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ANALYSIS OF THE CONTENT OF CONTRACTS FOR THE PROVISION OF COMMUNICATION SERVICES

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Abstract:
This article discusses the formation of civil law regulation of digital rights, theoretical and legal analysis of digital law, the concept and essence of digital rights, the need to define digital rights, the relationship of digital law with other rights, civil law analysis of digital law, theoretical and practical problems of the introduction of digital rights as a special object in civil circulation, conducted comparative analysis of the conceptual foundations for determining the rights and obligations of subjects of digital law, as well as scientific meta-methodological foundations of the categorization of digital rights in civil law.

Keywords: digital law, digital rights, digital technologies, digital society, trends, freedom of information, digitization, e-government, digital civil law, property rights, digital objects.

INTRODUCTION

Based on the proposal of the Ministry for the Development of Information Technologies and Communications, it was established to approve a list of information systems and resources of state and economic management bodies that will be placed in the data processing center of the electronic government system and systematically monitor their activities based on this list [1].
On June 3, 2016, the Cabinet of Ministers adopted Resolution No. 188 “On measures to continue the implementation of the Law of the Republic of Uzbekistan “On Electronic Government”. The document was adopted as part of the implementation of the law "on electronic Government", the Regulations on the procedure for providing electronic public services through the Unified Portal of Interactive Public Services and official websites of state bodies, on the government portal of the Republic of Uzbekistan on the Internet were approved, amendments and additions were made to some government resolutions.
The document defines such tasks as preventing unnecessary interference in the process of providing public services in electronic form, reducing the number of documents and requests required from the public and business, simplifying the process of providing services, as well as bringing documents of state bodies into a single form.
As for other digital assets, such as tokens, cryptocurrency, big data, domain names and accounts, virtual gaming property, etc., there has been a discussion for a long time about recognizing them as objects of civil rights. It would seem that today it is safe to say that it ended with the victory of supporters of the recognition of new digital assets as objects of civil rights, since the state can no longer ignore the property turnover involving these objects.

As you know, property or non-property benefits are recognized as objects of civil rights. In philosophy, "good" is a relative concept, since this or that thing is not good in itself, but only in a certain respect, when it benefits the subject. In this regard, not any object obtained as a result of the use of digital technologies can be attributed to the objects of civil rights, but only one that has value, real or potential. It should be particularly noted that the very name "digital asset" contains an indication of the property value of a digital object.

The use of tokens and cryptocurrencies in the financial sphere already indicates that these objects have a certain value. The fact that a token or a new cryptocurrency may not meet the expectations of investors and turn out to be a soap bubble has no legal significance. They have at least a potential value. This remark is also true for big data, domain names and virtual gaming property.

But the question of the property value of accounts deserves special attention, since recently it has been actively discussed in connection with inheritance problems.

In recent years, the issue of personal data protection has been quite acute. Not so long ago, the European Union adopted the General Regulation on the Protection of Personal Data (GDPR), according to which companies are obliged to protect the integrity and confidentiality of data, to guarantee a transparent data collection system. In general, the law is evaluated extremely positively, but there is also a critical position that it does not bring anything new [2].

The legal basis of digital human rights is one of the fundamental human rights - the constitutional human right to freedom of information in its various forms, that is, everyone has the right to freedom of thought, speech and beliefs. Everyone has the right to seek, receive and disseminate any information he wants, with the exception of information directed against the current constitutional regime and other restrictions established by law [3].

Previously, accounts on social networks and in virtual games were not subject to direct transfer either in the order of singular or in the order of universal succession.

In digital civil law, property rights are divided into digital objects that must be protected. Property liability occurs when these rights are violated. Intangible characteristics of digital objects in Russian civil law require a special classification of specific methods of protection.

According to V.D. Zorkin, "digitalization of public life has led to the emergence of previously unknown digital rights. Digital rights refer to the rights of people to use, create and publish digital works, access to computers and other electronic devices, as well as access to communication networks, especially the Internet [4].

Examples of legislative regulation of this sphere can be found in the legislation of some states of America. The Delaware State in August 2014 was the first to legislatively provide for the possibility of registering ownership of Internet accounts belonging to a deceased citizen [5]. In Idaho and Oklahoma, relatives of the deceased can access blogs, mail and social pages, and in Indiana — to documents and information stored electronically (or get a copy of them) [6].

Recently, the German Supreme Court allowed Facebook accounts to be inherited. According to the court's decision, social media accounts should be treated within the framework of the Inheritance Law in the same way as diaries and letters. After the death of the owner, they can be transferred to relatives. At the same time, during the proceedings, the courts of the first and second instances recognized the right of the heirs to access the account. However, the

plaintiffs' appeal was denied with reference to the impossibility of disclosing personal information of both the account owner and those with whom she communicated on the social network. Taking into account these positions, it was noted in the final decision that access to the account and the information contained therein is subject to the mode of personal correspondence: the heirs may require the network operator to provide them with access to the account, including data related to the user's communication in the social network, including the recipients of the correspondence [7]. The court equated the account with diaries. At the same time, the lawyer conducting the case on behalf of the heirs emphasizes that it is about the right to read correspondence, but not about permission to publish this information.

Thus, universal succession is recognized with respect to access to a digital asset that exists in the form of a code that is translated into binary form for execution, but has value not as a password and login, i.e. an encrypted record, but as an entity with economic value. At the same time, this asset, due to its digital informational nature, is closely linked to data concerning third parties. Therefore, the rights of the account holder may be related to his identity or the privacy of third parties.

The decision of the German Supreme Court shows another feature of a digital asset as an entity with economic value. In this case, the heirs were faced with the task of gaining access to the information component of the page on the social network. Therefore, the court's decision indicates the need to respect the secrecy of private life. However, the innovative nature of this act is that access to commercially oriented projects can now be provided — by obtaining inheritance (and other universal) or singular succession.

Thus, it seems that digital assets are subject to special regulation sui generis only if they have consumer properties in circulation.

Otherwise, we may be talking about providing protection to the relevant non-property rights.

Without identifying the consumer value of an asset, not every object, even if it falls under the signs of digital assets, may require the creation of a special civil law regime for it. What is connected with the material world, as it seems, has already received legal regulation. Thus, entries in registers of various kinds as such cannot be considered digital assets. At the same time, the issue of standardization of information placed in distributed registries is being solved in practice today, depending on the goals of creating a registry. And although it will be necessary to develop standards for the description of registered objects that would allow for the initial verification of ownership of rights, as well as further transactions regarding the transfer of rights to the corresponding objects in a publicly accessible manner [8], the functional purpose of the registry will not change. The commercial turnover of digital assets may require special regulation precisely due to the impossibility of solving emerging issues at the level of the available regulatory material.

At the same time, it should be emphasized that it is not the code entry itself that has the value, but the right certified by it to the object encrypted in it, including the right to access the code (login, password, crypto wallet, etc.) and to dispose of the digital asset.

Consequently, digital assets with economic value and capable of turnover can be recognized as objects of civil rights. However, the recognition of digital assets as objects of civil rights does not mean that they receive adequate legal regulation, since their specifics do not allow

them to be fully covered by the current civil legislation. To create a special legal regime, it is necessary to identify the distinctive features of such objects as objects of civil rights. We believe that the following constitutive features of digital assets can be considered as such:

— they are immaterial and do not need to be materialized in the real world;

— exist only in digital, not electronic form;

— presented as records (code), created by encoding using cryptography and can only be reproduced using special technical devices.

Digital assets are intangible and do not need to be materialized in the real world. Historically, property turnover was dominated by things, i.e. objects of the material world. With the development of technology, new material goods have appeared, the materiality of which is rather conditional, such as gas or electricity. The appearance of an electronic form for some traditional objects of civil rights, such as money, securities, and the results of intellectual activity, did not lead to a revolution in law, although it gave rise to a number of problems. Nevertheless, the legal regulation of such objects was built by analogy with the regulation of objects having a similar legal nature and having the characteristics of a thing.

This became possible because such objects, despite their shape, are closely connected with the material world. They can be material in nature, like gas and electricity, or they can be easily transferred from electronic (digital) form to material and vice versa. Thus, photographs are created in digital form, but can be objectified when they are printed on a material medium (paper, photo paper, wallpaper, fabric, etc.). Books printed before the end of the XX century can exist not only in paper version, but also in electronic form when they are digitized. It should be particularly noted that most films, music and literary works that exist in the form of video and audio files, text files, can be fixed on a separate material carrier (for example, a flash card).

In cases where such a connection is not obvious or absent, problems arise with their legal regulation. Thus, an attempt to extend the legal regime of securities to non-documentary securities was unsuccessful.

Digital assets exist only in digital form, while the concept of the latter does not coincide with the concept of electronic form. Despite the complexity of determining the nature of digital assets, the question of the form of existence of this type of objects comes to the fore in discussions with the participation of legislators and scientists. Therefore, it is necessary to focus separately on the problem of defining the electronic form and its relationship with the concept of a digital asset.

Thus, when we consider the nature of a digital asset, the code itself becomes the focus of our attention. At the same time, we must make a reservation that today such objects are created using cryptography, but this circumstance may change with the development of technology. If technically not a cryptographic encryption method is used, but some other one, this will not affect the nature of the object called digital.

It seems that the need to create a new legal regulation of relations with the use of digital assets arises in cases when digital assets have an exclusive digital essence, i.e. they are created and exist only in a digital, virtual environment.

A kind of trust in the algorithm in an untrusted environment determines the peculiarities of the turnover of digital assets. In the corresponding ecosystems that technologically provide access to the digital asset market, a special environment of trust is created between anonymous counterparties, the transfer, creation and introduction of assets into circulation are facilitated and do not require the participation of intermediaries, it becomes possible to use self-executing contracts to a certain extent, etc.

The conducted research has shown that today the number of digital assets with economic value and exclusively digital essence can include: tokens, cryptocurrencies, big data, domain names, accounts. It is possible that with the development of technology, other types of digital assets will appear.

The identified specific features of the listed digital assets as objects of civil rights allow us to conclude that the formation of special legal regimes for them is inevitable. Unlike traditional objects of civil rights, they are subject primarily to technological patterns of turnover, which should be reflected in the legal regulation of these relations.

It seems that at this stage, the necessary body of knowledge about new digital assets has not yet been accumulated, which would make it possible to develop a common concept and a common legal regime for them. It is necessary to follow the path of creating separate legal regimes based on the functional purpose of certain types of digital assets, thereby determining their legal nature.

Thus, in our opinion, the introduction of the concept of "digital rights" into legislation is, in principle, terminologically not quite accurate, and their attribution to objects of civil rights is completely erroneous. Of course, digital rights can be viewed as a legal fiction. However, the use of legal fiction in legislation should pursue some goal, contribute to achieving a certain result. In the case under consideration, such a result, apparently, is the extension of the property rights regime to cryptocurrencies and tokens. However, it seems that there is no objective need to create such a complex structure – for the purposes of regulating economic turnover, it would be enough to recognize the fact that property rights can be recorded in digital form, including by making entries in decentralized registers. The consolidation of such provisions in civil legislation would already make it possible to extend to crypto assets all the civil legal instruments necessary for their use and protection.

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