

**Case C-302/23 [Piekiewicz]<sup>i</sup>**

**Request for a preliminary ruling**

**Date lodged:**

10 May 2023

**Referring court:**

Sąd Rejonowy Katowice – Wschód w Katowicach (Poland)

**Date of the decision to refer:**

28 April 2023

**Applicant:**

M. J.

**Defendant:**

C. J.

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...

ORDER

28 April 2023

The Sąd Rejonowy Katowice – Wschód w Katowicach, VII Wydział Gospodarczy  
(District Court, Katowice-East, Katowice, Seventh Commercial Division)

...

following consideration ...

in closed session

of the action brought by M. J.

against C. J.

<sup>i</sup> This case has been given a fictitious name which does not correspond to the real name of either of the parties to the proceedings.

concerning an enforcement order

in relation to an application by M. J. for the exclusion of an officer of justice (Referendarz Sądowy)

*makes the following order:*

I.

the following question is referred to the Court of Justice of the European Union, pursuant to Article 267 of the Treaty on the Functioning of the European Union:

***Must Article 2(1) and (3) of Regulation (EU) No (...) [910/2014] of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ 2014 L 257, p. 73), in conjunction with Article 25(1) and (2) thereof, and recitals 12, 13, 18, 21, 22 and 49 thereof, be interpreted as meaning that a court of a Member State is obliged to accept a procedural document lodged with that court and signed with an electronic signature, as referred to in Article 3(10) of the regulation, where the national law of the Member State does not provide for any possibility of lodging procedural documents with the court by means of an electronic signature other than through an ICT system?;***

II. Proceedings are stayed pursuant to Article 177(3<sup>1</sup>) of the Code of Civil Procedure pending an answer to the question set out in paragraph I.

...

## GROUNDS

***Request for a preliminary ruling***

***Parties to the procedure***

(a)

applicant: M. J., ...

(b)

defendant: C. J., ...

...

I.

***Facts of the case, the procedure in, and subject matter of, the main proceedings.***

(1)

The applicant M. J. is a trader and a creditor of the defendant C. J.

(2)

On 28 November 2022, the applicant lodged with the Sąd Rejonowy Katowice – Wschód w Katowicach an application for an enforcement order to be issued against the defendant's spouse, B. J., in order to carry out enforcement against immovable property forming part of the spouses' community of property. The application was sent by e-mail to the court's email address. The application was not provided with a handwritten signature, but was signed electronically with a trusted signature correlated to the platform known as (...) [(‘elektroniczna platforma usług administracji publicznej’)] (‘electronic platform for public administration services’). It is an ICT system in which public institutions make services available through a single access point on the Internet. The application was also accompanied by an application for exemption from court costs.

(3)

On 30 December 2022, the officer of justice examining the application requested the applicant to remedy formal defects in the documents inter alia by submitting an official form, signed by hand, including details of family status, assets, income [and] sources of livelihood, within one week from the date of delivery of the request, otherwise the application for exemption from court costs would be returned.

(4)

On 21 January 2023, the applicant sent a declaration of family status, assets, income and sources of livelihood to the court's email address. He signed that declaration with a trusted electronic signature correlated to the platform (...).

(5)

By order of 8 February 2023, the officer of justice returned the application for exemption from court costs on account of the failure to remedy formal deficiencies within the time limit, including, primarily, the failure to sign the application by hand.

(6)

On 4 March 2023, the applicant sent to the court's email address an application for exclusion of the officer of justice from hearing the case, together with an application for the initiation of disciplinary proceedings against him. On that occasion too, the application was signed electronically with a trusted signature. In the grounds for the application, the applicant stated that there were serious doubts as to the officer of justice's lack of impartiality in hearing the case. In the view the

applicant, the officer of justice manifestly infringes EU law by refusing to accept a document provided with an electronic signature sent to the court's email address. The applicant considers that the officer of justice in particular infringes Article 25(1) and (2) of Regulation (EU) No ... [910/2014] of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC ('the eIDAS Regulation').

(7)

In the view of the applicant, the officer of justice is not impartial in hearing the case because he fails to comply with the principle of the primacy of EU law, which is well-established in the case-law of the Court of Justice of the European Union ... The applicant considers that the abovementioned circumstance is influenced by the political situation in Poland and the administration of justice by certain registrars nominated by the contested National Council of the Judiciary. In addition, the principle of primacy of EU law has recently been called into question in Poland and the applicant is a politically active person. The applicant further pointed out that the officer of justice had unlawfully rejected the application and thereby made an unauthorised political declaration.

(8)

The applicant argued that in court proceedings in the territory of the European Union an electronic signature must also be honoured by courts in Poland since Community law takes precedence over national law. An electronic signature cannot be denied legal effects and admissibility as evidence in legal proceedings solely on the grounds that it is in an electronic form or that it does not meet the requirements for qualified electronic signatures, as is clear from Article 25(1) of [eIDAS] Regulation ...

(9)

All the documents which the applicant lodged at the court's email address were printed off and added to the file by the court staff.

## **II. EU law relevant to the answer**

10) *[eIDAS] Regulation ...*

*recital 12:* One of the objectives of this Regulation is to remove existing barriers to the cross-border use of electronic identification means used in the Member States to authenticate, for at least public services. This Regulation does not aim to intervene with regard to electronic identity management systems and related infrastructures established in Member States. The aim of this Regulation is to ensure that for access to cross-border online services offered by Member States, secure electronic identification and authentication is possible.

**recital 13:** Member States should remain free to use or to introduce means for the purposes of electronic identification for accessing online services. They should also be able to decide whether to involve the private sector in the provision of those means. Member States should not be obliged to notify their electronic identification schemes to the Commission. The choice to notify the Commission of all, some or none of the electronic identification schemes used at national level to access at least public online services or specific services is up to Member States.

**recital 18:** This Regulation should provide for the liability of the notifying Member State, the party issuing the electronic identification means and the party operating the authentication procedure for failure to comply with the relevant obligations under this Regulation. However, this Regulation should be applied in accordance with national rules on liability. Therefore, it does not affect those national rules on, for example, definition of damages or relevant applicable procedural rules, including the burden of proof.

**recital 21:** This Regulation should also establish a general legal framework for the use of trust services. However, it should not create a general obligation to use them or to install an access point for all existing trust services. In particular, it should not cover the provision of services used exclusively within closed systems between a defined set of participants, which have no effect on third parties. For example, systems set up in businesses or public administrations to manage internal procedures making use of trust services should not be subject to the requirements of this Regulation. Only trust services provided to the public having effects on third parties should meet the requirements laid down in the Regulation. Neither should this Regulation cover aspects related to the conclusion and validity of contracts or other legal obligations where there are requirements as regards form laid down by national or Union law. In addition, it should not affect national form requirements pertaining to public registers, in particular commercial and land registers.

**recital 22:** In order to contribute to their general cross-border use, it should be possible to use trust services as evidence in legal proceedings in all Member States. It is for the national law to define the legal effect of trust services, except if otherwise provided in this Regulation.

**recital 49:** This Regulation should establish the principle that an electronic signature should not be denied legal effect on the grounds that it is in an electronic form or that it does not meet the requirements of the qualified electronic signature. However, it is for national law to define the legal effect of electronic signatures, except for the requirements provided for in this Regulation according to which a qualified electronic signature should have the equivalent legal effect of a handwritten signature.

**Article 2(1):** This Regulation applies to electronic identification schemes that have been notified by a Member State, and to trust service providers that are established in the Union.

**Article 2(3):** This Regulation does not affect national or Union law related to the conclusion and validity of contracts or other legal or procedural obligations relating to form.

**Article 3(10):** For the purposes of this Regulation, the following definitions apply: (...) ‘electronic signature’ means data in electronic form which is attached to or logically associated with other data in electronic form and which is used by the signatory to sign;

**Article 25(1):** An electronic signature shall not be denied legal effect and admissibility as evidence in legal proceedings solely on the grounds that it is in an electronic form or that it does not meet the requirements for qualified electronic signatures.

**Article 25(2):** A qualified electronic signature shall have the equivalent legal effect of a handwritten signature.

### **III. National law and case-law relevant to the answer**

(11) *Ustawa z dnia 17 listopada 1964 r. Kodeks postępowania cywilnego (Law of 17 November 1964 establishing the Code of Civil Procedure) (Dz.U.2021.1805, consolidated text of 2021 October 2004):*

**Article 126(1)(6):** Every procedural document must contain: the signature of the party concerned or his or her legal or authorised representative.

**Article 126(5):** A procedural document lodged through an ICT system shall bear a qualified electronic signature, a trusted signature or a personal signature.

**Article 125(2)(1):** Unless a special provision so provides or an option has been exercised to lodge procedural documents through an ICT system, procedural documents in the case shall be lodged only through an ICT system. Documents not lodged through that system shall not produce the legal effects which the Law attaches to the lodging of a document with the court, about which the court shall notify the person lodging the document.

**Article 125(2)(1a):** Opting to lodge procedural documents through an ICT system and the continued lodging of such documents through an ICT system shall be permissible if, for technical reasons attributable to the court, this is possible.

(12) *Ustawa z dnia 17 lutego 2005 r. o informatyzacji działalności podmiotów realizujących zadania publiczne (Law of 17 February 2005 on the computerisation of the activities of entities performing public tasks) (Dz-U.2023.57, consolidated text of 9 January 2023):*

**Article 3(13):** For the purposes of this Law (...) electronic platform of public administration services means an ICT system in which public institutions make services available through a single access point on the Internet.

**Article 3(14a):** For the purposes of this Law (...) trusted signature means an electronic signature, the authenticity and integrity of which are ensured by means of an electronic seal of the minister competent for computerisation, containing: (a) data identifying the person concerned, established on the basis of electronic identification means issued in the scheme as referred to in Article 20aa(1), including: – first name(s). – surname, – PESEL number [the Polish residence identification number], (b) the identifier of the electronic identification means used to submit it, and (c) the time of its submission;

13) ***Resolution of the Sąd Najwyższy of 23 May 2012, file reference: III CZP 9/12:***

1.

‘The lodging of an appeal by electronic means shall only be admissible if a special provision so provides (Article 125(2); now Article 125(2<sup>1</sup>) of the Code of Civil Procedure).

2.

A printout of an inadmissible appeal lodged by electronic means may be treated as an appeal not lodged by such means if the lack of a signature is remedied (Article 130(1) of the Code of Civil Procedure, in conjunction with Article 126(1)(4) thereof); the date on which this appeal is lodged with the court shall then be the date on which the printout is made (Article 130(3) of the Code of Civil Procedure)’.

***IV. Reasons why the court of first instance referred the question for a preliminary ruling***

(14) The present proceedings concern consideration of an application for the exclusion of an officer of justice who, when examining an application for an enforcement order, requested the applicant to remedy a formal defect in the application for exemption from court costs by signing it. The applicant, however, takes the position that it is not necessary to sign the application with a ‘handwritten’ signature since the [eIDAS] Regulation ... allows a document signed with an electronic signature to be lodged with a court. The application for the exclusion of the officer of justice was also only provided with an electronic signature. Thus, the dispute in the present case essentially concerns issues of law, and the correct interpretation of the ... [eIDAS] Regulation ... is crucial as to whether the application for the exclusion of the officer of justice should be accepted and moved forward or whether it should be deemed to contain a formal defect and a request to remedy it is justified. The correct interpretation of the ... [eIDAS] Regulation ... is also relevant to the possibility of lodging any procedural

documents lodged with a court where they have been provided with an electronic signature rather than a handwritten signature.

(15) The Court of Justice's answer to this question is relevant to the principle of uniformity of EU law. EU law must be applied uniformly in its entirety in all Member States. A uniform legal order in all Member States is one of the key values of EU law.

(16) In Poland, most courts do not apply the ... [eIDAS] Regulation ... as regards the possibility of lodging documents with the courts signed with an electronic signature, advanced electronic signature or qualified electronic signature. This appears to have its origin primarily in the Code of Civil Procedure, which makes the possibility of lodging a document signed with an electronic, trusted or personal signature conditional on the existence of an ICT system which enables that type of documents to be lodged with the courts (Article 126(5) of the Code of Civil Procedure). The referring court also does not have such a system. In Article 125(2)(1a) of the Code of Civil Procedure, the Polish legislature explicitly states that the court concerned must have an ICT system for it to be possible to lodge documents through it.

(17) The well-established case-law of the Polish courts and the practice which has existed for years demonstrate that only documents signed with a 'handwritten' signature are accepted in Poland. This relates to documents lodged in ordinary civil proceedings. Certain other proceedings provide for the possibility of lodging documents electronically, such as, for example, electronic writ-of-payment proceedings and bankruptcy proceedings. Such a position was taken primarily by the Sąd Najwyższy in its resolution of 23 May 2012, file ref. III CZP 9/12. That resolution, however, was adopted on the basis of the law as it stood before the entry into force of the ... [eIDAS] Regulation ...

(18) Article 126(1)(6) of the Code of Civil Procedure, although stating that every document must contain the signature of the party concerned, does not specify whether that signature may take a form other than that of a 'handwritten' signature. It is only for the last few years that the national legislature has, in Article 126(5) of the Code of Civil Procedure, provided for the possibility of lodging a document signed electronically, provided that there is an ICT system designed for that purpose. In that regard, however, it must be emphasised that the requirement relating to the signing of a document by hand applies only to procedural documents. As regards all other documents which are used in the course of court proceedings (primarily as evidence), they are admitted to the material of the case under the ... [eIDAS] Regulation ... and the effects thereof are assessed in accordance with national law.

(19) However, it follows from Article 25(1) ... [eIDAS] Regulation ... that an electronic signature cannot be discriminated against and denied legal effect solely on the grounds that it is in an electronic form or that it does not meet the requirements for qualified electronic signatures. At the same time, that provision



does not specify what legal effect that signature is intended to have. The first sentence of recital 49 of... the [eIDAS] Regulation ...also indicates that an electronic signature cannot be discriminated against on the grounds that it is an electronic signature.

(20) The referring court considers that the legal effect of the electronic signature was set out in particular in recitals 22 and 49 of the [eIDAS] Regulation. In the view of the court, that effect is determined by national law. It is only with regard to qualified electronic signatures that the ... [eIDAS] Regulation ... states that that signature is to be equal in effect to a handwritten signature.

(21) As explained above, the Polish Code of Civil Procedure allows procedural documents provided with an electronic signature (qualified, trusted, personal) to be lodged only if the court has an appropriate ICT system. The referring court considers that it should be inferred from the above that since the court does not have an ICT system, it is not obliged to accept a procedural document signed electronically. Such a document lodged outside an ICT system is vitiated by a formal defect in the form of an incorrect signature.

(22) Nevertheless, the court considers that account should also be taken of the other recitals of the ... [eIDAS] Regulation ..., according to which the ... [eIDAS] Regulation ... seeks to enhance trust in electronic transactions in the internal market between citizens, businesses and public authorities. In the view of the court, it is therefore also possible to interpret the ... [eIDAS] Regulation ... as meaning that there is an obligation to accept a document signed electronically on account of the unification of ICT systems in the Member States and non-discrimination against them.

(23) In this context, it may be relevant that Poland has not notified the Commission of any electronic scheme under ... [eIDAS] Regulation ... In particular, the (...) scheme correlated with the trusted signature, through which the applicant lodged the document, has not been notified to this day. However, it appears to follow from Article 2(1) and (3) ... [eIDAS] Regulation ... that the ... [eIDAS] Regulation ... only applies to electronic identification schemes which have been notified by a Member State. (...) [that] does not affect national or Union law related to the conclusion and validity of contracts or procedural obligations.

(24) In the view of the referring court, the correct interpretation of the ... [eIDAS] Regulation ... leads to the conclusion that the ... regulation ... merely introduces tools by which technological facilities may be introduced, but does not impose an obligation to apply them and, in particular, does not supplant national measures adopted with regard, in particular, to the legal effects of lodged documents.

(25) It may be that this interpretation does not accelerate the processes related to the development of innovation in judicial proceedings, but it appears that the

intention of the EU legislature was not to impose on the Member States the adoption of specific measures in judicial procedures relating to the use of electronic signatures. This seems to due mainly to the technological capabilities of a particular Member State.

(26) A different interpretation would lead to the conclusion that, irrespective of the existence of an ICT system and the notification thereof to the Commission, the courts of all Member States of the European Union must uniformly accept procedural documents signed electronically. Such an interpretation would lead to uniformity as regards the lodging of procedural documents with all the courts of all Member States.

(27) The Court of Justice’s answer will make it possible to interpret national law in a manner consistent with EU law and at the same time determine whether, in the case pending before the national court, it is necessary to accept an applicant’s document relating to the exclusion of an officer of justice, or whether it is necessary to request the applicant to remedy a formal defect in the document by signing it with his handwritten signature.

...

#### **INSTRUCTION**

1.

... [issue of delivery of a copy of the order]

2.

... [issue of anonymisation]

3.

... [issue of sending the case file]

4.

... [remaining procedural issue]

K., 28 April 2023

...