

ELECTRONIC DOCUMENT STORAGE: LEGAL, TECHNICAL AND ECONOMIC ASPECTS

by

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The purpose of this text is to explain contemporary problems of electronic document storage inside the e-government and e-justice in the Czech Republic. Main part of our paper is dedicated to documents, internal documents, legal documents and to ways of their regulation by the Czech law. There will be additional analysis about documents in paper form, their disadvantages and life situations they are used by Czech state power bodies in. In contrary, we will consider assets and risks of dematerialized documents which are digital documents having no material form. One document may be in paper and digital form at the same time. We consider that to be current important opportunity for the public administration and justice. In later parts of the paper we will focus on assets, risks and on creator or creators of the documents. There will also be mentioned foreign experience in this area. Substantial part is to analyze areas where we use dematerialized documents in the present legal state. Czech law system already have legal institutes connected with electronic documents and their storage, for example electronic mark and digital signature. We will also attend to perspectives of legal regulation into the future.

DOCUMENTS IN THEIR LEGAL SENSE OF THE WORD [1]

There are many different legal views on the concept “document” in Czech law. We will try to discuss the most important ones.

Czech legal informatics system ASPI contains word “dokument” (document in the Czech language) in the Czech legislative texts many times. While used in various lingual forms there are occurrences in 816 legally effective rules in the Czech Collection of Law and in 269 legally effective

treaties in the Czech Collection of International Treaties in the statutory text on 10th November 2006.

We can ask ourselves whether the document is a movable (an item in the sense of the Czech word “věc” defined by the Civil Code¹ No. 40/1964 Coll., in current statutory text, paragraphs no. 118 - 121) after digitalization and discarding or destroying? Document in a paper form is certainly a movable because it has its material substance and it is not usually qualified as an accessory of another movable. We stand for an opinion that the movable is no longer a movable from its destroying on because it lost the physical form and only exists as a data (group of zeros and ones) and document in an information system or on a computer.

Besides that there is a question if the document can be qualified as a creative work of an author (in the intellectual property law's sense of the word). This area is in the Czech Republic regulated by Author Act No. 121/2000 Coll., in current statutory text, in its § 2. Some creative works existing inside the public administration and justice are works qualified as an official publication and therefore they are not protected according to the Czech Author Act. Official publications are primarily documents created by law enforcement agencies or public administration agencies. Official publications in our opinion are not documents from procedure parties which are therefore subjects to intellectual property protection.

Document can be an act or an output of the act made by public administration agencies or by administration procedure parties according to Czech Administration Procedure Code.² There are used following concepts for documents: administrative action, acts of the parties or the public administration, papers and also directly document.

Document also may be an act or an output of the act made by the courts or civil procedure parties with respect to Czech Civil Procedure Code³ which is using concepts papers. We would be able to analogously find various uses of documents in other types of legal procedure (constitutional procedure, criminal procedure).

There is one substantial question coming to mind: is legal document the

¹ Civil Code No. 40/1964 Coll., in current statutory text, §§ 118 – 121.

² Compare Administration Procedure Code No. 500/2004 Coll., §§ 15 – 26, 36 – 38 and § 69 part 3.

³ Civil Procedure Code No. 99/1963 Coll., in current statutory text, §§ 36 – 58.

act of procedure party or state power body itself or the output of this act? Should legal documents be observed as a part of the substantive law or as a part of the procedural law? Or should we combine these two points of view? We will leave both answers for consideration of readers because we think it is not possible to answer this question without massive legal analysis.

Legal document can be a private document or an official document. It might be created according to various laws, the most used law in the Czech Republic is the Czech law, but there can exist documents created according to foreign law system, for example if they are issued abroad.

DOCUMENTS IN PRACTICE OF THE GOVERNMENT AND JUSTICE [2]

Creator of the legal document in practice of the government can be state power body (for example government decision issued by an administration office), natural person (eg. administrative action) or artificial person. Legal liability of documents is divided into general, individual and documents without legal binding.

Legal act is generally legally liable and as that it is the source of the law. Examples of legal act are the statutory act or international treaty. Internal normative act is an internal act of the public administration which is effective against more persons (both natural persons and artificial persons) who are not strictly defined, for example against all employees of agency subordinated to the Ministry of Finance. Internal individual act is an internal act of the public administration which is effective against one (or more) particular person (or persons) exactly defined in this act.

Factual act is an act inside the administration law having legal consequences. As an example of factual act, it is possible to mention act of a police officer or another security forces member that binds another subjects legally and the act is not the legal itself.

Another types of documents broadly used inside the public administration and justice are informational and educational documents used for internal purposes of its agencies. There may be also other types of documents, this list is not exhaustive, it is only demonstrational.

MATERIALIZED AND DEMATERIALIZED DOCUMENTS [3]

Materialized documents can be for example paper documents, paper documents certified by notary or documents recorded into protocol. In either case they may have only limited amount of copies. On the contrary dematerialized documents (documents in the electronic form) can have unlimited amounts of copies (except the case when copying is prohibited by the Author Act or any other legal rule, that means document which is not the subject to the official license). They are stored in data warehouses and information systems.

Dematerialized documents do not have legal binding in some cases. It includes digitalized text of court judgments and decisions that do not have legal binding but have only informative purpose. As financial instruments recorded in the register (shares etc.) or shareholder bills they are very widespread and legally effective.

In the Czech justice and public administration primary form of documents is written form. Even electronic (and digitally signed) acts are printed and filed on paper.

“BOTTLENECKS” AND WEAKNESSES OF CONTEMPORARY LEGAL REGULATION IN THE CZECH REPUBLIC [4]

Czech legal regulations do not save money by uncompromising dematerialization of documents in the public administration and justice. Millions of Czech Crowns are spent annually on postage, envelopes and many other obvious and hidden administrative costs removable by using electronic documents.

There is no strictly defined concept of effective cooperation among information systems and information technologies existing in state power bodies. We stand on opinion there should be an effective cooperation among courts, public prosecution offices, state administration agencies and self-government agencies (both regional and interest).

There are various exchange formats for transferring documents and other data between information systems, but they are not so widely used in the public administration. There is not any central data warehouse for information (and even personal data) and documents state and self-government works with.

Documents and data are duplicated many times inside the information systems. They take space on hardware and sometimes slow down the processes inside the public administration, especially when paper files are moved from one office to court or among two courts or two offices.

POSSIBLE SOLUTIONS [5]

The most logical solution of contemporary problems with lack of effectiveness in document management inside the public administration is placing all documents into the central data warehouse of the public administration. It would allow simple transferring of documents from one state power body to another or inside the same body to another geographical location. Users would be able to use sending of links inside information system or granting rights for part of the information system.

But there is one substantial question: who should be the administrator of this data warehouse? We suppose there are many possible answers for this question and it is not possible to proclaim some of them is the only one correct.

WHAT SHOULD THESE SOLUTIONS BRING TO OUR COUNTRY? [5.1]

- I. Unnecessary office work in public administration and justice would be removed.
- II. Waiting periods for documents among various state power bodies would become shorter.
- III. Government and justice would become more effective.
- IV. Tracking of document manipulation would become easier (by the use of so called logs - that means records about edit operations and viewing of documents).

RISKS OF PROPOSED SOLUTION [5.2]

- I. Possible problems with obligatory personal data protection according to Personal Data Protection Act.⁴
- II. Need to adapt current legal regulation and possibility of new regulations which can be economically unusable.

⁴ Personal Data Protection Act No. 101/2000 Coll., in current statutory text.

SOLUTION USED IN FOREIGN COUNTRIES – AUSTRIA [5.3]

Governmental and judicial documents in Austria are digitalized into the central data warehouse. Notary, government offices and courts (along with other subjects) can input more documents into this data warehouse according to their legal practice. Further actions of public administration and justice are done with dematerialized form from central data warehouse. This solution was presented in May 2006 on a E-Justiz conference in Vienna.

POSSIBILITIES OF THE CURRENT LEGISLATION [6]

The Czech law regulates the digital signature and electronic mark along with clock stamp.⁵ Another normatively controlled area is information systems in the public administration.⁶ Information about activities of public administration in the Czech Republic are published on the Internet or sent by e-mail on request according to the Free Access To Information Act No. 106/1999 Coll.

The Czech Law does not regulate dematerialized documents in various areas of the government and judiciary activity. It is substantial to revise these areas and add new legal provisions to existing acts or even create new acts to manage these areas by law.

By adding these areas to the legal regulation, the every day activity of government and justice would become more effective.

DOCUMENTS WITH DIGITAL SIGNATURE AND ELECTRONIC MARK [7]

Digital signature marks the natural person (or the natural person as a statutory body of an artificial person). Electronic mark marks the moment of document receipt by the natural person or artificial person (even the state power body). It was added to Czech law by the amendatory act to Digital Signature Act No. 440/2004 Coll.

Digitally signed documents are legally liable and able to be ascribed (but it is obligatory to use guaranteed digital signature with qualified certificate).

⁵ See Digital Signature Act No. 227/2000 Coll., in current statutory text.

⁶ Compare Information Systems in the Public Administration Act No. 365/2000 Coll., in current statutory text.

Both technically and legally it is possible to sign decisions of justice and government with digital signature of natural persons making decisions as a member of court or public administration agency.

It is also allowed by Czech law to mark administrative actions or presentations (addressed to the court) by electronic mark at the moment they are received by the state power body - addressee. It uses the clock stamp to mark the moment of receipt.

FUTURE PERSPECTIVE OF LEGAL REGULATION [8]

We would like to emphasize that main goal for future of the Czech law should be to improve the current legal status of regulations connected to electronic documents and begin compulsory use of dematerialized (that means digital) versions of legal documents and internal documents used inside the public administration and justice.

We hope all parts of our state will become more effective by using electronic means of document storage inside the public administration and justice processes. Otherwise the Czech Republic would soon become delayed in using modern information technologies in legal life. Electronic versions of documents may become primary versions, not just auxiliary as they are today.

Legal documents should be stored in data warehouses as legally binding (not as informative text as they are provided to people for example by website of the Commercial Register).⁷ This legal status should be legally regulated.

RECAPITULATION [9]

Legal documents in a dematerialized form and their legal binding vary between private sphere and public sphere. People can freely use digital documents for making their contracts and their commercial activity. But there is not the regulation for massive use of electronic documents in formal procedures as civil procedure, administrative procedure etc. People currently have to provide many supplements for their submissions which can be provided in electronic form only with difficulties. We have an opinion that the change of legislation in this area is a must for future development of the Czech Republic.

⁷ See Ministry of Justice of the Czech Republic. The Commercial Register. Retrieved December 18, 2006, from <http://www.justice.cz/xqw/xervlet/insl/index?sysinf.@typ=or&sysinf.@strana=searchPerson>.

REFERENCES

- [1] Civil Code No. 40/1964 Coll., in current statutory text, paragraphs no. 118 – 121.
- [2] Civil Procedure Code No. 99/1963 Coll., in current statutory text.
- [3] Digital Signature Act No. 227/2000 Coll., in current statutory text.
- [4] Free Access To Information Act No. 106/1999 Coll., in current statutory text.
- [5] Information Systems in the Public Administration Act No. 365/2000 Coll., in current statutory text.
- [6] Ministry of Justice of the Czech Republic. The Commercial Register. Retrieved December 18, 2006, from <http://www.justice.cz/xqw/xervlet/insl/index?sysinf.@typ=or&sysinf.@strana=searchPerson>.
- [7] Personal Data Protection Act No. 101/2000 Coll., in current statutory text.