

CASE TRANSLATION: GREECE

CASE NAME:

1327/2001 – Payment Order

NAME AND LEVEL OF COURT:

Court of first Instance of Athens

PRESIDENT OF COURT (1 MEMBER):

P. Lyberopoulos

LAWYER PRESENT

(NO INDICATION OF WHICH PARTY)

I. Brellos

Summary

Personal computers. Meaning of electronic document. Evidential weight. The legislator has determined that it is the equivalent of a private (manuscript) document. Prerequisites of an e-mail function, according to common experience.

In the sending of a message by way of electronic mail, the sender's will is identified with his electronic address, which has the characteristics of a manuscript signature. The attested copy of an electronically sent message, which exists in the receiver's hard disc is a full proof that its contents come from its editor-sender, according to the provisions of article 445 Civil Procedure Code. The defectiveness of a message that has been sent directly refers to the traditional acts of forgery in the physical world. The burden of proof lies to whoever appeals that defectiveness. The payment order for a debt that comes from an agreement that was concluded by way of electronic mail was granted. The agreement is neither subject to a stamp charge, nor is it a recognition of the debt after the event. The electronic message does not need to be authenticated by the Revenue Department.

Decision of the court

I. An electronic document is defined as "any data created on the magnetic disc of a computer, which, after having being processed by the computer system, can be printed by means of the computer programme in a way that makes them readable by the human being, either on the computer screen or through the printer attached to the computer". Despite the fact that an electronic document does not constitute in reality the strict 'equivalent' of traditional paper-based

documents, especially because the electronic document, before being printed out, is not borne by a stable and durable medium, however it can be considered as an "intermediate form", that is legally equivalent to "private" documents, according to the Greek law.¹ According to common experience (common usages and practices), for the operation of e-mail as a means of communication over the Internet, besides the connection with an Internet Service Provider, the use of a specific password is also required, in order for each user to be identified in the system, either as a sender or a receiver of electronic messages. This password is, in fact, the user's electronic address (e-mail), as it is originally chosen by the user himself in such a way that the specific combination of letters, numbers or symbols (the password) only reflects to the user that has chosen it, and cannot be legally used by anyone else. The representation of the sender's address in the message makes his identity specific for the recipient of the message, so he cannot be confused with any other user of the same system, while his congruency with the content of the message is indisputable. For electronic mail to come under the rules of articles 443 and 444 Civil Procedure Code,² it is necessary to understand how it works, because this is not simply an electronic document that is saved in the software of a personal computer, or of a document that its representation is transferred by means of wireless or otherwise (e.g. facsimile transmission). The sending of the message leads to the congruency of the content of the message and of the sender, in such a way that the message cannot be transferable if it is not accompanied by the sender's electronic address and, of course, if there is no specific and existing receiver. The logical consequence is that in the

¹ S. Kousoulis, *Contemporary forms of paper transaction (Sygchrones morfes eggrafis synallagis)*, 1992, p. 138-142.

² Article 443 Civil Procedure Code: **Elements of private documents.** "A private document has conclusive power only when it has the manuscript signature of its editor or, instead of a signature, a mark that he (the editor) drew on the document

and is verified by a notary or any other public authority, which confirms that the mark is placed instead of the signature and that the editor declared that he cannot sign".

Article 444 Civil Procedure Code: **Official books of merchants and other professionals.** "The definition of private documents also contains
a) the books that merchants and professionals

are obliged to keep under commercial law or other statutes

b) the books that lawyers, notaries, doctors, pharmacists and nurses are obliged to keep under current statutes

c) photographic and cinematic representations, recordings and any other mechanical representation.

sending of a message by way of electronic mail, the sender's will is identified with his electronic address so it is technically possible for the recipient to receive it and, of course, the form or the layout of the mechanical representation of the content in the document are of less importance.

So, the determination of the electronic address in a unique manner from the user himself and its representation in every electronic message sent, is a proof of the editor's identity and, pro rata with what is defined for the traditional document in article 443 Civil Procedure Code, its mechanical representation in a document, according to article 444 paragraph 3 Civil Procedure Code, can be defined as a private document, with a conclusive power against its editor, because each user electronic address is unique, in that it is chosen by the sender himself, and has the characteristic of a manuscript signature, even though it does not have the traditional form of a signature. The above-mentioned are valid regardless of where the sender's electronic address appears in relation to the text that it accompanies when it appears on the screen of the computer, or its mechanical representation on paper; this follows because it is necessary to take into consideration that the authentication of the sender and the binding to his will of the content that is included in the electronic message are accomplished through the process previously described. This means that any text sent as an electronic message can only be accompanied with a specific electronic address in its entirety, no matter how the form is represented in a mechanical way and where it substantially differs from the traditional meaning of a document.

Thus, the attested copy of an electronically sent message, which exists in the hard disc of the recipient, is a full proof that its contents come from its editor-sender, according to in the provisions of article 445 Civil Procedure Code.

However, the way the system operates, as set out above, allows for a message to be sent by a person other than the person whose electronic mail address it is, without their approval. The defectiveness of such a message sent directly is similar to a traditional act of forgery, as described in articles 460 and sequential of the Civil Procedure Code. The burden of proof lies to whoever appeals that defectiveness, because the function of the electronic mail acts to guarantee its

credibility, and any possible malfunction does not originate from a system flaw but from a third party's intervention. According to the above-mentioned discussion, article 457 paragraph 4 Civil Procedure Code is defined narrowly in respect of the similarity between the content of the personal computer hard disc and its mechanical representation, because an electronic message is, for the recipient, an incoming message to his personal computer and, therefore, he can be liable for the validity of a copy of the message that he has received.

Furthermore, the form that is required in commercial transactions can be defined directly in law or it can be by agreement between the parties, and as a result, the above described function can hardly operate, so there is a need for legislative activity towards this direction. In respect of contracts that are not subject to form requirements, they may be concluded by means of electronic documents and, particularly, through the use of e-mail, either by filling in a standard (contract) form posted on a website, or by exchanging the respective intentions of the parties through an e-mail communication. Under these methods the contractual parties recognize that they are legally bound, precisely because there is no doubt of the identity of the actual sender and his intention to be bound.

As a result, where contracts are concluded by means of e-mail correspondence and are subject to Greek law, the intention of the contractual parties to be bound, can be proved by original copies of the exchanged messages that are contained in the computer's hard disc, that can be printed on paper and ratified by an attorney at law.

- II. The claimant asks the competent court to order the respondent to pay, through the special proceedings of a payment order,⁴ and in order for its demand to be proved, it submits the following documents: (1) A table of fees indebted to the claimant by the respondent in petition, legally translated into Greek, for respective services offered by the applicant from January 1999 to February 2000. At this time, the applicant company undertook to assist the correspondent company with lodging arrangements made in Prague, Czech Republic, for groups of Greek tourists that visited Prague and were sent by the correspondent company, in furtherance of a service

³ Article 457 Civil Procedure Code, paragraph 4: "The burden of proof for the validity, if doubted, of photographic or cinematic representations, recordings and any other mechanical representation, lies to anyone who presents and

invokes them".

⁴ The issuance of a payment order is subject to articles 623-634 of the Greek Civil Procedure Code. It refers to a special court proceedings initiated by written application of a party claiming payment of

a debt against another party, on the condition that the obligation of payment and the amount will be proved.

agreement that was orally concluded between the two companies in Prague. (2) An e-mail, dated 27 July 2000, 12:34 pm, legally translated into Greek, that the authorized representative of the correspondent company sent to the applicant, by which it recognized the debt that originated from their commercial agreement, in the sum of 42.760 DM, and the promise of payment of the amount due before August 15, 2000. As aforementioned, the e-mail was sent by the correspondent company through the electronic address@....gr to the applicant's CEO to the electronic address@.....cz. (3) The Official Journal of the Greek Government, Nr. 5269/22.7.1996, in which the minutes of the Board of Director, dated 1.7.1996, that authorizes the sender of the above e-mail as the authorized representative of the company, who has the power to represent and legally bind the company by himself alone. (4) An e-mail, dated 12 September 2000, 10:27 am, legally translated into Greek, which was sent from the same electronic address, and from the same authorized representative, where it confirmed its intention to pay its debt and repeated the same promise as in the first e-mail. (5) The applicant's out of court declaration, dated 24.10.2000, which was served as a writ of action in 25.10.2000, which proves that the applicant accepted the recognition of the debt and the correspondent's promise to pay and asked for the payment of 42.760 DM. (6) Copies of the official bulletin of the National Bank of Greece for the equivalence of Euro and drachmas with Deutsche Marks (German marks), which proves that 1 Euro=1,95583 DM, 1 Euro=340,75 drachmas and 1 DM=174,223 drachmas.

Furthermore, the e-mails that were sent are a resemblance of the data copied in the magnetic disc of the correspondent's computer. These data are resembled in a readable format, after being processed by the Central Processor Unit in a printer installed to the computer. In this way, the automatic transmission of the messages in two identical texts-messages, one that remains in the personal computer of the correspondent company-sender, and one that was sent in the personal computer of the applicant-recipient, was mechanically reassembled. As a result, the two aforementioned electronic mails were legally 'delivered' to the applicant and, according to the previously stated legal opinion, they constitute and come under the rules of private

documents, and provide full evidence, as defined in article 448 paragraph 2 of the Greek Civil Procedure Code.

So, consequently:

The e-mail dated 27.7.2000 was explicitly admitted by the applicant with the out of court declaration, dated 24.10.2000, and an agreement of acknowledgement of debt was concluded between the applicant and the correspondent (article 361 Greek Civil Code),⁵ where the correspondent acknowledged its debt against the applicant that originated from their commercial cooperation and promised its payment.

The object of the agreement, that was orally concluded in a foreign country, was for the provision of services offered by the applicant in the foreign country, and the respective payment agreed should be paid in the applicant's seat in the foreign country, and these elements make this transaction an international one. Therefore, the agreement that the applicant's payment would be made in currency is legally valid. When the payment is requested in Greece, the amount owed will be converted into (Greek) drachmas, taking into account the monetary parity that exists at the date of payment.⁶ Given the fact that the drachma was replaced by the Euro in 1 January 2002, the reimbursement of the above amount will be made in Euro.

The transactions between the applicant and the correspondent company are not subject to stamp charge, because this is an oral agreement concluded in a foreign country, and its object is the provision of services in a foreign country under payment also due in the foreign country. The acknowledgement of debt that followed is also not subject to stamp charge. Finally, there is no taxable income due from this electronic message, therefore it need not be authenticated by the Revenue Department, according to article 8 paragraph 16 Act 1882/1990.

With the above-mentioned out of court declaration, that was served on 25.10.2000, the applicant lodged a protest for a prompt payment of the debt, and the correspondent did not respond, although it had promised to fully pay its debt before the first 15 days of August, 2000; therefore, it came into obligor's default (Article 340 Greek Civil Code)⁷ and, since then, it also owes delayed payment interest (Article 345 Greek Civil Code).⁸

As a result, the application has been legally

⁵ Article 361 Civil Code: **Contractual obligation.** "For the creation or an amendment of an obligation that comes from a judicial act, a parties' agreement is only necessary if it is not differently defined in law".

⁶ According to articles 6 paragraph 1 act 5422/32 and articles 291 and 292 Greek Civil Code.

⁷ Article 340 Civil Code: **Obligor's default.** "The obligor of an overdue payment becomes delayed, if a previous judicial or out of court notification from the creditor occurs".

⁸ Article 345 Civil Code: **Delinquency in case of a monetary obligation.** "When it comes to a monetary obligation, the creditor in case of an

obligor's default has the right to demand the legal or agreed delayed payment interest, without being obliged to prove damages. If the creditor can prove damage, has the legal right to demand it as well, if it is not differently defined in law".

submitted, based on the above mentioned legal thinking and the articles 623-634 Civil Code Procedure and 361, 321, 324, 340, 345 Civil Code and article 6 paragraph 1 Act 5422/32, in combination to the articles 291 and 292 Civil Code, and it is completely proved by all the submitted documents, legally stamped and valid until the date of their stamping in 29.10.2000.

[The application is granted...]

Translation © Michael G. Rachavelias,
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