Case name **AS Valga Külmutusvagunite Depoo (in bankruptcy)**

Citation **Administrative matter no 2-3/466/03**

Name and level of court **Administrative Chamber of Tallinn Circuit Court**

Members of court **Lilianne Aasma, Ruth Virkus and Silvia Truman**

Date of hearing **In Tallinn on June 12, 2003**

Facts

The Administrative Chamber of Tallinn Circuit Court, consisting of Lilianne Aasma, Ruth Virkus and Silvia Truman, heard in the course of written proceedings the appeal against the ruling filed by AS Valga Külmutusvagunite Depoo (in bankruptcy) against Tallinn Administrative Court Ruling of March 17, 2003 in administrative matter no 3-366/2002 on the return of the appeal.

In its ruling of March 4, 2003 the court states that up to the present moment the appellant has not given a proper response to the court; therefore the court cannot take a position in the question regarding the compliance with the term for the appeal; the appellant must submit to the court a properly compiled and signed response to the request of the court. The court's statement that a proper response has not been received, is not correct. The appellant submitted the response to the request of the court on February 27, 2003 by e-mail and signed the same in compliance with Clause 3(1) of the Digital Signatures Act (Digitaalallkirja seadus Vastu võetud 8. märtsil 2000. a. (RT I 2000, 26, 150)):

Digitaalallkirjal on samad õiguslikud tagajärjed nagu omakäelisel allkirjal, kui seadusega ei ole neid tagajärgi piiratud ning on tõendatud allkirja vastavus käesoleva seaduse § 2 lõike 3 nõuetele.	A digital signature has the same legal consequences as a hand-written signature if these consequences are not restricted by law and if the compliance of the signature with the requirements of subsection 2 (3) of this Act is proved.

In its ruling of March 4, 2003 the court has not set out or made any reference to law in regard to the reasons why the response was considered allegedly improper. Signing of a document by a digital signature does not in itself make the document improper. The court has set out in its ruling that a response to a request of the court must be received by the court by mail as the response must have the appellant's signature thereon. The appellant has complied with this requirement, and sent the response by e-mail. The response was digitally signed. Moreover, in case of hand-written signature it is not possible to ascertain that it was written by the person set out in the decipherment of the signature. In case of a digital signature, it is possible to ascertain it with certainty. The appellant hereby refers to the electronic and digital correspondence in proceedings as set out in the draft of the Code of Civil Procedure (published on the web-site of the Ministry of Justice www.just.ee).

AS Eesti Raudtee is still of the position that AS Valga Külmvagunite Depoo (in bankruptcy) has not submitted a required notice of intention to appeal and that it is not a purely technical error. As to signing a compliant by way of a digital signature, AS Eesti Raudtee would like to emphasise that making the respective act in the described manner has not only impaired the court proceedings but has also materially deteriorated the position of the proceeding parties upon the hearing of this matter. The third person received the content of the appeal against a ruling and the respective document only on the last day determined for giving a response, which does not in any way contribute to the objective of faster and easier court proceedings as set out in the complaint. In addition to the foregoing, AS Eesti Raudtee wants to point out that in these proceedings the Digital Signatures Act can only be viewed in the context of considering a digital signature equivalent to a hand-written signature. Pursuant to Clause 3(1) of the Digital Signatures Act, a digital signature has the same legal consequences as a hand-written signature if these consequences are not restricted by law and if the compliance of the signature with the requirements of Clause 2(3) of this Act is proved:

Digitaalallkiri koos selle kasutamise süsteemiga peab: 1) võimaldama üheselt tuvastada isiku, kelle nimel allkiri on antud; 2) võimaldama kindlaks teha allkirja andmise aja; 3) siduma digitaalallkirja andmetega sellisel viisil, mis välistab võimaluse tuvastamatult muuta andmeid või nende tähendust pärast allkirja andmist.	A digital signature and the system of using the digital signature shall: 1) enable unique identification of the person in whose name the signature is given; 2) enable determination of the time at which the signature is given; 3) link the digital signature to data in such a manner that any subsequent change of the data or the meaning thereof is detectable.

This provision does not make invalid the other mandatory provisions of the Code of Administrative Court Procedure regarding the form and content of a complaint, and the court has requested the complainant to comply with the same. Article 10 of the Code of Administrative Court Procedure sets outs the obligation that complaints shall be filed in writing:

§ 10. Nõuded kaebusele ja protestile Kaebus ja protest esitatakse kirjalikult ning selles märgitakse……	§ 10. Requirements for actions and protests

Based by way of analogy on Clause 7(6) of the Code of Civil Procedure:

§ 7. Kohtumenetluse keel ja avalduse vormistamine (6) Avaldus ja hagiavaldus, apellatsioonkaebus, kassatsioonkaebus ja erikaebus ning kirjalik vastus esitatakse kohtule selgesti loetavas masinakirjas formaadis A4.	§ 7. Language of proceedings and preparation of petitions (6) Petitions, statements of claim, appeals, appeals in cassation, appeals against rulings and written answers shall be filed with the courts in legible typewritten form in A4 format.

AS Eesti Raudtee states that appeals against rulings shall be filed with the courts in legible typewritten form in A4 format. Pursuant to Clause 31(7) of the Code of Administrative Court:

§ 31. Apellatsiooni korras edasikaebamine (7) Erikaebusele ja selle läbivaatamisele kohaldatakse apellatsioonkaebuse ja selle läbivaatamise kohta sätestatud nõudeid, kui need ei ole vastuolus erikaebuse olemusega.	§ 31. Appeal pursuant to appellate procedure (7) The requirements provided for appeals and the hearing thereof apply to appeals against rulings and the hearing thereof unless the requirements are contrary to the nature of appeals against rulings.

the requirements provided for appeals apply to appeals against rulings. Pursuant to Article 32 of the Code of Administrative Court Procedure:

§ 32. Nõuded apellatsioonkaebusele (2) Apellatsioonkaebus koos ärakirjadega esitatakse vastavalt protsessiosaliste arvule.	§ 32. Requirements for appeals (2) An appeal shall be filed together with one copy of the appeal to all the participants in the proceedings.

an appeal shall be filed together with one copy of the appeal to all the participants in the proceedings and pursuant to Clause 32(6) an authorisation document or other document certifying the authorisation of the representative shall be annexed thereto:

§ 32. Nõuded apellatsioonkaebusele (6) Apellatsioonkaebusele kirjutab alla selle esitaja. Apellatsioonkaebuse esitaja poolt volitatud isik lisab kaebusele volikirja või esindaja volitust tõendava muu dokumendi, kui seda ei ole tehtud esimese astme kohtus. Teistes riikides tõestatud volikiri või esindaja volitust tõendav muu dokument peab olema kehtivas korras legaliseeritud, kui välislepingust ei tulene teisiti.	§ 32. Requirements for appeals (6) An appeal shall be signed by the appellant. A person authorised by an appellant shall annex an authorisation document or other document certifying the authorisation of the representative to the appeal if such document was not submitted to the court of first instance. An authorisation document or other document certifying the authorisation of a representative which is certified in a foreign state shall be legalised pursuant to the procedure currently in force unless otherwise provided by an international agreement.

In the present matter, the authorisation of the complainant has also been an object of dispute. Thus when performing the request of the court, the complainant could not just send the complaint by e-mail but in order to comply with the requirements arising from the Code of Administrative Court Procedure should have delivered to the court other documented evidence in order to clarify the circumstances. The requests of the court have not been fulfilled also in this regard which is one of the reasons why the court has issued the contested ruling. In regard to the digital signing of a proceeding document, AS Eesti Raudtee would also like to point out that pursuant to Clause 4(2) of the Digital Signatures Act:

Avalik-õiguslikes suhetes kasutatakse digitaalallkirja vastavalt käesolevale seadusele ning selle alusel antud õigusaktidele.	In relations in public law, digital signatures shall be used pursuant to this Act and legislation issued on the basis thereof.

in relations to public law, digital signatures shall be used pursuant to the Digital Signatures Act and legislation issued on the basis thereof. Thus the law makes the possibility to use digital signatures dependant on the existence of legislation issued on the basis of the above Act. The court has explained to the complainant that assessing the situation objectively, the court cannot accept the complaint signed with a digital signature. The court has explained that there are no legal (the procedure has not been established) or technical (no programmes, hardware) possibilities to identify the person. Thus it had to be known to the complainant that there is no legislation issued on the basis of the Digital Signatures Act and that the court has no basis for accepting the respective documents submitted to the court. Moreover – the complainant had been given an additional chance to file the compliant in writing, which was waived by the latter without reason, thus failing to use the opportunity provided by the court to continue the appeal proceedings. In principle, with its activities the complainant has knowingly placed itself in the situation where the possibilities to exercise its procedural rights are extremely limited.

The response to the court's request of February 18, 2003 was sent electronically with a digital signature. Pursuant to Clause 3(1) of the Digital Signatures Act, a digital signature has the same legal consequences as a hand-written signature if law does not restrict these consequences. Laws regulating legal proceedings do not provide that digitally signed documents may not be used in procedural acts. Pursuant to Article 43 of the Digital Signatures Act:

Digitaalallkirja rakendamine (1) Vabariigi Valitsus asutab ja võtab käesoleva seaduse § 32 lõikes 1 sätestatud registri kasutusele käesoleva seaduse jõustumise hetkeks. (2) Vabariigi Valitsus kehtestab 2001. aasta 1. märtsiks riigi- ja kohaliku omavalitsuse asutuste ning avalik-õiguslike juriidiliste isikute asjaajamiskorra ühtsed alused, mis võimaldavad asutuste asjaajamises kasutada ka digitaalselt allkirjastatud dokumente. (15.11.2000 jõust.01.01.2001 - RT I 2000, 92, 597)	Implementation of digital signatures (1) The Government of the Republic shall establish and introduce the register provided for in subsection 32 (1) of this Act by the time this Act enters into force. (2) The Government of the Republic shall establish uniform bases for the document management procedures of state and local government agencies and legal persons in public law by 1 March 2001 and the bases shall also enable the use of digitally signed documents in the document management of the agencies. (15.11.2000 entered into force 01.01.2001 - RT I 2000, 92, 597)

by 1 June 2001 state agencies had to reorganize their document management so that it would be possible to use digitally signed documents in their proceedings. Thus the court had no legal basis to request the submission of a document on paper with a hand-written signature instead of a digitally signed document. Also, the acceptance of the digitally sent document was not hindered by the lack of proper software – it was and still is possible to immediately install the respective software in the courts, if necessary.

Thus there were no grounds for returning the appeal for the reason that the complainant did not sign the response to the request of the court of February 18, 2003 with a hand-written signature.

A breach of the above procedural provisions by the court may have led to the making of an incorrect decision. The petition filed by AS Valga Külmutusvagunite Depoo (in bankruptcy) on the grounds of Clause 237(2) of the Code of Civil Procedure remains unsolved up to the present moment. Before the final settlement of the question of the term for appeal, the court has to make a decision in regard to the petition. If the petition is not satisfied, it may become necessary for the appellant to apply for the restoration of the term for appeal. Pursuant to Clause 33(4) of the Code of Administrative Court Procedure, the court of first instance shall adjudicate a request of an appellant for the restoration of a term for appeal.

The appeal against the ruling is subject to satisfaction. We cannot agree with the position of AS Eesti Raudtee that under Article 46 of the Code of Administrative Court Procedure the circuit court does not have the right to annul the ruling of the administrative court and refer the matter to the court of first instance for a new hearing. Pursuant to Clauses 31(7) and 46(1)(3) of the Code of Administrative Court Procedure, in the hearing of an appeal against a ruling, a circuit court has the right to annul the ruling of the administrative court in full or in part and refer the matter to the court of first instance for a new hearing. The contested ruling of the administrative court shall be annulled and the matter shall be referred to the same administrative court in order to continue the performance of the acts set out in Article 33 of the Code of Administrative Court Procedure.

The circuit court draws the attention of the appellant and the administrative court to Clause 17(2) of the Bankruptcy Act, pursuant to which after the declaration of bankruptcy, the business name of the debtor may be used only with the words *"pankrotis"* [in bankruptcy].

Pursuant to Subcluase 46(1)(3) of the Code of Administrative Court Procedure, the College made the following decision:

Decision

To annul Tallinn Administrative Court ruling of March 17, 2003 in administrative matter no 3-366/2002 and to refer the matter to the court of first instance in order to continue the performance of the acts set out in Article 33 of the Code of Administrative Court Procedure.

To satisfy the appeal against the ruling filed by AS Valga Külmutusvagunite Depoo (in bankruptcy).

This ruling may be appealed to the Supreme Court within 15 days as of the receipt of the ruling through the circuit court that issued the ruling.

Commentary by Viive Näslund, attorney-at-law

The district court's declaration that documents may be sent to court by e-mail if they have a digital signature according to law is the first decision in Estonia regarding the validity of digital signatures. The district court's ruling has been followed by the Minister of Justice's regulation that further establishes the handling of digitally signed documents in courts[1]. The district court's ruling and the Minister of Justice's regulation have left no uncertainty over the use of digital signatures in documents sent to courts, thereby significantly facilitating the communication with the courts. The fact that digital signatures can be used in communication with the courts may also promote the usage of digital signatures in other sectors. ■

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[1] Justiitsministri 05.08.2003 määrus nr 54 Maa- ja linnakohtu kantselei kodukord

§ 49. Digitaalallkirjastatud dokumendi vastuvõtmine

(1) Digitaalallkirjastatud dokumendi vastuvõtmiseks ja digitaalallkirja kehtivuse kontrollimiseks kasutatakse Eesti Sertifitseerimiskeskuse poolt väljatöötatud tarkvara *DigiDoc Client*.

(2) Digitaalallkirjaga dokument peab olema andmete turvalisuse kaalutlusel *.txt, *.rtf, *.pdf, *.jpg või *.xml laienditega failis. *.xml laiendiga faili puhul kooskõlastab kohus selle vastuvõtmise Justiitsministeeriumiga.

(3) Digitaalallkirjastatud elektronposti võetakse vastu lihtteksti vormingus või *.rtf vormingus ning see ei tohi sisaldada muutuvaid osi (kirja sisu muutvaid linke).

(4) Tõendamise huvides ja vastavasisulise taotluse esitamisel võib kohus vastu võtta ka teiste laienditega digitaalallkirjastatud dokumente. Sellisel juhul tuleb vajaliku tarkvara installeerimiseks pöörduda Justiitsministeeriumi infotehnoloogia osakonna abisse (IT-abi), kusjuures täiendava tarkvara installeerimise kulud tuleb tasuda menetlusosalistel.

(5) Digitaalallkirjastatud dokumendi saamisest teavitab kohus dokumendi saatjat elektroonilise kinnitusega.

§ 50. Digitaalallkirjastatud dokumendi salvestamine ja säilitamine

(1) Digitaalallkirjastatud dokument salvestatakse pärast allkirja kehtivuse kindlaks tegemist kohtu infosüsteemis selleks ettenähtud kohta ning tehakse seejärel dokumendist väljatrükk. Väljatrükile lisatakse digitaalallkirja kinnitusleht, mille lahtrisse «asutuse- või teenusekohane lisainfo» märgitakse digitaalallkirjastatud dokumendist tehtud väljatrüki lehekülgede arv järgmise näite kohaselt: Lisa: Hagiavaldus.doc 2 lehel 1 eks

(2) Kohtu kantselei volitatud töötajad saavad salvestada digitaalselt allkirjastatud dokumente ühe kohtu või kohtumaja jaoks ettenähtud kaustadesse.

(3) Iga kohtunik ja vastava kohtuniku istungisekretär saab salvestada menetluse käigus esitatud digitaalallkirjastatud dokumente kohtuniku nimelisse kausta.

(4) Dokumendi salvestaja kinnitab väljatrüki õigsust oma allkirjaga.

(5) Nõuetekohaselt salvestatud dokumentide säilitamise tagab vastavalt üldisele dokumentide arhiveerimise korrale Justiitsministeerium.

§ 49. Acceptance of Documents with Digital Signatures

(1) For the purposes of accepting documents with digital signatures and verifying the validity of digital signatures, the software developed by the Estonian Certification Centre, *DigiDoc Client*, is used.

(2) For data security purposes, digitally signed documents must be in files with *.txt, *.rtf, *.pdf, *.jpg or *.xml file name extensions. In case of files with *.xml file name extensions, the court shall approve the acceptance thereof with the Ministry of Justice.

(3) E-mails with digital signatures shall be accepted in simple text format or in *.rtf format and such e-mails may not contain variable parts (links changing the content of the letter).

(4) For the purposes of proof and upon the submission of a respective application, the court may accept digitally signed documents with other file name extensions. In such cases, in order to install the necessary software, the helpdesk of the information technology department (IT-help) of the Ministry of Justice shall be referred to, whereas the expenses of installing the additional software shall be paid by the parties to the proceedings.

(5) The court shall inform the sender of the digitally signed document of the receipt thereof with an electronic confirmation.

§ 50. Storing and Saving Documents with Digital Signatures

(1) After the validity of the signature has been verified, the digitally signed document shall be saved in a prescribed file in the information system of the court and thereafter an extract shall be made from the document. A verification letter shall be added to the extract, whereas in the box "additional information regarding the institution or services" the number of pages of the extract made from the digitally signed document shall be indicated in accordance with the following example: Appendix: statement of claim.doc 2 pages 1 exemplar

(2) Authorized employees of the court office can save digitally signed documents in the files prescribed for one court or courthouse.

(3) Every judge or court session clerk can save digitally signed documents presented in the course of the proceedings in the files carrying the name of the judge.

(4) The saver of the document verifies the accuracy of the extract with his/her signature.

(5) The storage of duly saved documents shall be guaranteed by the Ministry of Justice pursuant to the general regulations of archival processing of documents.

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