

the purpose of which is only its external arrangement (correction of typographical, grammatical and syntactic errors, exclusion of normative legal acts or parts that have been formally canceled; omission of preambles, signatures of officials, etc.). The result of incorporation is the placement of legal material in different collections in a certain order.

Keywords: *systematization of labor legislation, incorporation, regulatory legal acts, labor standards, through external processing and unification of normative material, enter into labor relations, improvement of current legislation, incorporation can be official, unofficial and unoffical, external systematization of legislation, collection of legislation.*

UDC 347.2

DOI 10.31733/2078-3566-2022-5-104-107



Dmytro LESHCHENKO[®]
Ph.D. (Law), Associate Professor,
Advocate (Kyiv, Ukraine)

DIGITAL (VIRTUAL) CURRENCY AS AN OBJECT OF CIVIL RIGHTS IN UKRAINE AND EUROPEAN COUNTRIES

Дмитро Лещенко. ЦИФРОВА (ВІРТУАЛЬНА) ВАЛЮТА ЯК ОБ'ЄКТ ЦИВІЛЬНИХ ПРАВ В УКРАЇНІ ТА КРАЇНАХ ЄВРОПИ. Досліджено правову природу цифрової валюти в цілому та її різновиду – криптовалюти (віртуальної валюти), яка не має чітко визначеної правової природи і визнається або платіжним засобом, або товаром у європейських країнах. Цифровою (електронною) валютою вважаються електронні гроші, які використовуються як альтернативна або додаткова валюта. Найчастіше їх вартість прив'язана до національних валют. Проаналізовані такі цифрові валюти як Estcoin, eKrona, e-гривня. Визначено, що віртуальна валюта, як особливий різновид цифрової валюти, не має статусу законного платіжного засобу в переважній більшості юрисдикцій країн Європи. Досліджено нормативні визначення цифрових валют в Україні та ЄС, а також проаналізовані юрисдикції, у яких віртуальним валютам надано офіційного статусу як платіжного засобу. Акцентована увага на перспективному законодавстві України, присвяченому віртуальним активам та віртуальній валюті. Сформульовано ознаки цифрової валюти як об'єкта цивільних прав та особливості її правового статусу.

Ключові слова: *цифрова (електронна) валюта, віртуальні активи і віртуальна валюта, криптовалюта, об'єкти цивільних прав, фіатна валюта, блокчейн, e-гривня.*

Relevance of the study. The concept of digital currency is worth subjecting it to a comprehensive study and not only within the framework of civil and economic relations and its individual types, but also as a legal phenomenon.

Recent publications review. At one time, such lawyers as O. Danylenko, T. Zamotaeva, E. Kohanovska, V. Lapach, R. Maidanyk, K. Nekit, V. Skrypnyk, I. Spasibo-Fateeva, V. Yarotskyi, L. Zelmanovitz and others wrote and conducted research on money as an object of civil rights. Despite the fact that a lot of time has passed since independence, there have been significant changes in almost the entire range of use of various objects of civil rights, however, there are only few works devoted to digital money in Ukraine.

The article's objective is to study the peculiarities of digital currency and to provide an answer to the question of whether the legal regime of civil rights objects can be extended to it.

Discussion. Considering the complexity of the concept of digital currency and its specifics, we will focus on its main characteristics and varieties, thus making an attempt to outline the range of issues that will require considerable effort to study.

Digitalization of social relations in the world does not bypass Ukraine, which is also in the process of digitalization of the economy. This process is associated with the active use of

new technologies and leads to the emergence of new objects of civil turnover, including digital currency. The national legislator does not always have time to regulate new social relations that require legal protection. New social relations of private law, particularly in terms of digital currency circulation, are usually regulated by contractual principles, which, at the time of conclusion between the parties, are declared as such that do not contradict the general principles of civil legislation of Ukraine. However, the implementation of these objects may cause various complications both at the stage of concluding contracts and at the stage of their implementation, which may result in various civil disputes. The above convinces of the need for a deep study of the legal nature of digital currency and the peculiarities of its civil circulation in Ukraine and European countries at the level of a separate comprehensive study.

Starting from 2020, in the Concept of Updating the Civil Code of Ukraine (hereinafter referred to as the Civil Code of Ukraine), a group of scientists put forward proposals to expand the list of objects of civil rights, taking into account the development of civil turnover and the emergence of objects unknown at the time of the creation of the Civil Code of Ukraine, such as digital currencies (in particular, cryptocurrencies).

In general, digital (electronic) currency is considered to be electronic money used as an alternative or additional currency. Most often, their value is pegged to national currencies. A number of EU countries are planning or have already issued national digital currencies. They are fully centralized as they are under the control of the government. They are also non-anonymous, cannot be mined, and are usually backed up by fiat currencies or other values. Thus, Estonia plans to launch its own digital currency Estcoin on the blockchain. According to a government representative, Estonia can use Estcoin as a crypto token as part of its E-Residency program, which allows foreigners to obtain state ID cards. The central bank of Sweden is currently exploring the possibilities of blockchain technology. Moreover, the Riksbank is also considering the possibility of creating a national digital currency eKrona. If the electronic krona is issued, it will be used alongside conventional money. With the introduction of electronic money, Sweden has all chances to build a completely cashless society. At the beginning of January 2021, the Ministry of Digital Transformation of Ukraine signed a memorandum with the Stellar Development Foundation, within the framework of which it is planned to develop a national digital currency – e-hryvnia, as the press office of the Ministry posted official information on the Ministry's website on January 4, 2021.

However, in some cases, there is no peg to national currencies and their value is formed solely by the balance of supply / demand. We are talking about such type of digital currencies as cryptocurrencies (Bitcoin, Ethereum, Tether, Litecoin, etc.). They are also often called virtual currencies. This is the interpretation of the European Central Bank (hereinafter – the ECB). In particular, in the ECB annual report for 2012, virtual currency was defined as one of the types of digital money not regulated by the state, which is usually created and controlled by developers and accepted among members of a certain "virtual community".

Unlike digital currencies, they do not have a clearly defined legal nature and are recognized either as a means of payment or as a commodity. Thus, the Court of Justice of the European Union in its judgment in the case of *David Hedqvist v. Sweden* dated 22.10.2015 determined that bitcoin should be considered a currency (means of payment), not a commodity. This was due to the fact that there were certain difficulties regarding the taxation of cryptocurrency. The relevant decision established that all transactions related to the exchange of bitcoins (bitcoin) will be taxed in the same way as transactions with traditional currencies. European case law essentially equated cryptocurrency to legal tender, and the exchange of funds – to a "currency exchange transaction".

That is, a virtual currency is such a way of currency exchange that acts as a currency in some areas, but does not have all the attributes of real currency. Virtual currency is considered "convertible" if it has an equivalent in real currency, or acts as a substitute for real currency. In particular, virtual currency does not have the status of legal tender in the vast majority of jurisdictions. Despite the above-mentioned decision of the EU Court of Justice, according to the current EU legislation, digital currency is considered to be a commodity and is subject to the regulation of civil law and the EU Directive on PFM as a commodity, and the contract of sale in relation to cryptocurrency is a contract of sale of goods.

The official status of virtual currency as a means of payment is established in Belarus by the decree, which legalized the circulation of cryptocurrency in the country. Cryptocurrency was defined as bitcoin, another digital sign (token) used in international circulation as a universal means of exchange. And, accordingly, the operator of the crypto platform provided individuals

and legal entities with the opportunity to perform among themselves and with the operator such transactions on alienation, acquisition of digital tokens for national currency, foreign currency, electronic money; exchange of digital tokens of one type for digital tokens of another type [1].

The position of the Ukrainian legislator until 2020 was unambiguous. In a joint statement of the National Bank of Ukraine, the National Securities and Stock Market Commission and the National Commission for Regulation of Financial Services of November 30, 2017 "On the Status of Cryptocurrency in Ukraine" it was noted that, since in accordance with Part 2 of Article 32 of the Law of Ukraine "On the National Bank of Ukraine" the issue and circulation of other monetary units in Ukraine and the use of monetary surrogates as a means of payment was prohibited, the National Bank of Ukraine considered the "virtual currency / cryptocurrency" Bitcoin as a monetary surrogate.

But, at the end of 2020, the Verkhovna Rada of Ukraine adopted as a basis the draft Law "On Virtual Assets", which, among other things, regulates legal relations related to the circulation of digital currency [2]. According to this draft law, digital currency is considered a virtual asset, which is divided into secured and unsecured. The first "provides its owner with the right to claim other, except for the virtual asset itself, objects of civil rights", the second – no. According to some lawyers, if the draft law is adopted as a whole and becomes a law, the business related to digital currency in Ukraine will actively develop [3, 4].

The main problem of digital currencies (except cryptocurrencies) is that they are centralized, which allows the government to close them at any time. Cryptocurrencies, on the other hand, use blockchain and distributed ledger technologies. Thanks to this, no regulator can control what happens in the network, and this happens throughout the user space. In cryptocurrencies, such as Bitcoin, Litecoin and PPCoin, issuance and accounting are based on cryptography and the Proof-of-work security method, and this happens decentralized in a distributed computer network.

Conclusions. Thus, the peculiarity of digital (virtual) currency as an object of civil rights is its substitutability and equivalence. Digital currency, as well as fiat money, claims to be the most important object of almost any civil legal relationship along with fiat money. Just like fiat money, it gradually becomes an equivalent of other objects of civil rights: fiat money, material things, works, services, intellectual property, etc. The peculiarity of their legal status as an object of civil rights is that their legal regime is not established exclusively by the state (as in fiat currency) and it is not the state itself that ensures their issue. The right to issue, control circulation and withdrawal from circulation belongs not exclusively to the National Bank of Ukraine, but to its issuers (developers) – members of a certain "virtual community". The circulation of these objects of civil rights is based on the principles of decentralization and anonymity.

The issue of their legislative regulation both in Ukraine and European countries remains open and can be determined in the short terms.

Conflict of Interest and other Ethics Statements

The author declares no conflict of interest.

References

1. Логойда В. М. Криптовалюти як об'єкт цивільних прав: порівняльно-правовий аналіз. Дисертація на здобуття наукового ступеня доктора філософії за спеціальністю 081 «Право». ДВНЗ «Ужгородський національний університет». Ужгород, 2022. 287 с.
2. Закон України від 17.02.2022 № 2074-IX «Про віртуальні активи». URL : <https://zakon.rada.gov.ua/laws/show/2074-20#Text>.
3. Дем'янюк М. Віртуальні активи в Україні. Чому потрібно легалізувати ринок віртуальних активів та які можливості це відкриє для економіки. *Економічна правда*. 01 вересня 2020. URL : <https://www.epravda.com.ua/columns/2020/09/1/664585/>.
4. Соседка Е. Банки и финтех: 5 трендов ближайшего будущего. *Бізнес Цензор*. 07.12.2020. URL : <https://biz.censor.net/m3235394>.
5. Дроздов О., Дроздова О., Герелюк Т Bitcoin в Україні: to be or not to be. URL : <https://unba.org.ua/publications/print/2962-bitcoin-v-ukraini-to-be-or-not-to-be.html>
6. Чаплян С. Правовий статус криптовалют. *Приватне право*. 2018. № 2. С. 148-164.

Submitted 05.12.2022

1. Logoida V. M. Kryptovalyuty yak ob'ekt tsyvil'nykh prav: porivnyal'no-pravovyy analiz [Cryptocurrencies as an object of civil rights: a comparative legal analysis]. Qualifying scientific work on manuscript rights. Dissertation for the Doctor of Philosophy degree in specialty 081 "Law". SHEI "Uzhgorod National University". Uzhhorod, 2022. 287 p.
2. Zakon Ukrainy vid 17.02.2022 № 2074-IX "Pro virtual'ni aktyvy" [Law of Ukraine of 17.02.2022 No. 2074-IX "On Virtual Assets"]. URL : <https://zakon.rada.gov.ua/laws/show/2074-20#Text>. [in Ukr.].
3. Demianiuk M. Virtual'ni aktyvy v Ukraini [Virtual assets in Ukraine]. Why it is necessary to legalize the virtual asset market and what opportunities it will open for the economy. Ekonomichna Pravda. September 1, 2020. URL : <https://www.epravda.com.ua/columns/2020/09/1/664585/>. [in Ukr.].
4. Sosedka E. Banky y fyntekh: 5 trendov blyzhaysheho budushcheho [Banks and fintech: 5 trends of the near future]. Bsiciness Cenzor. 2020. URL : <https://biz.censor.net/m3235394>. [in russ.].
5. Drozdov O., Drozdova O., Gereliuk T. Bitcoin v Ukraini: to be or not to be [Bitcoin in Ukraine: to be or not to be]. URL : <https://unba.org.ua/publications/print/2962-bitcoin-v-ukraini-to-be-or-not-to-be.html>. [in Ukr.].
6. Chaplian S. Pravovyy status kryptovalyut [Legal status of cryptocurrencies]. *Private Law*. 2018. No. 2. P. 148-164. [in Ukr.].

ABSTRACT

The article examines the legal status and features of digital currency as an object of civil rights in Ukraine and the EU. The legal nature of digital currency as a whole and its variety - cryptocurrency (virtual currency), which does not have a clearly defined legal nature and is recognized either as a means of payment or as a commodity in European countries – has been studied. Digital (electronic) currency is electronic money that is used as an alternative or additional currency. Most often, their value is tied to national currencies. Such digital currencies as Estcoin, eKrona, e-hryvnia were analyzed.

It was determined that virtual currency, as a special type of digital currency, does not have the status of legal tender in the vast majority of jurisdictions of European countries. The normative definitions of digital currencies in Ukraine and the EU were studied, as well as the jurisdictions in which virtual currencies were given official status as a means of payment were analyzed. Focused attention on the prospective legislation of Ukraine, dedicated to virtual assets and virtual currency. Features of digital currency as an object of civil rights and peculiarities of its legal status are formulated.

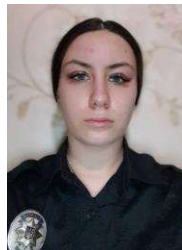
Keywords: digital currency, virtual assets, cryptocurrency, civil rights objects, fiat currency, blockchain, e-hryvnia.

UDC 347.9

DOI 10.31733/2078-3566-2022-5-107-111



**Maryna
LOGINOVA**[©]
Lecturer
(Dnipropetrovsk State
University of Internal
Affairs, Dnipro, Ukraine)



**Karolina
REZNICHENKO**[©]
Cadet
(Dnipropetrovsk State
University of Internal
Affairs, Dnipro, Ukraine)

PECULIARITIES OF REPRESENTATION IN CIVIL PROCEEDINGS

Марина Логінова, Кароліна Резніченко. ОСОБЛИВОСТІ ПРЕДСТАВНИЦТВА У ЦИВІЛЬНОМУ ПРОЦЕСІ. Стаття присвячена висвітленню однієї з актуальних проблем цивільного процесу щодо питання представництва в цивільному процесі України. Сучасний цивільний процес відрізняється особливою складністю, оскільки на зміну слідчому процесу прийшов процес змагальний, сутність якого полягає у перенесенні обов'язку обґрунтування і доведення всіх фактичних обставин справи на сторони. Нині цивільне судочинство здійснюється на засадах змагальності, тому сторони та інші особи, які беруть участь у справі, повинні довести обставини, на які посилаються як на підставу своїх вимог та заперечень.

© Loginova M., 2022

ORCID iD: <https://orcid.org/0000-0001-5608-9911>

marinaloginova.dduvs@gmail.com

© Reznichenko K., 2022