

CASE NOTE: GERMANY

CASE CITATION:

14.01.2010, VII ZB 112/08

NAME AND LEVEL OF COURT:

**Bundesgerichtshof
(Federal Court of Justice)**

Appeal by e-mail; signed with a qualified electronic signature; verification of the signature

Summary

The plaintiff appealed against a judgment in due time and form. The plaintiff's statements reached the court in a separate mail in electronic form on the last day of the period for filing an appeal. The document was signed electronically with a qualified electronic signature. The verification of the signature led to the result that the document was properly signed but that the signature certificate did not exist. The directory service of the federal chamber of notaries (Bundesnotarkammer) that issued the signature card and key did not allow for the verification of the signature. Upon receipt of the new signature card, the lawyer did not confirm the receipt to the federal chamber of notaries even though the letter accompanying the new signature card contained the advice to confirm the receipt to the chamber. The letter also contained the information that the new signature card is "...valid from now on". The court of appeal rejected the complaint as inadmissible because the statement of claim was not provided in the necessary form. The court stated that section 130a of the Code of Civil Procedure (Zivilprozessordnung – ZPO) requires a qualified electronic signature and that such signature requires a certificate.

Section 130a ZPO - Electronic Document: (1) If the written form is required for preparatory pleadings and their annexes, for applications and declarations of the parties and for information, statements, reports and declarations from third parties, the record as an electronic document shall suffice if it is suitable for processing the court. The responsible person shall sign the document with a qualified electronic signature according to the Signature Act [...].

A reinstatement of proceedings was not taken into consideration by the court of appeal because it results from section 5 subsection 2 of the ordinance on electronic signatures (Signaturverordnung - SigVO) that a certificate will only be activated after acknowledgement of receipt by the signature keyholder.

The Federal Court of Justice partly agreed with the court of appeal. It ruled that the qualified electronic signature is a mandatory form requirement pursuant to section 130 a ZPO. For lack of a valid certificate the signature was not 'qualified' because it was impossible to verify its validity. But the Federal Court of Justice reinstated the procedure and stated that the lawyer does not have to know the ordinance on electronic signatures, which is directed at certification service providers only. According to the Federal Court of Justice, the lawyer could rely on the information that the new signature card is valid "form now on" provided with the new card.

Comment

The decision points out the electronic documents have to be signed with a qualified electronic signature. Surprisingly the Federal Court of Justice argues that the lawyer is not obliged to know the ordinance on electronic signatures. One might expect that a lawyer that uses qualified electronic signatures knows the legal regulations regarding electronic signature and the prerequisites for coming into force. If this case is discussed in Germany's legal journals it can be assumed that lawyers know about the obligation to confirm receipt of the signature card to the issuing entity.

Dr Martin Eßer is a member of the editorial board