CASE NOTE: BRAZIL

CASE CITATION:
AI 564765 RJ – Rio De Janeiro

NAME AND LEVEL OF COURT:
Supremo Tribunal Federal (Brazilian Supreme Court) Interlocutory Appeal

RELATER:
Mr Justice Sepúlveda Pertence

DECISION HELD ON:
14 February 2006

PANEL OF JUDGES:
First Panel

DATE OF PUBLICATION:
DJ 17 March 2006 p. 00015 – digest v. 02225-07 – p. 0362

APPELLANT:
The Federal Union

ATTORNEY AT LAW:
The Attorney General

APPELLEE:
Wagner Figueiredo Da Silva

ATTORNEY AT LAW:
Sergio De Souza Macedo

Summary

Procedural act. Appeal. Electronic signature. The need for regulating its use for judicial safeguard. 1. Taken into consideration the judgment given by Supremo Tribunal Federal as to the fact that only a petition signed with a manuscript signature previously by an attorney at law is recognized as valid. Precedents. 2. As to the cited document, it is not a digital certificate nor a printed version of a digital document protected by a digital certificate; it is a mere electronic signature without any regulation whose authenticity is impossible to be confirmed without the help of a forensic expert. 3. The need for regulating the use of a digitalized signature is not a mere procedural formalism, but a reasonable requisite in order to avoid acts whose liability would be impossible to be disclosed.

Judgment

Judge Sepúlveda Pertence (relater) and Judge Eros Grau voted for dismissing the appeal. Judge Marco Aurélio voted in favour of it. Judge Cezar Peluso requested additional time for verification. First Panel of Judges. 17 November 2005.

Decision: Judge Cezar Peluso renewed the request of additional time for verification in accordance with article 1st, § 1st, in fine, Resolution nº 278/2003. First Panel, 13 December 2005.

Decision: Judgment postponed in accordance with Judge Cezar Peluso's request. First Panel, 7 February 2006.

Decision: The Panel of Judges voted against the appeal for a majority of votes in accordance with the Relater's opinion. Judge Marco Aurélio's vote considered as a dissent opinion. Judge Carlos Britto was absent. First Panel of Judges. 14 February 2006.

THE REPORT OF THE RELATOR

COURT: **Supremo Tribunal Federal**

DATE OF DECISION: **17 November 2005**

PANEL OF JUDGES: **First Panel**

INTERLOCUTORY APPEAL:
564.765-6, Rio De Janeiro

RELATER: **Judge Sepúlveda Pertence**

APELLANT: **The Federal Union**

ATTORNEY AT LAW: **The Attorney General**

APPELLEE:
Wagner Figueiredo Da Silva

ATTORNEY AT LAW:
Sergio De Souza Macedo

Report

Mr Justice Sepúlveda Pertence

Interlocutory Appeal that dismissed RE, a, b and c, against decision ruled by the Second Panel of Appeal of Juizados Especiais do Estado do Rio de Janeiro.

Complete text of the ruling (p. 73):

It is an appeal submitted to the Court as a photocopied document. The signature of the attorney at law was also presented, it being photocopied in the petition and also in the document describing the reasoning.

If it were not for the formal strictness of this kind of appeal, one could be skeptical about the validity of such petition as a procedural act if such document were not signed previously by the attorney at law.

This distinguished Court has dismissed repeatedly such appeals, so it is an agreed fact that only a petition signed with a manuscript signature previously by an

attorney at law is recognized as valid as follows:

'It is an appeal submitted as a photocopied document against a decision that dismissed an appeal based on article 102, III, 'a', of Federal Constitution. The jurisprudence of this Court clearly establishes that only a petition signed with a manuscript signature previously by an attorney at law is recognized as valid. Precedents: AgRAI 179.709, 1st Panel, Rel. Octavio Galloti; AgRAI nº 263.570, 2nd Panel, Rel. Néri da Silveira. [...] I dismiss the appeal (art. 557, caput of CPC). Ordered immediate publication. Brasília, October 27, 2004. Judge GILMAR MENDES Relater (AI nº 441821/ SC. Rel. Min. GILMAR MENDES, DJ 11/30/2004, p. 0050). (Words underscored for emphasis).

'Only a petition signed with a manuscript signature previously by an attorney at law is recognized as valid. Precedents. Appeal dismissed.' (RMS 24257 AgR/DF, Rel. Min. ELLEN GRACIE, DJ 10/11/2002, p. 0032).'

On account of this reasoning, I DISMISS the extraordinary appeal.

The Federal Union alleges that the submission of an extraordinary appeal through a photocopy is authorized by article 24 of Statute nº 10.522/02 and, in spite of it, instead of an accomplishment by copy, it should be considered as an appeal submitted with a digitalized signature of the attorney at law, a procedure undertaken to respond to the great number of law suits filed in special federal courts.

The appeal was accompanied by the principal court records.

This is the report.

APPEAL AND DECISION

COURT: **Supremo Tribunal Federal**

DATE OF DECISION: **17 November 2005**

PANEL OF JUDGES: **First Panel**

APPEAL Nº: **564.765-6 – RIO DE JANEIRO**

Opinion

Judge Sepúlveda Pertence (Relater)

The decision that denied the extraordinary appeal must be sustained.

Surely, the use of electronic means in procedural filings has increased. However, the use of technological media is not exempt from regulation.

In some statutes it is possible to identify some provisions relating to this subject, e.g., Statute nº 9.800/99 – that regulates the use of facsimile devices for the transmission of procedural filings - and article 8th, § 2nd of Statute nº 10.259/2001 (Courts are allowed to accomplish judicial notifications and filing of complaint briefs through electronic media).

The Supremo Tribunal Federal has enacted a number of resolutions in order to make the use of technological resources possible: Resolution nº 179/99 prescribed rules for the use of data and image transmission by facsimile or similar process in Court filings in accordance with Statute nº 9.800/99; Resolution nº 287/04 established the use of e-mail in procedural filings; at last, Resolution nº 293/04 established the use of an electronic signature, an instrument similar to that one adopted by the attorney at law that subscribed the extraordinary appeal. However, this resolution establishes criteria for qualification for judges interested in such a process and the appointment of authorized personnel to handle electronic signatures; every time each electronic signature is used, it must be registered in a database in connection with the clerk who uses it; such a step is necessary in order to clarify any unlawful use of the digitalized signature.

A public key infrastructure was created for the federal Brazilian public service under the name of 'Infra-Estrutura de Chaves Públicas Brasileira – ICP-Brasil' by Medida Provisória nº 2.200/2001 'in order to ensure the authenticity, the integrity and judicial validity of electronic documents and the supporting applications that use digital certificates as well as the accomplishment of safe electronic transactions'.

Instituto Nacional de Tecnologia da Informação (ITI) is responsible for issuing digital certificates at the present time.

The document submitted is not a digital certification nor a printed version of a digital document protected by a digital certificate; it is a mere non-regulated electronic signature whose authenticity is impossible to be confirmed without the help of a forensic expert.

The need for regulating the use of a digitalized signature is not a mere procedural formalism, but a reasonable requisite in order to avoid acts whose liability would be impossible to be disclosed.

This exception was adopted at the decision held by the First Panel (RMS nº 24.257, 08.13.2002). As it is stated in the opinion of Judge Ellen Gracie:

> '...whenever possible, the delivery of Justice should not only keep up with modern standards but also be on top of modernity. However, to promote juridical safeguards some media relating to informatics and general automation should be normalized before put into operation. This has not happened yet with the digitalized signature.'

In the same way, e.g., AI nº 179.709-AgR, 05.14.1996, First Panel, Judge Gallotti and RE nº 263.570-AgR, 04.23.2002, Second Panel, Judge Néri.

My opinion: I dismiss the appeal.

Dissenting Opinion

Judge Marco Aurélio

> "Mr Chief Justice, I request permission to maintain my defeated opinion. I accept such use because this Court has made flexible other articles. The digital signature is an example".

Mr Judge Sepúlveda Pertence (Chief Justice and Relater) –

> "But regulamented – I am not sure of this word – is it 'regulated? Perhaps not?"

Mr Judge Marco Aurélio:

"By this very Court, not by a statute. Proceedings were put at ease since even a declaration of authenticity of a document handled by an attorney at law is neglected. So, I cannot be sure if it is either a copy of the original document or a signature that is really digital."

Mr Judge Sepúlveda Pertence (Chief Justice and Relater) –

> "It is in fact a mechanical signature without any data of its registration in accordance with the law."

Mr Judge Marco Aurélio:

> "Yes. The party submitted an appeal to the Court against a decision. So, taking into consideration the great number of suites filed against the Federal Union, I request permission to accept the claim."

Opinion-examination – Concurring dated 14 February 2006

Judge Cezar Peluso

It is a question related to a petition of appeal signed either by a digital signature, or by a digitalized one or even by an electronic signature.

After considering the benefits and inconveniences regarding the use of such electronic medium in judicial proceedings, in accordance with the tendency that points towards a less formal legal process, I think that the matter should be considered only after its acceptance into law, because it could provide reasonable authenticity - even an authenticity founded on presumption – there are risks of serious frauds against the party whose petition is presented before the Court. This fact might occur because such frauds would be difficult to be noticed immediately by the aggrieved party who would not protest on time and would not be able to obtain the help of a forensic expert due to the principle of preclusion that prevents any further procedural measures to be taken to seek a legal remedy.

For the sake of requirements of justice and the common interests of the parties, it is not advisable to take such a risk even if the possibility of damage is remote. I agree with the Relater's opinion and pay my respects to Judge Marco Aurélio.