Case note **Greece**

Case No. **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**

The following text provides a succinct description of the facts and basic conclusions of a ruling issued by the Court of First Instance of Athens, Greece, on the validity and legal effect of electronic documents transmitted through e-mail communications between contractual parties. This decision is the first case that has been ruled by a Greek court following the adoption of the EU Directives on e-commerce and e-signatures; it outlines the legal value of e-mail communications and their ability to bear acts of legal significance. Also, it provides some basic indications on the criteria and principles that a Greek judge may follow while assessing the equivalency of an electronic signature to a manuscript one.

Facts

Company A (a Czech agent) concluded a service agreement with Greek company B (presumably, a Greek travel agency). On the grounds of this agreement, the Czech agent undertook to assist company B with lodging arrangements that had to be made in Prague for groups of Greek tourists visiting Prague under the services of company B.

Referring to their contractual arrangements, the Czech agent asked company B to be paid for the services it supplied to the company for the period from January 1999 to February 2000. In response, the authorized representative of company B sent an e-mail to the Czech agent (dated 27 July 2000), by which it recognised the debt in question and promised payment of the amount due to the Czech operator before August 15, 2000.

The deadline having expired, company B confirmed its intention to pay by a second e-mail sent to the Czech agent on September 12, 2000.

The Czech agent notified company B of its obligation to pay on October 25, 2001. Given that company B did not react to this request, the Czech agent asked the Greek competent court to order company B to pay, through the special proceedings of 'payment order' as provided in the Greek Code of Civil Procedure, asking that its payment order against company B be validated and enforced.[1]

In its decision, the Athens Court of First Instance (the competent court) upheld the complaint of the Czech agent by recognising the validity and binding effect of legal acts exchanged through e-mail communications.

The Reasoning of the Court

To establish its reasoning, the Greek judge had primarily to rule on the nature and legal value of the e-mail messages through which company B recognised its debt towards the Czech agent.

If the exchange of e-mails were to be considered valid legal acts that recognised the existence of the debt, then the Czech agent was in a position to demonstrate that company B a) failed to make the payment under the terms of the initial contract and b) also failed to honour its promise to pay the debt as evidenced in the exchange of e-mails.

In this context, the core issue challenged by the ruling was whether the e-mails sent by company B could indeed stand for an admissible and legal act of debt recognition as set out in is art. 873 of the Greek Civil Code. According to this provision, the statement by which a person recognises a debt or promises payment of a debt shall be made in writing in order to be valid.

In construing its arguments, the Greek judge accepted:

1. That documents exchanged through electronic means and primarily by the use of e-mail ("electronic documents") are valid

[1] The issuance of a payment order is subject to art. 623 to 634 of the Greek Code of Civil Procedure. It refers to a special court proceedings initiated by written request (application) of a party claiming payment of a debt against another party, on condition that the obligation of payment and the amount due can be proved on the basis of a private or public document.

documents and can bear legal consequences.
2. That legal acts (incl. acts by which the parties to a contract express a will to be bound) can be formed and exchanged between counter-parties through the use of electronic documents;
3. That a contract which a legal provision does not subject to a specific form, may be concluded through the exchange of the parties' intention by means of e-mail communication.
4. An e-mail address, attached to or accompanying an e-mail communication, may be considered as equivalent to a manuscript signature.

The ruling defines an electronic document 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*"

After providing this definition, the judge has clarified that, any electronic documents meeting the above characteristics shall be deemed as of equal value to 'private' documents, despite the fact that the electronic documents do not constitute in reality strict 'equivalents' of traditional paper-based documents (especially because the electronic document - at least before being printed out - is not borne by a stable and durable medium). According to the Greek law, 'private' documents are the documents that can be formed validly by private parties. Such documents constitute full proof of the facts they refer to.

Concurrently, the contracts which are not subject to form requirements 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. According to the judge, the intention of a contractual party to be bound, as expressed in an electronic document that is sent to its counter-party by e-mail, should not raise any doubts as to whether the e-mail in question originates from the actual sender, since:

- the e-mail address attached to the text of an e-mail message has the role and effects of a manuscript signature, and
- the operation of the e-mail system as such warrants in itself the authenticity of such signature (being the e-mail address).

To establish its conclusion under the first point, the judge has referred to the 'common usages and practices' of the e-mail communication. In the light of such practices, an e-mail correspondence requires, apart from the intervention of a service provider supplying e-mail services by means of software, that the user has permanently installed on his computer, the use of a special code.

This special code identifies one only individual user over the e-mail operating system, in the role of sender or recipient of an electronic message. On the other hand, such a special code constitutes the e-mail address of the user. This e-mail address is formed in an original way by the user himself, which composes the e-mail address by characters of his choice that are combined together through the symbol @ and with symbols chosen by the e-mail service provider. The result of such combinations is to create a unique e-mail address, which can be related to the specific individual user only, without making it possible for another individual to use lawfully the same e-mail address (at least, without the consent or knowledge of the initial holder of the e-mail address).

Furthermore, the appearance of the sender's address on the electronic message as received by the e-mail recipient identifies the sender in a unique way. This unique link between the e-mail address and its holder precludes the risk for the recipient of confusing the identity of the sender with the identity of another user of the operating system.

In parallel, the identification of the sender as the person from whom the content of the specific message originates is irrefutable, since the e-mail functionality as such:

- links in a unique way a message to his sender, and
- does not allow a message to be sent without linking such message to an e-mail address;
- neither does the e-mail technique permit the sending of the message in the absence of an existing recipient again, identified through a unique e-mail address.

Accordingly, it is self-evident that each e-mail address is composed in a unique way for each specific individual enabling his or her unique identification to be confirmed to a specific individual, which is itself uniquely recognisable through its e-mail address. Thus, the functionality of the e-mail address is actually the same as the manuscript signature. The Greek judge confirms explicitly that such an equivalency shall be accepted regardless of the position of the e-mail

address within the accompanying text on the computer screen or on a printed version of the e-mail. The equivalency between the manuscript signature and the e-mail address shall not be denied by the fact that the e-mail address in question does not bear the traditional form of the manuscript signature.

Strangely enough, the judge precludes the occurrence of any malfunctions or failures of the operating e-mail system at the transmission of any e-mail message. In terms of the risks associated with the transmission (by the sender) and the recognition (by the recipient) of an electronic signature, the ruling in question seems to address only the risk of transmission of the e-mail message (and, therefore, of the e-mail address signature) by a person other than the holder of the e-mail address (e.g. non-authorized user of the e-mail address).

However, in this case, the judge stresses that the burden of proving that the signature or document (e-mail address or e-mail address and the text of the e-mail) transmitted is fraudulent, shall be borne by the party who challenges the authenticity of the signature. In this respect, the Greek court states explicitly that the operation of the e-mail system provides in itself adequate security making it possible for the parties using it to exclude any risks of failed or wrong transmission associated to failures or malfunctions of the operating e-mail system.

In light of the above considerations, the court has concluded that company B's intention to satisfy its payment obligations towards the Czech agent that had been recognised through (and within) company B's e-mail communications constitutes a legal act of 'recognition of debt' under the Greek law. Thus, such recognition binds company B towards the Czech agent, who is in effect entitled to request payment of the amount due in accordance with the services agreement concluded between the parties.

Conclusion

The printed form of an e-mail, being an electronic document, can contain an expression of will of a private party and, as with any other private document, can be accepted as evidence by a Greek judge. The e-mail address can be considered as the electronic equivalent of the manuscript signature since it is linked to a specific (individual) sender identifying the latter in a unique manner towards the e-mail recipient. The unique link of the e-mail address to the sender is implied by the fact that the e-mail address is formed in an original way combining characters selected by the user and symbols chosen by the service provider, in a way that makes it impossible for another party to use the same e-mail address without the knowledge, consent or approval by the legitimate e-mail address holder. The location of the signature with respect to the e-mail message it accompanies cannot have any significant evidential consequences, contrary to the importance that this element may have at the examination of a traditional (paper-based) document.

The e-mail system warranties on the face of the document sufficient security throughout the message transmission against the risk of forgery (of the e-mail message or the e-mail address as a signature). Basically, any failure or fault in the identification of the holder of an e-mail address through the e-mail operation in question (e.g. the sending of an e-mail message by a person other than the actual holder of an e-mail account) shall be borne by the party who claims the occurrence of such fault or failure.

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■ Comments by editor

This is an interesting case that raises a number of questions, primarily in relation to the nature of the evidence presented to the judge before making the decision. Consider the issues:

1. **Issues in dispute:** It appears that both parties acknowledged the e-mails were sent and received. Where there is no dispute about the sending and receipt of an e-mail, the rules of procedure and evidence within a particular jurisdiction will determine whether the e-mail correspondence constitutes evidence of the agreement, or a subsequent amendment to a previous agreement.
2. **Whether the e-mails were signed:** Typing a name into an e-mail is a form of electronic signature. The definitions of an electronic signature provided in the UNCITRAL Model Law on Electronic Signatures (art 2(a)) and Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures (OJ 19.1.2000 L13/12) (art 2(1)) provide a wide meaning to what is meant by an electronic signature, and a name typed into an e-mail, for instance, comes

within both definitions. Unfortunately, the report of the case does not indicate whether the e-mails in question had the names of the people typed in the text. If this were the case, then the name typed in the text of the e-mail will be sufficient to indicate the intention of the person sending the e-mail. In the absence of a name typed into the text of the e-mail, other extrinsic evidence can be used to demonstrate the intention of the sender of the e-mail to be associated with the content, as determined by the learned judge in this case. This is analogous to the position when a letter, written by the sender that includes their name and address in the text, but lacking their manuscript signature, can demonstrate the writer's intention to be bound by the content of the document (see the English case of *Tourret v Cripps* (1879) 48 LJ Ch 567, 27 WLR 706). However, the operation of the e-mail system is not capable of warranting, by itself, that the e-mail address is authentic and can therefore be trusted.

3. **The security issues:** First, it is not clear whether the facts in this case demonstrated that the e-mails could only be sent when a password was entered by the user before they could gain access to their e-mail account. If a user was required to enter a password before entering their e-mail account on their computer, it can be argued that this level of security helped to demonstrate, in a simplistic way, it was possible that only the user whose e-mail account was used could have used the e-mail facilities, and actually sent the e-mail in question. The ease by which an e-mail can be forged indicates that this line of reasoning, with the greatest possible respect to the learned judge, cannot be accepted. Second, it does not follow that an e-mail address is uniquely linked to the user, nor is an e-mail address inherently capable of providing evidence that a particular user actually opened a blank e-mail message, typed in a message and then directed the computer to send the message. Where there is no dispute about the sending of an e-mail, as in this case, then the issue does not arise. In the event of a dispute, specialist forensic evidence will be required. Interestingly, when people are made aware that typing their name into an e-mail is a form of electronic signature, their first response is 'is it safe?' to which the reply is: you have asked the wrong question. Nobody asks the question 'is it safe?' when presented with a manuscript signature on a letter with the name of a firm or company printed on the paper, even though the manuscript signature and the name of the firm or company may be forged or not even exist. The real question to be asked of any signature (whether in electronic format or a manuscript signature) is this: is there sufficient evidence to trust the signature? If not, what action should the recipient take to confirm the signature is that of the person whose signature it purports to be?
4. **Conclusions reached:** The learned judge correctly reached the conclusion that documents exchanged in electronic format are valid and can bear legal consequences; that parties using e-mail are capable of entering contracts by way of an exchange of e-mail; where a contract is not subject to a specific legal form, it can be concluded by an exchange of e-mails, and an e-mail address is capable of providing extrinsic evidence of the intention of the sender to be bound, and is capable of being defined as an electronic signature.
5. This case illustrates how easy it is to enter into a binding agreement or to alter an existing agreement by an exchange of e-mails, and organizations of all types and sizes should take particular care to ensure employees are aware of the dangers of entering binding agreements by an exchange of e-mails. Clearly, it is possible for an employee to enter an agreement without authority, and in this context, it is important to consider the inclusion of a suitable disclaimer in the text of all e-mails. The aim of such a disclaimer should be to alert the recipient to check whether the person whose name appears in the e-mail has the authority to bind the organization before the recipient commits themselves to a legally binding agreement, or the alteration of an agreement already in existence. ■