

Legally significant messages with regard to the development of the Internet

Mensajes legalmente significativos con respecto al desarrollo de Internet

Elena Anatolyevna KIRILLOVA [1](#); Varvara Vladimirovna BOGDAN [2](#); Valentin Nikolaevich TKACHEV [3](#); Olga Aleksandrovna KOVALEVA [4](#); Roman Vasilyevich KHALIN [5](#)

Received: 12/06/2017 • Approved: 10/07/2017

Content

[1. Introduction](#)

[2. Methods](#)

[3. Results](#)

[4. Discussion](#)

[5. Conclusion](#)

[Acknowledgements](#)

[References](#)

ABSTRACT:

This article describes the features and legal nature of legally significant messages with regard to the development of the Internet. The legal effect of legally significant messages is without any doubt, as this institution has long and successfully been used in the contractual obligations of all countries of the world. The main objectives of the research are to determine the nature of legally significant messages in the substantive legal aspect and to define the place of this category in the system of various phenomena of legal reality with regard to the development of the Internet. When writing the article, we used the methods of collection and study of single facts; the methods of compilation; the methods of scientific abstraction; the methods of cognition of regularities. The study concluded that legally significant messages sent via electronic means could acquire the status of legal documents if they were properly secured and executed and if the law or the contract did not provide an obligatory written form of notification on paper in this case. As a result of the

RESUMEN:

Este artículo describe las características y la naturaleza legal de mensajes legalmente significativos con respecto al desarrollo de Internet. El efecto legal de los mensajes legalmente significativos es sin duda alguna, ya que esta institución ha sido larga y exitosamente utilizada en las obligaciones contractuales de todos los países del mundo. Los principales objetivos de la investigación son determinar la naturaleza de los mensajes legalmente significativos en el aspecto jurídico sustantivo y definir el lugar de esta categoría en el sistema de diversos fenómenos de la realidad jurídica en lo que respecta al desarrollo de Internet. Al escribir el artículo, utilizamos los métodos de recolección y estudio de hechos únicos; los métodos de compilación; los métodos de abstracción científica; los métodos de cognición de las regularidades. El estudio concluyó que los mensajes legalmente significativos enviados a través de medios electrónicos podían adquirir el estatuto de los documentos jurídicos si estaban debidamente asegurados y ejecutados y si la ley o el contrato no

analysis, the definition was prepared which highlighted the main features and functions of legally significant messages; it was proved that legally significant messages by their characteristics were classified as volitional legal acts and contained signs of actions similar to transactions; they were between legal transactions and legal actions. In the first place, this specific position of legally significant messages opened for the practice of law, especially judicial, a unique opportunity to find and justify the most fair and reasonable solutions to various situations by using in some cases the characteristics of transactions and other actions.

Keywords: legally significant messages; transactions; legal facts; actions; legal nature; the Internet; electronic document management.

proporcionaban una forma escrita obligatoria de notificación sobre el papel en este caso. Como resultado del análisis, se elaboró la definición que destacó las principales características y funciones de los mensajes legalmente significativos; se demostró que los mensajes legalmente significativos por sus características se clasificaban como actos jurídicos deliberados y contenían signos de acciones similares a las transacciones; estaban entre las transacciones legales y las acciones legales. En primer lugar, esta posición específica de mensajes legalmente significativos se abrió para la práctica del derecho, especialmente judicial, una oportunidad única para encontrar y justificar las soluciones más justas y razonables a varias situaciones, utilizando en algunos casos la características de las transacciones y otras acciones.

Palabras clave: mensajes legalmente significativos; transacciones; hechos jurídicos; acciones; naturaleza jurídica; Internet; gestión electrónica de documentos.

1. Introduction

The legal effect of legally significant messages is beyond doubt.

This institution has been successfully used in the commitments of all countries (Tot, 2017) for a long time. The key issues that require understanding today are the definition of the nature of legally significant messages of this category in the substantive legal aspect and the definition of the place of this category among various phenomena of legal reality with regard to the development of the Internet.

In today's reality, with the development of electronic document management and online exchange of information in the Internet, the electronic documents and Internet messages acquire greater legal importance. However, the development of these technologies raises many issues and questions related to confirmation of the fact of implementing electronic document management and the existence of legally significant information in the Internet.

Many researchers considered the problems of the legal status of legally significant messages since the mid-twentieth century; legally significant messages were defined as actions similar to transactions by Larenz, & Wolf (1997) in German doctrine; legally significant messages were defined as transactions by Gärtner (2014), Zimmermann (1994); when addressing the issues of civil rights, legally significant messages were defined as real acts by Coffee *et al.* (2015); the unclear legal nature of legally significant messages was mentioned by Hartig (2016); some research results were obtained simultaneously in the study of labour, corporate, financial, and tax law by Deakin, & Morris (2012), Derkum (2015), Hill, & Shúilleabháin (2016). So, there is a conflict in approaches to the definition of legally significant messages in the civil law, and more questions still arise in determining the legal status of legally significant messages in electronic form. This issue has received little attention. In this study we can mention the work of Lindner, & Riehm (2009). Many researchers analyzed the legal precedents; Bertrams (2004), Yimer (2016) were forced to conclude that when courts faced different kinds of messages, their contact with this category occurred in terms of establishing the fact of the message and issues related to the form of the message. In these cases, the courts considered various kinds of messages as transactions and unsuccessfully tried to apply thereto the appropriate rules (Bruns, & Arnold, 2017).

It should be mentioned that the legal doctrine shows interest in the legal categories, which are at the intersection of transactions and legal acts (Deakin, & Morris, 2012); however, the legal status of messages, notifications, and requirements is not defined in civil law, which leads to problems of a practical nature. The status of legally significant messages in electronic format is practically unexplored at the present stage.

2. Methods

The object of research is the legal status of legally significant messages with the development of the Internet. In the context of globalization, this process opened new opportunities for the application of the systemic method and those methods that serve it – structural, of functional analysis. In this study, we used the following methods:

- methods of collection and study of single facts;
- methods of synthesis;
- methods of scientific abstraction;
- methods of cognition of regularities;

At the stage of collecting and studying isolated facts, we used the methods of interpretation of the law by which we identified whether the intent of the person exercising a legal notice focusing on the legal consequences influences legally significant messages and, therefore, if legally significant messages should be classified as legal acts (transactions) or legal actions.

In this article, we used the method of legal modeling. The modeling process was made up of three stages:

- 1) formulation of objectives and selection of targets;
- 2) study of the model and the formulation of conclusions;
- 3) interpretation (analysis, interpretation) of results and the attribution of the acquired knowledge to the original.

The prognostic method allowed making science-based predictions about the vector of the use of legally significant messages with regard to their legal nature and developing recommendations for practice. Also, we used semantic analysis, in conjunction with the above methods, which allowed considering the peculiarities of the legal nature of legally significant messages in detail.

3. Results

Legally significant messages are claims; notices; notifications; requirements; other communications. Most often, the civil turnover uses mail with notification of delivery (international mail exchange with notification of delivery) – mail, when the sender instructs the postal communication operator to inform him/her when and who received the dispatch. The most problematic is legal regulation in the sphere of legal relations arising from digital information. The question arises of whether an electronic document or online information is a legally binding document. Electronic document management in the tax area has significantly simplified the work of accountants and lawyers; in the field of taxation there are more and more electronic documents that do not require additional formalization, but have the status of legally significant (Kirillova *et al.*, 2015). The business correspondence finally switched to an electronic format. Recently, many organizations have started implementing document management with partners through the Internet, particularly via email. Thus, notices on the termination of the contract, claims, additional agreements and other documents related to the execution of contracts are sent, but the expectations of the parties to prove their case and based on the received email message often fail (Lindner, & Riehm, 2009). The fact is courts take a cautious position in relation to electronic communications: there are a number of requirements, at the violation of which the court will not take them into account (Derkum, 2015). Thus, the question about the possibility of sending legally relevant communications through electronic means (by email, by fax, by SMS messages or by making posts on social networking pages on the Internet) remains open.

Let us consider the legal nature and algorithm of the application of legally significant messages. The legal precedents and law attribute legally meaningful communications to legal facts (Bertrams, 2004).). According to the classical definition of a legal fact, the fact is the specific

circumstances with which the law connects certain legal consequences. As the judicial practice shows, the expression of will of the counterparties in the form of the considered messages in civil law relations is mostly of rights-changing or rights-terminating character.

Many researchers have emphasized that legally significant messages can be viewed as transactions, as they are aimed at establishing, changing or terminating civil rights and duties (Zimmermann, 1994).

It should be recognized that a legally significant message has all the doctrinal characteristics of the unilateral transaction as a legal fact (see Fig. 1. Signs of transaction with legally significant messages):

Figure 1. Signs of transaction in legally significant messages



However, further analysis of legally significant messages allows detecting the presence in their nature of elements of transactions and other elements that characterize legally significant messages as a separate legal category that is applied not only to relations arising out of the transactions.

First, such unilateral actions are often an integral part of the existing relationship and are aimed at the modification or termination of the relationship. Second, legally significant messages are a form of exercising a specific subjective right of a participant in the legal relations stipulated by the law, contract, custom or established practice between the parties (Coffee *et al.*, 2015). Furthermore, crucial for this kind of unilateral action is following the procedures prescribed by the law, agreement, custom, or established practice between the parties for the implementation of legally significant messages. This aspect of legally significant messages determines their nature so much that failure to comply with it or violation of it leads to the fact that this message is not considered valid, which is very often an obstacle for the exercise of existing subjective rights. Besides, legally significant messages, as a rule, represent a separate legal procedure.

On the other hand, it is required to clearly understand what consequences (especially negative risks) the recognition of legally significant messages as transactions can entail. The most obvious is a conclusion about the use of the entire array of the rules on invalidity of transactions. It seems that in this interpretation, this institute is able to bring in the civil turnover more instability than benefits.

These factors allow us to doubt the clear understanding of legally significant messages as transactions. Moreover, the theory indicates individual characteristics of legally significant messages, which indicate the fundamental difference between these categories (Ulrici, 2003). For example, the lack of authority of a person, who reported a particular fact which the law connects with certain legal consequences, does not matter, as this is dependent upon the knowledge of a particular fact.

It is required to allocate criteria for distinguishing between transactions and messages.

First, messages do not contain any elements of the intent and, therefore, represent a distinct category of declarations of intent and transactions.

Second, messages are beyond any doubt the manifestations of the intent of an entity, but they are not classified as expressions of will, but fall under the category of messages of the intent (Egger, 2003).

The entity still makes a certain expression within legally significant messages. But it expresses not the intent aimed at causing certain desired legal consequences (as in expression of will), but the intent aimed at the notification of another person (or persons) on information about a

particular fact (for example, the fact of the delay).

Moreover, the scope of legal transactions and legally significant messages is different. Different understanding of the scope of legally significant messages can lead to the fact that this legal category will lose all meaning, as it will fully apply the rules of legal transactions.

Analyzing the ratio of legally significant actions and legally significant messages, the following can be mentioned. On the one hand, it often happens that the person submitting a legally relevant message not just balances his/her actions with the law, knowing the legal consequences of the actions, but purposefully wishes their occurrence, being guided by the rule of law, performing those actions which are prescribed by it (Wigmore, 1969). A person does not just send the message that subsequently leads to well-defined legal consequences and affects the rights and obligations of persons, but his/her intent is directed to the occurrence of such legal consequences.

On the other hand, sometimes a person sends a message with the intent to commit an actual (not legal) action, such as informing the contractor about the delivery date (Shatalov *et al.*, 2016). The subject is not aware that with its action (in particular, message) the law binds the occurrence (change, termination) of any legal disputes, it does not involve further conflict and is not aware that the message will have (or has) any legal value. In this case, any message (email, SMS message, fax message, a verbal message) may be subsequently recognized as having legal value, i.e. legally significant message.

Reducing the concept "legally significant messages" only to the first approach, i.e., cases where the person originally had the intention to achieve the occurrence of certain consequences when sending a legally significant message (Merryman, & Pérez-Perdomo, 2007), obviously, narrows the content of this institute. And a legally significant message as such may represent a one-sided transaction.

It seems that the second understanding of legally significant messages is closer to legally significant actions. It also appears that such an understanding of legally significant messages extends this institute and gives greater scope for enforcement and judicial interpretation, particularly in conjunction with standards of fairness. In a sense, all the subjects should be more accountable for their actions and deeds of others, including sent and received communications (by any means), as they can have legal value and, accordingly, lead to the occurrence, change or termination of rights and obligations.

The above discussion refers to the issues of determining the place of legally significant messages in the system of legal facts. It seems that the main purpose and role of legally significant messages is not that they are the basis of occurrence, change and termination of civil rights and obligations as other legal facts, but that they determine the date of such occurrence, change and termination. It defines their legal nature as a special kind of "subsidiary" legal facts.

Currently, in the civil law there is no qualification of documents transferred via the Internet. These documents cannot be classified among documents, performed in written or in oral form. In this regard, there is a lot of debate in the evaluation of Internet evidence in court. The resolution of this issue may be the adjustment of the legal status of electronic documents, determining their legal force.

The question of the recognition of the publications in the media with the aim to notify the participants in corporate relations as legally significant messages is also controversial. First of all, this form of communications is used for the notification of the creditors of the company, as well as unlimited number of individuals. Such notices published in the media, of course, have legal value, and in cases of publication of such messages the person needs only to prove the fact of such publication, regardless of the fact if the person whose notice was supposed to be the purpose of this publication is familiar with it. The Internet documents and Internet information acquire the status of legal documents only when using proper means and design. The subject of responsibility for the information posted on the website shall be determined in

each specific case, depending on the scope of activities of the website, on the subject of administration of the website and the degree of restriction of access to the resources of the website.

4. Discussion

In Western Europe and the United States, there is a variety of positions in respect of legally significant messages. Some of the authors point to the fact that messages do not contain any of the elements of the intent and, therefore, represent a distinct category different from intent and transactions (Hartig, 2016). Other authors claim that messages beyond any doubt are manifestations of the intent of an entity, but they are not classified as expressions of will, but constitute a category of messages about the intent (Mattila, 2016). There are also other positions (Gärtner, 2014).

In German law there is such a category as actions similar to transactions but it should be noted that it is a product of the German doctrine, and the law does not contain any reference in it.

Currently, there is a definition of actions similar to transactions, generally accepted by the doctrine, which sounds the following way: actions similar to transactions constitute expressions which entail legal consequences, as they are provided by law and regardless of the intent on the occurrence of these legal consequences (Samuel, 2016). This definition in civil law is based on the position that actions similar to transactions are neither legal transaction nor real acts, while possessing elements of the transaction and the real act (Larenz *et al.*, 1997). In particular, the similarity of actions similar to transactions and real acts is that under both legal categories legal consequences arise by operation of law and regardless of the intent on the occurrence of these legal consequences.

Another question is what determines the fact that the law connects legal consequences not to the intent aimed at legal effects, but only to the expression of the fact. This approach is connected to the fact that from the point of view of the legislator the protection of the recipient of the message in its credibility to the contents of the received message is the most important (Novak, 2016).

In particular, the expression in actions similar to transactions should always be perceived as credible – even in those cases when in fact it was wrong (Hill, & Shúilleabháin, 2016). In this case, unlike the intent, which assesses the coincidence of intent and expression, the actions similar to transactions always take place, if the "average" third party understands what the sender informed it about. Such conclusions are bases for the position that actions similar to transactions cannot be challenged as it happens in relation to legal transactions (Menkel-Meadow, & Garth, 2010).

Speaking about the legal nature of legally significant messages, we cannot ignore their functions. According to researchers, legally significant messages serve as part of the legal compounds that are formed as a result of the prevailing of legal relations between the parties (Yimer, 2016). In particular, the message on the designation of the term is a required component of the rights of the creditor to demand in return of performance of the obligation of reparation. Without this element, the new legal structure is not formed and the position of the parties within the relationship remains unchanged.

Based on the features of legally significant messages, it is possible to allocate the basic functions of legally significant messages (Fig. 2. The main functions of legally significant messages):

Figure 2. The main functions of legally significant messages

informative – notifies about events perpetrated by the sender

regulatory change, add to, terminate the relationship

unfamiliar to law makers

From the analyzed array of literature, we can conclude that legally significant messages, including those of the digital format, have the following practical purpose: possible application to legally significant messages of only the provisions on legal transactions or actual acts may not lead in all cases to appropriate situations and solutions taking into account the interests of all parties. In particular, in applying the provisions of only real acts the sender is deprived of the opportunity to challenge the consequences of the messages. Meanwhile, legally significant messages in some cases impose certain responsibilities on the sender and may result in adverse consequences for him/her. In such cases, provided that the rights of the sender to self-determination within the framework of certain legal relations are substantially violated, the provision of right to appeal is both necessary and appropriate. On the contrary, if the provisions on legal transactions are applied to legally significant messages in all cases, the consequences would have to be considered invalid in all cases, when the inner intent of the sender does not correspond to his/her expression. However, this approach significantly violates the rights of the recipient of the expression and significantly undermines the credibility of the information. Therefore, in some cases it is deemed reasonable to deprive the sender of rights to challenge the consequences of legally significant messages and provide him/her only with the possibility to withdraw his/her expression with the termination of its action for the future.

5. Conclusion

1. Legally significant messages are an independent legal category with unique characteristics and represent a separate legal procedure. Legally significant messages are between legal transactions and legal actions, which determines the presence of elements of both, one category (transactions) and other (acts). This special position of legally significant messages in the first place opens for the practice of law, especially the judiciary, a unique opportunity to find and justify the fairest and most reasonable solutions to various situations by using the characteristics of transactions and other actions in some cases. Undoubtedly, such a position of legally significant messages is characterized by significant discretion provided to the courts when confronted with different kinds of messages. However, this path is the most optimal and effective for ensuring the balance of interests of the parties involved in civil matters, and consistent with the spirit of civil law.
2. The main features of legally significant messages:
 - focus of messages on the creation of a new legal construction;
 - the action only in the framework of changing the relationships;
 - greater protection of the person receiving the message, compared to the protection of the recipient of the intent on the transaction.
3. The functions of legally significant messages:
 - informative – to notify the participant in civil legal relations of specific events;
 - regulatory – through messages that have legal significance, participants of the civil process can acquire, change or terminate their rights;
 - law enforcing – messages allow parties involved in legal relationships to ensure the performance of actions by persons who received the messages and to ensure the liability for failure to comply within the law.
4. Legally significant messages sent via electronic means (by email, by fax, by SMS message or by posting on the pages of social networking on the Internet, as well as documents signed by digital

signature or other analogue of a handwritten signature) can acquire the status of legal documents in case of proper security and clearance and if the law provides the obligatory written form of notification in this case.

The further research on the topic should determine the vectors of the application of legally significant messages with regard to their legal nature and the development of the Internet, and develop the recommendations for practice.

Acknowledgements

The research work in the framework of the state task "Traditions and innovations of civil law: Legally significant messages and their role in civil law of Russia", T 1.40.17 F

References

- Bertrams, R.I. (2004). *Bank Guarantees in International Trade: The Law and Practice of Independent (First Demand) Guarantees and Standby Letters of Credit in Civil Law and Common Law Jurisdictions*. Kluwer Law International.
- Bruns, A., & Arnold, G. (2017). Zivile Sicherheit im Zivilrecht. In *Rechtshandbuch Zivile Sicherheit* (pp. 563-583). Springer Berlin Heidelberg.
- Coffee Jr., J.C., Sale, H., & Henderson, M.T. (2015). *Securities Regulation: Cases and Materials* (13th ed.). Foundation Press.
- Deakin, S.F., & Morris, G.S. (2012). *Labour Law*. Hart Publishing.
- Derkum, B. (2015). *Die Folgen der Geltendmachung nicht bestehender vertraglicher Rechte*. Nomos Verlagsgesellschaft mbH & Co. KG.
- Egger, F.F. (2003). *From Interactions to Transactions: Designing the Trust Experience for Business-To-Consumer Electronic Commerce* (Ph.D. Thesis). Eindhoven University of Technology.
- Gärtner, F. (2014). *Der unfreiwillige Verlust der Gesellschafterstellung von ausgeschiedenen Managern und Mitarbeitern*. Nomos Verlagsgesellschaft mbH & Co. KG.
- Hartig, A.J. (2016) Conceptual Blending in Legal Writing: Linking Definitions to Facts. *English for Specific Purposes*, 42, 66-75.
- Hill, J., & Shúilleabháin, M.N. (2016). *Clarkson and Hill's Conflict of Laws*. Oxford University Press.
- Kirillova, E.A., Bogdan, V.V., Pozdnyakova, E.V., Zenin, S.S., & Ustinovich, E.S. (2015). Inheritance of Electronic Payment Accounts: Practice Issues. *Journal of Internet Banking and Commerce*, 2015(S1), 002.
- Larenz, K., Wolf, M., & Neuner, J. (1997). *Allgemeiner Teil des Bürgerlichen Rechts*. München: Beck.
- Lindner, R., & Riehm, U. (2009). Electronic Petitions and Institutional Modernization. International Parliamentary E-Petition Systems in Comparative Perspective. *JeDEM – eJournal of eDemocracy and Open Government*, 1(1), 1-11.
- Mattila, H.E. (2016). *Comparative Legal Linguistics: Language of LAW, Latin and Modern Lingua Francas*. Routledge.
- Menkel-Meadow, C.J., & Garth, B.G. (2010). Civil Procedure and Courts. In P. Cane, & H.M. Kritzer (Eds.), *Oxford Handbook of Empirical Legal Research*. Oxford, UK: Oxford University Press.
- Merryman, J.H., & Pérez-Perdomo, R. (2007). *The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America*. Stanford University Press.
- Novak, M. (2016). Understanding Law and Legal Practice Through Jungian Type Theory. In *The*

Type Theory of Law (pp. 15-47). Springer International Publishing.

Samuel, G. (2016). *Epistemology and Method in Law*. Routledge.

Shatalov, M.A., Ahmedov, A.E., Smolyaninova, I.V., & Mychka, S.Yu. (2016). The Formation of Adaptive Strategies of Development of the Enterprises of Agro-Industrial Complex in the Conditions of Realization of Import Substitution. *Modern Economy Success*, 1, 70-78.

Tot, I. (2017). Il rischio della riscossione dell'Oggetto di leasing nel contratto di leasing operative per veicoli a motore. *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, 38(1), 303-335.

Ulrici, B. (2003). Geschäftsähnliche Handlungen. *Neue Juristische Wochenschrift*, 56(29), 2053-2056.

Wigmore, J.H. (Ed.). (1969). *Law and Justice in Tokugawa Japan: Persons: Civil Customary Law*. University of Tokyo Press.

Yimer, G.A. (2016). Standards for Provisional and Protective Measures in Civil Litigation: What Ethiopian Courts may Learn from US Courts. *African Journal of International and Comparative Law*, 24(3), 329-345.

Zimmermann, R. (1994). Civil Code and Civil Law – The Europeanization of Private Law within the European Community and the Re-emergence of a European Legal Science. *Columbia Journal of European Law*, 1(1), 63.

1. Russian Federation Southwest State University, Russia, 305040, Kursk, ul. 50 let Oktyabrya, 94. E-mail: Kirillova.E.A@bk.ru

2. Russian Federation Southwest State University, Russia, 305040, Kursk, ul. 50 let Oktyabrya, 94

3. Russian Federation Southwest State University, Russia, 305040, Kursk, ul. 50 let Oktyabrya, 94

4. Orenburg State University, Russia, 460018, Orenburg, prosp. Pobedy, 13

5. Belgorod Law Institute of the Ministry of Internal Affairs of the Russian Federation named after I.D. Putilin, Russia, 308024 Belgorod, ul. Gorky 71

Revista ESPACIOS. ISSN 0798 1015
Vol. 38 (Nº 48) Year 2017
Indexed in Google Schollar

[Index]

[In case you find any errors on this site, please send e-mail to webmaster]

©2017. revistaESPACIOS.com • ®Rights Reserved