

CASE TRANSLATION: SWEDEN

Case citation:

Case No. 11534-13

Name and level of the court:

Administrative Court in Gothenbourg

Date of decision:

26 May 2014

Members of the court:

District Court Judge Anna Fredricson Svensson, and Elisabeth Ericson and Ulf Dermark

Rapporteur:

Lennart Backman

Sweden; advanced electronic signature; effectiveness; administrative proceedings

Court of Appeal for Western Sweden

Judgmentr 2014-05-26

Stated in Gothenburg

Case No. 11534-13

Title 3 Unit 34

PLAINTIFF

Helena Lindvall (born 1982)

Fjärås, Sweden

DEFENDANT

Kungsbacka municipality

Municipal working committee

434 81 Kungsbacka

APPEAL AGAINST DECISION

Municipal working committee's decision dated 1 October 2013, §§ 290-305

THE CASE

Legality consideration under the Local Government Act (1991: 900), abbreviated KL

JUDGEMENT

The Administrative court of appeal rejects the appeal.

BACKGROUND

At a meeting dated 1 October 2013, the municipal working committee decided on various issues under § 290-305 of the minutes. According to proclamation of the same day, the protocol was adjusted and the adjustment was announced by a notice. The notice was set up on 7 October 2013.

CLAIMS

Helena Lindvall appeals the decision of the municipal working committee and argues that decisions must be repealed. She argues the following. The protocol is announced, but there is no visible signature on the minutes – no manuscript signature. A protocol should be adjusted with a ballpoint pen. The municipal officials claim that it is an electronic signature with e-identification, but how can one know that it is true when it has not been signed. She questions whether the decisions really are valid, when the adjustments of the minutes have not been made properly.

Kungsbacka municipality claims that the local board's working committee decision is in accordance with due process, that it is not contrary to law or regulation and is otherwise legal.

The municipality mainly states the following.

E-government is now a top priority for the public administration. Governmental and municipal authorities are working hard to streamline and simplify the administration in particular. The municipality is in the process of making changes to improve the efficiency of management, including e-government, which is collected in a number of projects under the name of Kungsbacka 2020. The municipality's processes will be digitized as part of this

project. One objective is that cases should be able to get into the municipality through a digital process – an e-service or otherwise processed digitally in the form of a draft decision, sent digitally to policy makers, for decisions to be made through a digital process, and finally archived in the e-archives. The transition to a completely digitized case and document management system that supports the above process is important for efficiency. The transition to such a system has started and will be completed during 2014.

Work on digitizing the processes of the municipal working committees have come relatively far. In 2013, the municipal executive committee, all working committees and city councillors took advantage of summonses to make decisions digitally, even if paper documents are sent during the transition period. The members take note of the documents by downloading them on a computer or tablet. The municipal working committee and the working committee of Recreation and Public Health have been pilot projects, and the members are now used to take part of the documents digitally. Since the beginning of 2013, the documents of the municipal working committee are only sent digitally. The next step for the municipality is to introduce a digital adjustment procedure of the protocols, on the grounds that a fully digitized process must include digital protocol adjustments.

A signature on a piece of paper states who has signed and the purpose of the signature. An electronic signature must therefore capture both the signatory's identity and his or her intent. An advanced electronic signature is exclusively linked to the signatory who can be identified by the signature. It is created in such a way that the signatory has control of it.¹ Changes to the electronic signature can be detected. The municipal working committee revised the minutes of the meeting of 1 October 2013 with ProSale Signing from Comfact AB. ProSale Signing meets the requirements for advanced electronic signatures under the Act (2000:832) as a qualified electronic signature. Comfact AB is an issuer of qualified

certificates to the public under the qualified electronic signatures law.

Practically, it is carried out as follows. The municipal office saves the minutes as a pdf file in the ProSale Signings system. The concerned politicians are then added to the system. When the document is uploaded to the ProSale Signings system, the first politician in the adjustment chain receives an e-mail, telling the person to identify him- or herself to the signing system and thereafter to adjust the protocol. After review of the protocol, the protocol can be approved. The approval is done by the politician by confirming this twice to avoid mistaken approvals. After the first politician has approved the protocol, an e-mail message is sent to the next adjuster, who undertakes the same procedure. When the last person in the adjustment chain has approved the protocol, the document is sent back to the issuer – that is to say to the municipal office. The document will then be given a reference number on each page. The reference number can be found in the certificate issued by Comfact AB, which is part of the document, and where the time of the signatures are indicated.

The municipality understands that Helena Lindvall's objection to decisions affecting the suspension basics of Chapter 10, 8 § 1 and 4 KL, and assumes that she thus argues that both decisions fail to be undertaken by due process, because the protocol is not adjusted by the signature with a manuscript signature, and that it is contrary to law or regulation that the protocol is adjusted by an electronic signature. The first testing ground that the decision not to come to due process is all about procedural defects, such as conflicts of interest, lack of preparation, improper summonses or inaccurate polls. Any inaccuracy in the adjustment that is to form the requirements for the adjustment cannot be observed if there is a procedural defect. The fourth trial plea relates to cases where the decision is contrary to law or regulation, for example decisions contrary to the competence rules of the Local Government Act. KL also has rules for adjusting the protocol. A method for adjusting the protocol contrary to KL's rules for adjustment could be a decision that is contrary to law or regulation.

¹ Editor's note: this is not correct, for which see Stephen Mason, *Electronic Signatures in Law* (3rd edn, Cambridge University press, 2010), 118 – 124; see also 'non-repudiation' at 318 – 325.

The main issue of the case – for redressing the basics – is if there are any formally expressed or implied adjustment protocol procedures in the municipal committees and the executive committee. KL imposes no explicit rules on how the adjustment is made in practice. The term signature is not used. Normally, adjustments of the minutes are signed by adjusters with a ballpoint pen. The adjustment should confirm that the protocol correctly shows what happened during the meeting. This means that any formal errors during the meeting will be reported in the minutes. It is not a task for the adjusters to correct this during the protocol adjustment. The adjustment is also important in the enforcement of decisions, because the approval of the minutes is a prerequisite for a decision to be enforced. The adjustment does not imply that the protocol will be the carrier of any rights. The revised protocol is not absolutely authentic and does not possess absolute validity even if the content must predominantly have been disproved to give decisions different meanings.

Assimilation of the electronic signature with a handwritten signature requires access to a method that can provide assurance that the electronic document originates from a particular sender, and that its contents are not altered during transfer. This is now possible with today's technology, and is undertaken by the municipality when using the system ProSale Signing from Comfact AB.

Here is no expressed or implied method for adjusting municipal protocols. A process that is controlled by a certain rule always done a certain way does not necessarily mean that the rule does not permit it can be carried out differently. The above review shows that it is possible to confirm the validity of the contents in the protocol – that is, making adjustments using different methods. KL's rules for protocol adjustments are therefore technology neutral. It is therefore quite possible that the minutes can be adjusted through a digital process with an electronic signature. The municipality has not been able to find anything to indicate the requirements of law or statute that provides that the adjustment should be done by a manuscript signature of the protocol

document in paper form. The appeal must therefore be dismissed.

GROUNDS FOR THE DECISION

Legal framework

Under chapter 10 1 § KL, each member of a municipality or a county has the right to challenge the legality of the municipality's or the county council's decision by taking out proceedings to appeal to the Administrative court of appeal in Gothenburg.

The administrative court's review of the decision is limited to a determination of whether the contested decision is unlawful under the provisions of chapter 10 8 § KL. This means that the decision may be annulled only if

1. It was not subject to due process,
2. It is related to something that is not a concern of the municipality,
3. The council or the committee that made the decision exceeded their powers, or
4. The decision is contrary to law or regulation.

It is for the complainant to show that the decision is unlawful under any of the above grounds. It is only the legality of the decision and not its suitability that can be considered inadmissible. In the event that the appellant failed to show that the decision violates any previous decisions can it be repealed. The administrative court cannot put a different decision in the place of the contested decision.

The meetings of the executive committee and all working committees shall be recorded. In terms of the implementation of protocols, it is necessary to show how the content is adjusted, under chapter 5, 61 and 62 § § applied (Chapter 6 § 30 CL).

A protocol, taken at the meeting of the council, shall be adjusted no later than fourteen days after the meeting in the way the council has determined (Chapter 5 § 61 KL).

No later than the second day after the protocol has been adjusted, the adjustment is announced on the bulletin board. The notice shall state where the

minutes are available and on what day it is posted (Chapter 5 § 62 KL).

According to § 2 Act (2000:832) concerning the purposes of the qualified electronic signature

For the purposes of this Act the following definitions apply:

Electronic signature: data in electronic form attached to or logically associated with other electronic data, and used to verify that the content originates from the alleged issuer, and has not been altered.

Advanced electronic signature: an electronic signature that

- a) is uniquely linked to a signatory,
- b) is capable of identifying the signatory,
- c) is created using means that are under the signatory's sole control, and
- d) is linked to other electronic data in such a way that any alteration to the said data can be detected.

Qualified electronic signature: an advanced electronic signature based on a qualified certificate and created by a secure signature creation device.

Assessment of the administrative court of appeal

KL shows that minutes recorded at the municipal executive committee meeting should be adjusted no later than fourteen days after the meeting in the manner councillors have decided. The rules of the council decide on the procedure for the approval of the minutes. The adjustment is usually done in such a way that the president and two designated members at a gathering attest with their signatures that the protocol is correct. The purpose of the adjustment is thus to authenticate the veracity of what is written in the protocol. KL says nothing about that authentication must be done by signing with a manuscript signature. There is therefore no obstacle according to KL to adjust the notes of a municipal meeting with an electronic signature. The administrative court of appeal therefore considers that the adjustment of the municipal working committee meeting notes cannot be considered to be made in a way that implies that the adjusted decisions

have not been legally constituted or that decisions are contrary to law or regulation.

Against the background of the foregoing, and that Helena Lindvall has not adduced any evidence to show that the municipal working committee decision is unlawful under any of the grounds enumerated in chapter 10. 8 § KL, the appeal is dismissed.

HOW TO APPEAL, see appendix 1 (DV 3109/IB)

Anna Fredricson Svensson

District Court Judge

The special members Elisabeth Ericson and Ulf Dermark participated in the decision.

The rapporteur of the case is Lennart Backman.

With thanks to **Johnny Bengtsson** for his help with this translation.