The Court of Cassation addresses the evidentiary value of electronic documents in light of the relevant international conventions.

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Court of Cassation

Appeal No. 17689 of judicial year 89, 10 March 2020; Appeal No. 11043 of judicial year 9, 27 June 2024; Appeal No. 15365 of judicial year 89, 31 August 2024; Appeal No. 33622 of judicial year 94, 21 May 2025; Appeal No. 11479 of judicial year 94, 11 April 2026

In these judicial rulings, the Court of Cassation addressed the evidentiary value of electronic documents in light of the Convention on the Limitation Period in the International Sale of Goods (New York 1974), as amended by (Vienna Protocol 1980), the United Nations Convention on the Use of Electronic Communications in International Contracts 2005, the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (New York, 2008).

Facts related to each case:

- Appeal No.17689 of Judicial year 89

The appellant filed a lawsuit seeking a refund and damages for an unfulfilled engineering contract, while the respondent counterclaimed for unpaid fees. The Cairo Economic Court of Appeal (Commercial Chamber) dismissed the appellant's suit and awarded the Respondent full financial claims and damages.

The core legal dispute centered on the evidentiary value of e-mails, as the respondent submitted printed copies of communications, which the appellant completely denied receiving.

On 18 August 2019, the appellant lodged an appeal before the Court of Cassation, arguing, inter alia, that the aforementioned judgment had erred in law because it was based on photocopies of the e-mails, even though the appellant had challenged the authenticity of all those photocopies before both the Court ruling on the merits and the committee of experts.

- Appeal No. 11043 of Judicial year 91

The dispute arose between an Egyptian insurance company, the appellant, a cargo shipping company, the first respondent, and an Egyptian company producing crystal products, the second respondent. The second respondent contracted with the first respondent to transport a shipment, which was assigned to one of the first respondent's drivers. During transit, the truck and its cargo were stolen in an armed robbery, and a final criminal judgment a final criminal judgment convicted the driver of participating in the theft as an accomplice. The shipment was insured by the appellant, which compensated the cargo owner. The shipment was insured by the appellant, to which the cargo owner assigned its rights against the party responsible by way of an assignment of rights.

The appellant then filed a civil action seeking USD 86,199 plus interest from the respondents, alleging that the first respondent was liable for the wrongful acts of its employee.

The North Cairo Primary Court dismissed the case on 20 January 2020, finding that the correspondence between the respondents did not establish a contractual relationship for the transportation of the crystal products or prove that the driver was an employee or subordinate of the first respondent. The Cairo Court of Appeal upheld the judgment on 28 April 2021.

The appellant subsequently lodged an appeal before the Court of Cassation, arguing, inter alia, that the aforementioned judgment had erred in law. According to the appellant, the official translations of the emails exchanged between the two companies showed the existence of a contractual relationship and established that the first respondent had engaged the driver to perform the transportation.

- Appeal No. 15365 of Judicial year 89

The dispute arose from an agreement under which the appellant company was obligated to supply transport vehicles to the respondent company.

The appellant filled a lawsuit, seeking an order requiring the respondent to pay 150,387.50 EGP, representing the transportation fees for the period from 21 May 2012 to 15 July 2012, together with legal interest at the rate of 7% per annum from the date of demand until full payment.

The Alexandria Court of First Instance dismissed the case on the grounds of absence of papers Originals. The appellant appealed the judgment before the Alexandria Court of Appeal, which, on 15 May 2019, upheld the judgment of the Court of First Instance.

On 11 July 2019, the appellant lodged an appeal before the court of cassation, arguing that the judgment under appeal had erred in the application of the law and had failed to accord evidentiary value to the electronic messages submitted by the appellant, despite the respondent's failure to establish their lack of authenticity.

- Appeal No. 33622 of Judicial year 94

The dispute arose from a contract between a medical services company (the appellant) and a medical equipment supply company (the respondent), under which the respondent was obliged to supply medical equipment and furniture. The appellant claimed that the respondent had failed to deliver the equipment despite having received an advance payment. It therefore filed a lawsuit seeking rescission of the contract and restitution of EGP 2,220,000 paid in advance, together with statutory interest at 5% per annum from the date of judicial demand until full and final payment. The respondent filed a counterclaim, alleging that the appellant had breached the contract by failing to pay the balance of the purchase price and by refusing to collect the goods after being notified by email.

The New Cairo Court of First Instance dismissed the principal claim and allowed the counterclaim, and the Cairo Court of Appeal affirmed that judgment on 25 August 2024. On 23 October 2024 the appellant appealed to the Court of Cassation, arguing, among other grounds, that the impugned judgment was wrong in law, and challenging the evidentiary value of the photocopied email correspondence submitted by the respondent.

- Appeal No. 11479 of Judicial year 94

In this case, the dispute arose from the transfer of an amount representing the inheritance due to the appellants' decedent from her deceased husband. The amount was transferred from the husband's account at a Swiss bank to a bank in Egypt. The appellants claimed that the respondents had seized the amount. They alleged that the second respondent received it by transfer to his account, and that the first respondent, as the court-appointed guardian of their decedent, was also liable, since the transfer could not have been made without his approval.

In support of their claim, the appellants relied on an email dated 15 January 2016, sent by the Swiss bank to the first appellant, specifying the value of the inheritance shares and indicating that the second respondent had received the amount by transfer to his account. They sought an order that the respondents jointly pay USD 732,206.30, plus profits and legal interest.

The North Giza Court of First Instance dismissed the case because the file contained neither a debt instrument signed by the respondents nor any statement from the Egyptian bank identifying who had received the funds transferred from abroad. The Cairo Court of Appeal upheld that ruling on 5 February 2024. On 4 April 2024, the appellants lodged an appeal with the Court of Cassation, arguing, inter alia, that the judgment contradicted the record and breached their right of defence, because it ignored their defence and failed to consider the evidentiary value of the email.

The Court of Cassation decision:

In addressing the pleas related to the evidentiary value of electronic documents, the Court of Cassation mentioned that it is well established in the jurisprudence of this Court that the legislature, through Articles 1, 15, and 18 of Law No. 15 of 2004 on the Regulation of Electronic Signatures and the Establishment of the Information Technology Industry Development Agency , together with Article 8 of the Executive Regulations of this Law, sought to ensure that electronic writings and official or private electronic documents enjoy the same evidentiary value as traditional written documents, provided that the prescribed technical and technological safeguards are satisfied. These safeguards include the technical ability to determine the date and time of the creation of an electronic writing through an independent electronic storage system that is not subject to the control of its creator nor the control of the person concerned therewith, as well as the ability to identify the source of creation of the electronic writing and the extent of the creator's control over that source and the media used in its creation.

The Court held that this reflects the legislature's intent to keep pace with global technological developments in civil, commercial, and administrative transactions by regulating them and establishing the legal framework governing their legal effects, being mindful that that the legal concept of a document is not confined to information recorded on paper but extends to any medium capable of preserving information. Accordingly, the decisive requirement for evidentiary purposes is the ability to attribute the document to its author, rather than the medium on which it is recorded. It is therefore not required that the writing be on paper in the traditional sense and bear a handwritten signature — which necessitates accepting, for purposes of proof, all other media, whether paper, electronic, or of whatever material they are composed.

Further, the Court, in Appeals No. 17689 and 15365 and 33622, cited a number of international conventions, which likewise adopt a similar understanding of the concept of "writing" to cover communications by telegram, telex, and electronic means, including Article 1(g) of the Convention on the Limitation Period in the International Sale of Goods (New York, 1974), as amended by the 1980 Protocol; Article 13 of the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980); Article 4 of the United Nations Convention on the Use of Electronic Communications in International Contracts (New York, 2005), which expressly includes electronic mail within its definition of data messages; and paragraph (17) of Article 1 of the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (Rotterdam Rules, 2008).

The Court thus stated that electronic mail (e-mail) constitutes a means of exchanging electronic communications between users of electronic devices, such as computers and mobile phones, characterized by the arrival of the message to its recipient contemporaneously with, or shortly after,

its transmission by its sender, via the international information network (the Internet), regardless of the means used to print out a copy thereof at the place where the message is received, and irrespective of whether such messages include attached documents or files (attachments) or not

The Court confirmed in all five appeals that

> **...national laws and international conventions have permitted the judge, in the case of electronic contracting, to infer the facts of offer and acceptance from the substance of those electronic messages themselves, without need for them to be transcribed in writing on paper signed by both parties. This is because such messages are exchanged via the international information network (the Internet), and accordingly the originals of those messages — understood as the data comprising the electronic document or instrument — remain preserved with their parties**, however numerous they may be, namely the sender and the recipient(s), within the electronic device of each of them, in addition to existing in their principal storage location within the Internet, on the computer servers ("Servers") of the companies providing e-mail service to the public.
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> In all events, where the printed copies are disavowed, the sender of the e-mail message is not in a position to produce the original of the document or electronic instrument, since all printouts generated from electronic devices are nothing more than printed paper copies devoid of the signature of either party. Accordingly, the legislator — being concerned not to forfeit the rights of persons dealing through these modern electronic means in circumstances where they lack tangible evidence of such transactions — established, in the Law on the Regulation of Electronic Signature and its Executive Regulations, the controls aimed at ascertaining the party responsible for creating or sending the electronic documents and instruments, the party or parties receiving them, and the absence of human intervention or manipulation designed to create a false impression of their authenticity, a matter which may in certain cases require recourse to specialized technical expertise in this field.
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> Where these conditions and controls are satisfied, messages exchanged by e-mail acquire probative force in proof equal to that of messages transcribed on paper and bearing a handwritten signature. The mere fact that a message was produced in electronic form does not therefore bar its acceptance as evidence, and it accordingly cannot be defeated by the mere disavowal, by the opposing party, of its printouts coupled with an insistence on production of the original — since such a printout is nothing more than a transcription of what the e-mail, or the electronic medium in question, contained. The sole course left open to a party wishing to deny it is to bring a plea of forgery in accordance with the procedures prescribed by law, as a preliminary step toward securing a technical expert examination in

that regard.

Based on the foregoing, the Court decided in Appeals Nos. 11479, 11043, and 15365, the Court accepted the pleas for recognition of the evidentiary value of the e-mails and quashed the challenged judgments and remitted the cases to the respective courts of appeal. With respect to Appeal No. 33622, the Court rejected the plea challenging the evidentiary value of e-mails and partially quashed the challenged judgment insofar as it ordered the appellant to pay the amount of USD 3, 492, 971. It then adjudicated the merits by upholding the judgment of the Court of First Instance insofar as it had ruled on the counterclaim. As for Appeal No. 17689, the Court rejected the plea challenging the evidentiary value of e-mails and dismissed the appeal, ordered the appellant company to bear the costs, and ordered the forfeiture of the security deposit.

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