

CASE TRANSLATION: GREECE

Case citation:
Payment Order 5845/2013

Name and level of the court:
Court of First Instance of Athens

Greece; debt; electronic document; e-mail; e-mail address; burden of proof; forgery

Summary

Acknowledgement of a debt by e-mail. Issuance of a payment order. Definition of electronic document. An e-mail has a representation of the sender's address and a specific and existing receiver. The will of the sender of the e-mail sender is identified with his electronic address, and the form or the layout of the mechanical representation of the content in the document are of less importance. Function of an e-mail address as a manuscript signature. The legally 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. Forgery of a sent message. The electronic message does not need to be authenticated by the Revenue Department.

Payment Order 5845/2013

Court of First Instance of Athens

President of Court (1 member)

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".

So, an electronic document does not constitute in reality the strict "equivalent" of traditional paper-based documents, as they are described in the Civil Procedure Code, mainly because 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, due to their proximity, according to the legislator.¹

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

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 ISP provides this service via special software permanently installed by the user in his computer), 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) with the symbol "@" 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 of the 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

² Article 443 of the 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 of the Civil Procedure Code: Official books of merchants and other professionals. "1. The definition of private documents also contain

- 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.

Note: A second paragraph was added in article 444, in an attempt to define the term mechanical representation. According to this, 'Mechanical representation, under the meaning of paragraph 1, is any means that is used by a computer or a computer's memory in an electronic, magnetic or any other means, for recording, storage, production or reproduction of evidence that cannot be read directly, as well as any magnetic, electronic or other material on which any information, image, symbol or sound can be recorded, individually or in combination, as long as these means and materials are legally capable of proving facts of legal importance".

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 recipient. The logical consequence is that in the 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 is 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 as the traditional document in article 443 of the Civil Procedure Code, its mechanical representation in a document, in accordance with article 444 case c of the Civil Procedure Code, can be defined as a private document, with a conclusive power against its editor (combination of articles 443, 444, 445 Civil Procedure Code), 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.³ The above-mentioned determinations 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

³ This has also been held in Payment Order 1327/2001 Court of First instance of Athens, DEE 2001, p. 377, for a translation into English, see Case No. 1327/2001 – Payment Order, *Digital Evidence and Electronic Signature Law Review*, 3 (2006) 104 – 107; for a note, see Case note of Case number 1327/2001 – Payment Order from the Court of first instance of Athens, *Digital Evidence and Electronic Signature Law Review* 1 (2004) 83 – 86. See also Payment Order 1932/2011 Court of First instance of Athens, published in legal database NOMOS and EPOLD 4/2011 p. 482; for a translation into English and a commentary, see Payment Order 1932/2011, *Digital Evidence and Electronic Signature Law Review*, 10 (2013) 198 – 200.

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.⁴

Thus, the legally 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 of the Civil Procedure Code.⁵

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 flaw⁶ but from the intervention by a third party.

According to the above-mentioned discussion, article 457 paragraph 4 of the Civil Procedure Code⁷ 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.⁸

⁴ This has also been held in Payment Order 1327/2001.

⁵ Payment Order 1327/2001 Court of First instance of Athens, Court Of First Instance of Athens 6302/2004, Payment Order 1932/2011 Court of First Instance of Athens.

⁶ This conclusion is based on legal thinking that has been established in Greek case law, and the same conclusion is repeatedly used in many cases (see for example Court of First Instance of Athens 1963/2004, Payment Order 8444/2011). Unfortunately, the judge in this case does not cite any reference for this conclusion. Besides, it is already strongly supported that an electronic document that has a simple (not an advanced) electronic signature has full evidential power according to article 445 Code of Civil Procedure, as far as the origin of the editor's contents is concerned, and according to common experience, the security and certainty of the law that is served with a simple electronic signature is no less than that provided with a traditionally signed private document.

⁷ Article 457 of the 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".

⁸ Court of First Instance of Athens Payment Order 1327/2001, DEE 2001 (377), Court of First Instance of Athens Payment Order 6302/2004 Arm2005 (239), Court of First Instance of Athens 1963/2004, NOMOS.

Furthermore, in commercial contracts a form requirement is an obligation directly deriving from law or the parties' agreement, and as a result the above-mentioned mechanism does not work in this case, concluding of the necessity of a legislative intervention towards this direction. In other forms of contract, that are not subject to form requirements (as is the debt acknowledgement) may be concluded by means of electronic documents and, particularly, through the use of the Internet, by exchanging the respective intentions of the parties through a communication by e-mail. 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 messages exchanged that are contained in the computer's hard disc, that can be printed on paper and ratified by an attorney at law.⁹ [...]

II. The claimant asks the competent court to order the respondent to pay, through the special proceedings of a payment order,¹⁰ and in order for its demand to be proved, it submits the following documents: 1) An attested copy of an e-mail, dated 11 October 2012 (18:46:45), that the respondent person sent to the applicant-claimant. The e-mail was sent by the correspondent company, and especially its legal representative, through his electronic address m.@.com to the applicant's electronic address, and especially to the claimant's hotel manager (...@hotmail.com) by which it verified and recognized by the respondent, and she promised to pay to the applicant the amount due.

This e-mail that was sent is 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 and are capable of being printed out through a connected printer. In this

⁹ Court of First Instance of Athens Payment Order 1327/2001, *DEE 2001 (377)*, Court of First Instance of Athens Payment Order 6302/2004 *Arm2005 (239)*, Court of First Instance of Athens 1963/2004, *NOMOS*.

¹⁰ 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.

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 aforementioned electronic mail was legally 'delivered' to the applicant and, according to the previously stated legal opinion, it comes under the definition of the mechanical representation of the article 444 section c of the Civil Procedure Code and, consequently, it constitutes and comes under the rules of private documents originating from the editor, and provides full evidence for its contents, as defined in articles 445 and 448 paragraph 2 of the Greek Civil Procedure Code. 2) An attested copy of an e-mail, dated 11 October 2012 (17:59:41), that the applicant-claimant sent to the respondent person. The e-mail was sent by the applicant's electronic address, and especially by the claimant's hotel manager (...@hotmail.com) to the electronic address of the correspondent's company legal representative (m.@.com), which confirms the cause of the debt.

This aforementioned e-mail was legally 'delivered' to the respondent person, and according to the previously stated legal opinion, it comes under the definition of the rules of private documents originating from the editor, and provides full evidence for its contents, as defined in articles 445 and 448 paragraph 2 of the Greek Civil Procedure Code. (3) (4)..... (5) an attested copy of the applicant's out of court declaration, dated 19.12.2012, which was lawfully served as a writ of action. With the above-mentioned out of court declaration, the applicant lodged a protest for a payment (within two days) of the debt, and the correspondent did not respond nor paid any of the above mentioned amounts. (6) (7...).

As a result, the application has been legally submitted, based on the above-mentioned legal considerations and articles 623-634 of the Civil Code Procedure, and it is completely proved by all the submitted documents, legally stamped and valid.

[The application is granted...]

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Michael G. Rachavelias is a member of the editorial board.