CASE TRANSLATION: HUNGARY

CASE CITATION:
**BH (Court Decisions) 2006/324**

NAME AND LEVEL OF COURT:
**A Magyar Köztársaság Legfelsőbb Bíróságának (Supreme Court)**

*Electronic documents; identifiable signature; unsigned e-mail; legal effect; requirement for an advanced electronic signature*

**A request for a press correction must be based on electronic documents with an identifiable signature attached in accordance with the relevant laws. An unsigned e-mail does not have legal effect [Section 196 of Act III of 1952; Section 4 of Act XXXV of 2001].**

The defendant published the following statement on page 6 of the 19 April 2005 issue of the periodical edited by the defendant: "We inform the citizens of D. city and all relevant organizations that according to the effective statutes of MESZ, the D. Department of MESZ is not an individual legal entity; therefore, it is not and has never been duly authorized to act on its own or to make declarations in consumer protection or other administrative cases concerning citizens. With respect to the aforesaid, any recent or future declaration made by the D. Department of MESZ shall be deemed as invalid and shall be ignored. 'VCSM Kft. in D.'"

Upon the publication of the statement, MESZ as plaintiff sent a request by e-mail via its D. Department for a correction of the relevant claims of the statement. According to the request, MESZ had never stated that D. Department is an individual legal entity. However, it was entitled to act upon the plaintiff's authorization in the interests of the consumers of D. and was registered by the notary of the city accordingly. The request indicated the date and named the plaintiff's D. Department as petitioner and President Dr. P. P. as a natural person and representative 'authorized by a power of attorney', but the e-mail did not include the signature of the organization or that of the president.

The defendant did not comply with this request, so the plaintiff requested in its statement of claims that the defendant be obliged to publish the correction as worded by the plaintiff.

The defendant requested the rejection of the statement of claims. In its view, a local unit without a legal entity cannot make legal declarations and therefore may not request a correction.

In its judgment, the court of first instance obliged the defendant to publish the correction to the defined extent, but rejected the plaintiff's further claims relating to the correction of the statements included in the 'What it is behind the statement' article. According to the justification, the article contained statements specifically in connection with the plaintiff's D. Department; therefore, the plaintiff's D. Department was entitled to request the correction. The authorization provided by MESZ also related to this. Since the defendant failed to prove that the statements in question were true, the defendant was obliged to publish the correction.

The second instance court, acting upon the defendant's appeal, without affecting the provisions of the first instance judgment that were not appealed, reversed the provisions that were the subject of the appeal and rejected the entire claim. In its justification, the court explained that in press correction litigation, courts examine *ex officio* whether a request for correction meets the requirements set forth in Section 342 (1) of Act III of 1952 ('Civil Procedural Code'), i.e. if it is made in writing. According Section 38 (2) of the decree on the enforcement of the Civil Code and Section 4 (1) of Act XXXV of 2001 on Electronic Signature, electronic documents signed by advanced electronic signatures shall be deemed as documents in writing. Advanced electronic signatures are electronic signatures that are uniquely linked to and thereby identify the signatory. The plaintiff's request by e-mail for correction did not meet this requirement of written form. Referring to court practice regarding null and void agreements, the court held that adjudicating grounds for nullity *ex officio* does not violate Section 164 (2) of the Civil Procedural Code if the court, in the course of

establishing the facts, takes other facts into consideration than those presented by the parties. Therefore, the second instance court could adjudicate *ex officio* that the plaintiff failed to meet the statutory requirements for filing a request for correction in writing within the deadline. The claim was therefore rejected.

The plaintiff then filed a request for revision in order to repeal the final and binding judgment and to sustain the first instance judgment. In its view, the final and binding judgment violated the procedural and substantial provisions on press correction. According to Section 342 (1) of the Civil Procedural Code, press corrections must be requested in writing within 30 days from the publication. However, the Civil Procedural Code does not include any definition regarding criteria of written form. Section 38 of the decree on the enforcement of the Civil Code includes contract law provisions when defining the formal criteria of the written agreements. However, contract law provisions are not applicable to press correction procedures. Since e-mails also mean the transformation of writing created with letters to electronic signs and then the retransformation to letters, in a similar way of communicating by telegram or facsimile transmission, communication by e-mail shall be considered as statements or requests made in writing, in a similar way as statements with same contents sent by telegram or facsimile transmission. In this case, the provisions of Act XXXV of 2001 on Electronic Signature are also not applicable because they exclusively cover cases where law prescribes the written form in special legal relationships. However, a press correction request does not constitute contractual relationship. Since in this case the contents of the press correction request were not disputed, an electronic signature was not required.

The plaintiff pointed out that the sender of the message was identifiable by the IP address indicated on the request. The defendant has never disputed during the procedure that the plaintiff sent the request included in the e-mail. Therefore, the court was not entitled to examine the authenticity of the private document according to Section 197 (1) of the Civil Procedural Code, since no dispute had arisen in this respect.

In its counter request, the defendant requested that the court sustain the final and binding judgment.

Based on the reasons set forth in the request for correction, the final and binding judgment is not unlawful.

Section 79 (1) of Act IV of 1959 (Civil Code) sets forth that if a daily newspaper, magazine (periodical), radio station, television channel, or news service publishes or disseminates false facts or distorts true facts about a person, the person affected shall be entitled to request, in addition to other actions provided by law, the publication of a statement to identify the false or distorted facts and indicate the true facts (correction).

According to Section 85 (1) of the Civil Code, inherent rights may only be enforced personally.

According to Section 342 (1) of the Civil Procedural Code, press corrections must be requested from the press in writing within 30 days of publication of the statement.

Based on the above provisions, due to false statements, the injured party may enforce his or her claim for a press correction personally and in writing (Point I. of Standpoint 13 of the Civil Department of the Hungarian Supreme Court).

According to Section 124 of the Civil Procedural Code, the court must examine the statement of claims within the framework of the laws applicable to the relevant claim, and shall take all necessary measures to ensure that the claim can be settled at a single hearing.

According to Section 343 (4) of the Civil Procedural Code, the statement of claim must expressly specify the contents of the press correction, contain proof that the plaintiff made the request for press correction within the legal deadline, and – if the case concerns a daily newspaper or magazine (periodical) – the issue that contains the contested allegation must be attached.

According to these provisions (without respect to the court practice applicable in case of null and void agreements), in press correction litigation the court will examine whether the requirements specified above for initiating legal action are met, i.e. if the plaintiff requested a press correction in writing within thirty days from the publication of the statement.

The statutory requirement for written form is a guarantee in terms of the statement's content and whether the statement is made by the entitled party. Therefore, if the law requires written form and this is not met, the legal consequences cannot be ignored, even if the will and identity of the person making the statement can be concluded from other circumstances.

A written declaration is deemed as made by the entitled party if it is signed by him or her. It is required to sign documents containing a declaration even for simple documents with no formal requirements.

 

Therefore, the competent courts had to examine whether the e-mail request for press correction was signed by the plaintiff and indicated that they were the issuer of the document (or its legal representative), i.e. if the request meets the minimum requirements for written form in case of simple documents.

According to the facts, which are not disputed by the plaintiff, the request was not signed. Therefore, without the signature, the request did not meet the statutory requirements for simple documents.

With respect to electronic documents, the requirements for written form shall be deemed met if they comply with the provisions of Act XXXV of 2001 on Electronic Signature (Electronic Signature Act). Section 4 (1) of this act stipulates that if written form is required by law for any legal relationships other than those defined in Subsections (2)-(4) of Section 3, electronic documents attached with electronic signatures shall also be sufficient to satisfy these criteria if signed by advanced electronic signatures. This provision applies not only to contractual relationships, but to all cases where law requires a declaration to be in written form.

Section 342 of the Civil Procedural Code requires written form for press correction requests. The correction obligation of the press is established by such written request.

If a press correction is requested in an electronic document, Section 4 (1) of the Electronic Signature Act applies. Therefore, notwithstanding the fact that Section 38 of the decree on the enforcement of the Civil Code (referenced in the final and binding judgment) interprets the formal requirement of electronic documents in respect of contractual relationships, a press correction requested in electronic documents complies with the statutory requirements of written form only if an advanced electronic signature is attached. With respect to private documents with full probative force, Section 196 (1) f) sets a similar requirement.

Since the plaintiff's press correction request not only lacked an advanced electronic signature, but any signature at all, it did not comply with the requirements of written form.

The plaintiff's reasoning that the sender of an e-mail can be identified based on the IP address even if the e-mail is not signed, could not be taken into consideration. Government decree no. 184/2005 (IX. 13.) on management of telecommunication identifiers and addresses (távközlési szám és címgazdálkodás) and government regulation No. 75/2000 (V. 31.) formerly effective on the same topic, does not include any provisions on formal requirements for written form set forth in the Civil Procedural Code and the Electronic Signature Act.

As a consequence of the aforesaid, the final and binding judgment properly concluded that the plaintiff's press correction request did not meet the requirement of written form. Therefore, the court duly rejected the plaintiff's claim.

With respect to the above, based on Section 275 (3) of the Civil Procedural Code the Supreme Court of Hungary sustained the final and binding judgment. (Legf. Bír. Pfv. IV. 20.002/2006. sz.)