

CASE TRANSLATION: GREECE

CASE CITATION:

Payment Order 8444/2011

NAME AND LEVEL OF COURT:

Court of First Instance of Athens

PRESIDENT OF THE COURT: **Chr. Bastouni**

Electronic documents; meaning and distinctions of electronic documents; evidential weight of an attested copy of an e-mail; whether it meets the requirements of article 623 of the Code of Civil Procedure for the issuance of a payment order

[Note: the legal reasoning in this case is based on previous decisions published in this journal: Payment order 1327/2001 (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; Translation of Case No. 1327/2001 – Payment Order, *Digital Evidence and Electronic Signature Law Review*, 3 (2006) 104 – 107) and Court of First Instance 1963/2004 (Court Decision No. 1963/(2004), *Digital Evidence and Electronic Signature Law Review*, 2 (2005) 107 – 111)]

Payment Order 8444/2011

Court of First Instance of Athens

President of Court (1 member): Chr. Bastouni

Lawyer: St. Karathanou-Deligianni

Summary: Electronic documents. Meaning and distinctions of electronic documents. Evidential weight of an attested copy of an e-mail. This document meets the legal requirements (article 623 Code of Civil Procedure) for the issuance of a payment order.

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”.

Under this definition, the electronic document is the mechanical representation that is predicated in article 444 paragraph 3 of the Civil Procedure Code,¹ which has full conclusive power (*susceptible to counter-evidence*) for everything that is recorded in it. (Article 448 paragraph 2 Code of Civil Procedure). Furthermore, its attribute as a private document should be explored, because a private document has full evidential power and is a full proof that its contents come from its editor-sender, according to the provisions of article 445 of the Civil Procedure Code, by “replacing” the “manuscript signature” required in article 443 of the Civil Procedure Code,² with a functional equivalent, for the purpose of the convenience of transactions.

So, an electronic document does not constitute in reality the strict “equivalent” of traditional paper-based documents, 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.³

According to common experience (common usages and practices), for the operation of e-mail as a means

¹ Article 444 of the Civil Procedure Code: Official books of merchants and other professionals. “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.

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. “The definition of private documents also contains

d) the books that merchants and professionals are obliged to keep under commercial law or other statutes
e) the books that lawyers, notaries, doctors, pharmacists and nurses are obliged to keep under current statutes
f) photographic and cinematic representations, recordings and any other mechanical representation.

³ S. Kousoulis, *Contemporary forms of paper transaction (Sygchrones morfes egrafis synallagis)*, 1992, pp. 138-142.

of communication over the Internet, besides the connection with an Internet Service Provider (the ISP provides this service via a 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,⁴ 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 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 as the traditional document in article 443 of the Civil Procedure Code, its mechanical representation in a document, in accordance with article 444 paragraph 3 of the 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 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 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 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.

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 of the Civil Procedure Code⁵ 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.⁶

Besides, under the provisions of presidential decree 150/2001,⁷ the validity of the simple (not the

⁴ See note 2 above

⁵ 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".

⁶ 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.

⁷ P.D. 150/2001 "implementation of Directive 99/93/EC on electronic signatures".

“advanced”) electronic signature or its acceptability as an evidential means is not excluded by the fact that it does not meet the legal requirements of an advanced electronic signature, as underlined in article 3 paragraph 2 of the above-mentioned presidential decree. The wording of this article reflects the intention of both the European and the national legislator to avoid any argument related to the validity of the advanced electronic signature as a manuscript signature, which could lead to the denial of legal consequences to the simple electronic signature. It is already strongly supported that an electronic document that lacks an advanced electronic signature has full evidential power according to article 445 of the Code of Civil Procedure, as far as the origin of the editor's contents is concerned. The same opinion is also supported by this Court. According to common experience and the conception of transactions and moral habits, the security and certainty of the law that is served with a simple electronic signature is no less than the provided with a traditionally signed private document. Moreover, the traditional manually signed private document cannot guarantee total protection against the hazard of forgery or adulteration, so there is no reason why the evidential power of the documents referring to article 445 of the Code of Civil Procedure (documents required by law for the issuance of a payment order) cannot be attributed to an electronic document, coming from the e-mail address of the sender and signed with a simple electronic signature.

Furthermore, contracts that are not subject to form requirements 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 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 messages exchanged 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,⁸ and in order for its demand to be proved, it submits the following documents: (1) An attested copy of a contract for respective services that was contracted between the claimant and the respondent, which proves their agreement for their co-operation and the claimant's provision of a translation service to the respondent. (2) An attested copy of a voucher for the provision of services for the amount of, which proves the (initial) respondent's debt to the claimant from this cause. Following the provisions agreed in the above mentioned contract, this voucher (receipt) was issued after the execution of the service agreed and the claimant's delivery of the translations to the respondent. (3) An attested copy of an e-mail, (dated,), (time,), that the authorized department of the correspondent company sent to the applicant-claimant, signed by an authorized employee of the respondent's accounts department, by which it verified and recognized the debt that originated from their agreement. The e-mail was sent by the correspondent company through the electronic address@....gr to the applicant's electronic address@.....com. 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. 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 aforementioned electronic mail was legally 'delivered' to the applicant and, according to the previously stated legal opinion, 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. (4)..... (5) an attested copy of the applicant's out of court declaration, dated, which was lawfully served as a writ of action in, which proves that the e-mail was clearly accepted by the correspondent and an agreement of

⁸ 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.

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acknowledgement of debt was concluded between the applicant and the correspondent, where the correspondent acknowledged its debt against the applicant that originated from their cooperation.

With the above-mentioned out of court declaration, that was served in, 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; therefore, it came into obligor's default (article 340 of the Greek Civil Code)⁹ and, since then, it also owes payment interest (article 345 of the Greek Civil Code).¹⁰

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 361, 321, 324, 340, 345 of the Civil Code, 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

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

10 Article 345 of the 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 delinquent payment interest, without being obliged to prove damages. If the creditor can prove damage, he has the legal right to demand it as well, if it is not differently defined in law".