written form, which is an exception to the general rule expressed in article 116 of the CCP that motions and other statements may either be in written form or oral (in the latter situation they must be inserted to a protocol). In addition, in accordance with the provisions of article 119 § 1 pkt 4, every written motion should have the 'date and signature of the person lodging the motion'.

In the opinion of the Supreme Court, all the rules of legal interpretation are in no doubt that article 119 § 1 pkt 4 refers to a handwritten, original signature of the person lodging the motion. Giving the reasons for its decision, the court quoted the meaning of the word 'signature' in Polish, which is explained in dictionaries as 'name ... usually handwritten'. The verb 'to sign' is described as, amongst others, 'to validate a document by writing a name on it'. This view is also supported by analysis of other legal provisions.

The view that a signature must be added to the motion by hand is also shared by scholars and expressed in previous decisions of the Supreme Court. According to these views, a handwritten signature cannot be replaced by a signature made by a machine (for example a computer) and other mechanic signature (for example facsimile, photocopy or seal). This restriction is to ensure the signature can be verified by the person signing the document and in accordance with his will. Further it was observed that a handwritten signature transformed by technical means is 'copied', and therefore cannot be regarded as 'handwritten' and given 'personally'.

The Supreme Court pointed that all exceptions to the requirement of a handwritten signature must be prescribed by law and provide for adequate security. The legislator passed Ustawa z dnia 18 września 2001 r. o podpisie elektronicznym (Act on Electronic Signature 2001) for this purpose, but the Act did not provide for the transmission of a signature by facsimile transmission. The court also rejected the argument that because article 132 § 3 of the CCP permits law enforcement authorities to send to participants in criminal proceedings certain documents by facsimile or electronic mail, the same possibility should by analogy work in the opposite way. This regulation only relates to summons and notices. Lodging an appeal is a very important procedural act, and the court must be sure that it was lodged by the person entitled to do so, and according to his will. An appeal cannot be treated in the same way as a summons or notice.

Concluding, the members of the court stated that an appeal sent by facsimile transmission is to be regarded as having a shortage of form, because of the lack of a handwritten signature. Where an appeal is sent by facsimile transmission, the provisions of article 120 of the CCP permit the person lodging the appeal to correct the defect within seven days. If this is done, the appeal should be regarded as having legal effect from the date of the facsimile transmission. The court also pointed out that in such case the handwritten signature may be made on the document which was earlier sent by facsimile transmission (so it could be signed in the court's secretariat) or by producing another copy of the appeal containing a manuscript signature (in the latter situation under the condition that the copies contain the same text).

Commentary

The opinion expressed by the Supreme Court is justified in the light of the Polish regulations relating to the formal requirements of procedural acts and for lodging appeals. The purpose of requiring an appeal to be signed with a handwritten signature is to exclude any doubt that the alleged author did not lodge the appeal or that the appeal was not wholly in accordance with his will. Where the person claims the appeal was not signed by him, it will be for an expert to verify the authenticity

of signature. It is not easy or even possible to verify a signature in the case of documents sent by facsimile transmission, when so many features of a signature can be lost.

This opinion of the Supreme Court does not solve the problem. As the District Court rightly observed, in the information age, new means of communications should be used (just as the telephone and telegram were used). However, they must be also secure enough to enable verification. Polish regulations are not up-to-date with the development of information technology and the expectations of the information society. Further, law enforcement authorities are not prepared to introduce new solutions, such as electronic signatures. It is to be hoped that this will change in the near future, as some initiatives have recently been taken.¹ Perhaps European Union action focusing on the promotion of the use of electronic signatures in the law enforcement sector would be also helpful and speed the changes in the Member States.

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¹ See for example *The Act of Parliament on Informatisation of Entities Carrying Out Public Tasks 2005 and adopted in 2007 The Plan on Informatisation of the State in the years 2007 – 2010.*