

The evidential strength of the e-mail

A line of Greek judicial decisions has been focused on the definition of the nature, the role and the evidential strength of the e-mail. The lack of specific and self-contained legislative dispositions regarding the e-mail and its function as an evidence has been ultimately faced by the Greek case-law, whereby the unquestionable value of the electronic post and of the numerous needs that same fully satisfies one was fully understood.

The rapid evolution in the communication's field soon led to an increasing number of transactions through electronic means. The creation of open nets, the internet being largest, allowed a fast and effective exchange of information and has facilitated, perhaps unexpectedly, the conclusion of various legal transactions worldwide. Among the most important legal issues that came up not only in Greece but in the totality of the developed countries, the issue of validity of all contracts that can also be concluded through internet (for which the Greek law demands the respect of the written form) is included.

The need to protect the individual autonomy of each person or legal entity concluding a transaction was the historical legislator's prime concern, who defined the written form in a strict manner, requiring - for the validity of the so called "typical" legal transactions - firstly their incorporation into a written document and, secondly, by the issuer's hand-written signature¹. These two elements give the personal document full and binding evidential strength for the judicial authorities in relation to the origin and the authenticity of its content². The incorporation into a legal form indicates that the content of the document corresponds indeed to the will of the declaring person, whilst the handwritten signature certifies the source of the document .

¹ C.C. 160§1: "If the law or the parties have prescribed the written form in respect of an act the document shall bear the handwritten signature of the person who issued such document."

² C.C.P. 445: "... consist full evidence that the declaration contained comes from the person who issued the document."

³1. Pitsirikos, "Modern means of communication", PeirNom 2002, vol 24, p.387.

We, therefore, seek to determine up to what point the last court decisions⁴ confirmed the coexistence of the above two elements in an electronic document before proceeding to the full equivalence of same to the personal document, as well as to its consideration as a full binding evidence.

The definition of the e-mail was the starting point of all the Greek court decisions related to it. Trying to define the nature of the same, the judicial authorities accept as an electronic document the «total of the data written to the magnetic disc of a personal computer, which after being processed by the central unit, are imprinted on the basis of the program's orders, in a readable way, either on the machine's screen or on the printer connected to it». Consequently, the electronic mail «does not embody the elements of a (traditional) document, mainly due to the lack of stability during its incorporation to a material presenting duration, it is, however, an intermediate form which the legislator equates with a private document»).

Since the conceptual element of incorporation into a written form "appears" to be fulfilled on the basis of Article 444 par. 3 of the Greek Code of Civil Procedure which equates every mechanical depiction - hence also the electronic document⁵ - with a private document⁶, the issue of the hand-written signature tends to question the constant and safe function of e-commerce. However, realizing the importance of the signature and the need to overcome any possible obstacle impeding the transactions of the Member States, the European legislator procured for the issue of Directive CE/1999/93 aiming at the introduction of a single regulation⁷ regarding the electronic signature, pursuant to which the latter is legally recognized and obtains full evidential strength.

⁴ Athens Court of First Instance 1327/2001, Supreme Court 1628/2003, Athens Court of First Instance 1963/2004.

⁵ «The hard disc of a personal computer is a mechanical depiction, although no visual or audio figurations but only meanings are imprinted on it.», Tentos to Kerameas, C.C.L.P. art. 444, 5.

⁶ Opposite opinion : «...the electronic documents doesn't consist a mechanical depiction, since they don't depict an act of statement/issue on it from their issuer, but only their notional context)), N. Christodoulou, "Three new issues of the electronic signature's law after the bill for electronic signatures", Dikh2002, p. 1011.

⁷ The different national regulations of Member States regarding electronic signature can consist an obstacle to the commercial transactions in the European Union as well as to the function of the Internal Market.

⁸ «Legal recognition means that developed electronic signatures can on one hand satisfy the legal requirements of the hand-written signature, and on the other hand be accepted as full evidence before

On the other hand, the Greek legislator preferred to implement the above European Directive to the Greek legal system through an independent legislative text⁹, so as not to interfere directly to the dispositions of the Civil Code and of the Code of Civil Procedure on documents and their evidential strength. The consequences of this specific regulatory choice reflected on the Greek case-law that followed. From the 2001 court decision that issued an order of payment based on the content of an e-mail, until the admission by the Athens Court of First Instance of the validity of the convocation of a association's general meeting via e-mail¹¹, the problem of the non-existence of signature seems to be neglected.

Consequently, it has to be examined in what way the above mentioned position of the Greek judicial authorities towards the European legislator's intention for a broad and uniform use of electronic signature may be amended accordingly. It seems more appropriate to consider all electronic documents not bearing a signature as simple judicial tokens and not as full means of evidence.

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justice in the same way as hand-written signatures.)), X. Mihailidou, "The problem of electronic signature", *Dikh*, p. 1195.

⁹ The Directive CE/1999/93 was introduced in the Greek legal system by Presidential decree 150/2001.

¹⁰ 1327/2001

¹¹ 1963/2004