

Digital rights as a socio-economic and legal reality

Aminov I.I.

Moscow State Legal University named after O.E. Kutafin,
Moscow, Russia
aminovii@mail.ru

Abstract — The article substantiates that the developing process of moving real assets into the digital environment in order to carry out legally significant actions with them requires defining clear legal models of this process, and therefore the law, as an instrument of social regulation, undergoes qualitative changes under the influence of information and digitalization processes.

The features of the interrelation and interdependency of law and the economy, characterized by the digitization of civil turnover are considered. The features of these interrelations, based on new technologies, using the existing toolset of civil law, are determined. A legal assessment of legislative innovations is given in connection with the adoption of the Federal Law "On Amendments to the Civil Code of the Russian Federation" (March 12, 2019), which legalized the concept of digital rights and individual transactions, conducted electronically in the information environment. In the context of existing points of view on the tokenization of objects of civil law and the digitalization of means and methods of conducting civil law transactions, the existing problems in legislation and legal practice on the regulation of digital rights are detected. Individual offers were made on the organizational and legal optimization of the processes occurring in this direction.

Keywords — *digital economy, digital law, virtual asset, self-executing transactions, smart contract.*

I. INTRODUCTION

The scaled and all-pervasive spread of digital technologies, especially manifested in the last decade, the blurring the borders between the real and digital world, the widespread of simplified virtual simulations, super-services and smart designs not only have a significant impact on the socio-cultural landscape, but also generate problems that need for consistent legislative regulation, and participants of relations in the information environment need for guaranteed legal protection. The developing process of transfer of real assets into the digital environment in order to carry out legally significant actions with them requires defining clear legal models of this process [1]. Law, as a tool of social regulation under the influence of the processes of informatization and digitalization, undergoes qualitative changes. Information and legal space become more dynamic, interactive [2].

The challenges in our time in some cases make inevitable a revision of the traditional attitudes prevailing in the law and the development of new approaches in theory, legislation and in practice. Modern realities already dictate their own rules and, without waiting for legislative regulation, force law enforcers, first of all, judges, to solve the necessary issues. So, in May 2018, the cryptocurrency was first recognized as property when the court referred it to the category of "other property", pointing out the absence of a closed list of civil rights objects and the possibility of a broad interpretation of

the concept "other property" in civil law, given by Article 128 of the Civil Code of the Russian Federation (hereinafter referred to as the Civil Code of the Russian Federation).

Law is a socio-cultural phenomenon. It is determined by the economic formation and, at the same time, is able to determine it. The legalization of certain socio-economic phenomena leads to the stability of economic turnover and socio-economic development. At the same time, the law can go ahead of the curve and anticipate the emergence of social relations in a particular sphere, which have not yet matured, but are extremely necessary for society. Significant manifestation of mutual influence and interdependence of law and economy was recorded on March 12, 2018, when the State Duma of the Federal Assembly of the Russian Federation adopted a law creating an institutional basis for regulating relations within the digital economy - the Federal Law "On Amendments to Parts One, Two and Article 1124 of Part Third of Civil Code of the Russian Federation" (hereinafter the Law "On Amendments to the Civil Code of the Russian Federation"), or, as it is widely called, the Law on digital rights. It is noteworthy that the Council under the President of the Russian Federation on the codification and improvement of civil legislation rejected the draft law twice, sending it back for revision. The final version of the document was supported by 76% of deputies.

II. RESEARCH METHODOLOGY

In this Article, on the basis of a legal analysis of the norms of the Law "On Amendments to the Civil Code of the Russian Federation" adopted by the State Duma, innovations to the Civil Code related to the legalization of digital rights and certain phenomena and actions of legal importance associated with them, are considered. In the context of existing points of view on the tokenization of objects of civil law and the digitalization of means and methods of conducting civil law transactions, the existing problems in legislation and legal practice on the regulation of digital rights are detected. Individual offers were made on the organizational and legal optimization of the processes occurring in this direction.

III. RESULTS OF THE RESEARCH

The Law "On Amendments to the Civil Code of the Russian Federation" is a new sphere for Russian law, therefore, first of all, it was important for the legislator to consolidate the basic concept of "digital rights" at the legislative level, according to which there was no united consensus and understanding so far. The official "registration" of the concept of "digital law" in the Civil Code determined its place in the system of civil rights objects, made it possible to turn this object over on the Internet and other

information networks, including providing individuals and legal entities with protection under digital rights transactions .

The Federal Law “On Amendments to the Civil Code of the Russian Federation” integrates digital rights into the system of civil rights objects and classifies them as property rights, that is, related to property (clause 2 of Article 128 of the Civil Code of the Russian Federation). The law legalized the basic definition of “digital law” — the legal equivalent of the term “token”, meaning a virtual value unit (virtual asset) that various electronic platforms operate with [3].

According to the new Article 141.1 of the Civil Code of the Russian Federation, introduced by the Law “On Amendments to the Civil Code of the Russian Federation”, “digital rights are obligation and other rights, the content and conditions of which are determined in accordance to the rules of the information system, that meets the criteria established by law, while implementation, disposal, including transfer, pledge, encumbrance of a digital right by other means or restriction of disposal of a digital right is possible only in the information system without third person”.

In this definition, first of all, the phrase “obligations and other rights” is noteworthy. We consider that other rights should include, for example, corporate rights, which follows logically from a system analysis of the provisions of clause 1 of Art. 2, clause 3 of Art. 48 and cl. 3 of Art. 307.1 of the Civil Code of the Russian Federation: corporate relations are relative, but not binding [4].

Noteworthy is the reference to clause 1 of Art. 141.1 of the Civil Code to the “rules of the information system” on which digital rights are turned over. Federal Law "On Information, Information Technologies and Information Protection" in Art. 2 gives a rather utilitarian concept of an information system as a totality of information contained in databases and information technologies and technical tools that ensure its processing, which corresponds to a software and hardware complex. The new form of Civil Code puts a greater meaning in this concept — the existence in the information system of internal regulation, to which third-party users will obey through a user agreement, through a public offer, a public contract, a contract of accession, etc. In addition, for the turnover of digital rights, the sign of decentralization, which occurred in the original version of Article 141.1 of the Civil Code of the Russian Federation, is excluded from the concept of an information system. Now the Article refers to the signs of the information system established by law. This makes the norm more universal and allows to realize civil circulation of digital rights not only on blockchain platforms that were supposed to be regulated initially. Thus, the Law adheres to the principle of technological neutrality: there is no binding of digital rights to a specific technology, for example, distributed ledger technology, DLT (distributed ledger technology), blockchain, etc. Accordingly, when qualifying digital rights, one can proceed from the essence of the tool, and not from the form [5].

At the same time, the legal definition of digital rights raises questions: why are transactions with digital rights possible only in the information system without the appeal to a third party, and not in several integrated information systems? Will the appeal to a third party system refer to a third party?

Apparently, this norm is caused by the desire to distinguish digital rights and non-documentary securities, in case of which you need to contact the registrar to complete a transaction or encumbrance.

The holder of a digital right is a person who, in accordance with the rules of the information system, has the opportunity to dispose of this right, unless otherwise provided by law (clause 2 of Article 141.1). At the same time, the Law does not establish rules for the circulation of digital rights within the information system, shifting this issue to special regulation.

Paragraph 3 of Art. 141.1 of the Civil Code of the Russian Federation determines that digital rights can be alienated without the agreement of the issuer (for example, a platform), they are subject to the provisions on the sale and purchase, they can be pledged, bequeathed and they can be penalized. That is, the transfer of a digital right on the basis of a transaction does not require the agreement of the person obligated under such digital law. The possibility of transferring digital rights without the agreement of the issuer will help to avoid problems in organizing the secondary circulation of digital rights and adapt it to current market practices.

Significant changes have affected the form of transactions. Clause 1 of Article 160 of the Civil Code of the Russian Federation establishes that a remote expression of a person’s will using electronic or other technical means is considered an expression of will in proper written form if two conditions are met: 1) the technical means used for the expression of will allow the content of the transaction to be reproduced on a tangible medium in an unchanged form; 2) any method was used to reliably determine the person who expressed will. In other words: the written form of the transaction is respected if the text of the document can be reproduced unchanged on a tangible medium, and there is a signature if it is possible to identify the person who attached it.

Corresponding changes relating to the written form of the contract, are made to clause 2 of Article 434 of the Civil Code. It should be mentioned that the Civil Code in clause 5 of Article 1286, introduced in the Civil Code by Federal Law No. 35-FL of March 12, 2014, contains a similar rule when the terms of a contract for the provision of a simple non-exclusive license concluded in a simplified procedure can be stated in electronic format. At the same time, the beginning of the use of a computer program or database by the user, as determined by these conditions, means his agreement to the making of contract. In this case, the written form of the contract is considered to be complied with. At present, users of computer programs actively express their agreement to make a license contract by pressing (“click”) certain keys [6].

However, the amendments to Article 160 of the Civil Code of the Russian Federation eliminated the excessive regulation of the electronic form of transactions, as a variant of a simple written form, and electronic signatures. Previously, Article 160 of the Civil Code referred to the law on electronic signature (EDS). Accordingly, the courts, assessing whether the electronic document was properly signed, appealed to the law on EDS or demanded an explicit agreement between the parties on how to use electronic documents and signatures. As a result, documents, signed by simple unqualified electronic signatures (for example, DocuSign), which were most convenient for business, were reluctantly admitted by the courts [7].

IV. DISCUSSION OF RESULTS

However, the question of how the court will decide whether the method of an electronic signature to “reliably determine” the signatory remains open. Apparently, this is the

task of proving the authenticity in each particular case and the formation of judicial practice by higher authorities.

In accordance with the Law “On Amendments to the Civil Code of the Russian Federation”, Article 181.2 of the Civil Code specifies that a decision of an assembly by absentee voting may be taken, including, by voting by electronic and other technical means. In other words, it will be possible to absentee vote by using electronic or other technical means at meetings of civil law communities.

The Federal Law “On Amendments to the Civil Code of the Russian Federation” supplemented Article 309 of the Civil Code with clause 2, which regulates the possibility of executing a transaction through the automated fulfillment of obligations determined by the terms of the transaction. Thus, a basis is created for admission of the legal significance of “self-fulfilling” transactions or smart contracts, since under the new rule, the automatic launch of a condition when certain circumstances agreed by the parties occur has legal force. This gives IT business confidence that the automatic execution of the condition, when, after signing a smart contract, the parties no longer require additional expression of will, is not against the law. From a legal point of view, a smart contract is not a separate transaction, but only a condition (for example, a pricing procedure or triggers that trigger a payment) about the automatic execution of any civil law contract. It can be added that a smart contract is not a separate type of contract, but a special type of execution and implementation of civil law transactions, which allows to use the enormous economic potential of IT technologies and has a number of specific characteristics [1]. In other words, the transaction may provide for the execution by the parties of their obligations upon the attachment of certain circumstances — through the use of information technologies, that is, the information system itself will do the execution[8]. For example, upon the attachment of the circumstances specified in the agreement, the seller of the virtual object will automatically be debited with a digital right, and the customer will have the money (the client instruction to the bank to write off the utility fee in the “auto payment” mode). At the same time, information system platforms can be used both for relatively simple operations (for example, alienation of law), and for complex and multi-level schemes for managing various assets. Smart franchise contract can provide an automatic signing of a contract to supply equipment to the franchisee and the debit from his account funds. Other conditions can be included in the scope of a smart contract, as well as a system for accounting for sublicense contracts [9]. At present, the ideas of using smart contracts in letter of credit transactions, factoring transactions are being implemented.

In addition, the Law “On Amendments to the Civil Code of the Russian Federation” stipulates that the provisions of § 1 “General provisions on sale and purchase” of chapter 30 “Purchase and sale” of the second part of the Civil Code apply to the sale and purchase of digital rights. As a result of the amendment to Article 493 of the Civil Code of the Russian Federation, the contract of retail purchase and sale will be considered signed in the proper form also from the moment the seller gives an electronic document confirming the payment. For example, a transaction enclosed remotely will be considered valid if the website or mobile application describes the conditions for pressing the confirmation button (“Enter”, “OK”). The proper way of expressing the will is to fill an electronic form or send an SMS. Note that such actions are

widespread both in Russia and abroad, but they have not been directly regulated by Russian law so far [10].

In order to admit the public offer exposing of goods on the Internet, the provisions of clause 3 of Article 493 of the Civil Code of the Russian Federation are supplemented.

The Law “On Amendments to the Civil Code of the Russian Federation” introduces a new Article 783.1 in the Civil Code, which establishes the contract for the provision of information services, and thereby legalizes the collection and processing of large arrays of impersonal information (Big Data). The contract for the provision of information services may specify the obligation not to take action, as a result of which the transmitted information may be disclosed to third parties.

It is prescribed that, in the interests of the parties of the transaction, the contract may provide for the obligation not to take actions, as a result of which the transmitted information may be disclosed to third parties.

The Law “On Amendments to the Civil Code of the Russian Federation” amended clause 1 of Article 860.2 and clause 2 of Article 940 of the Civil Code of the Russian Federation, which establish the possibility of signing a nominal account contract and insurance contract in electronic form or by exchanging electronic documents.

At the same time, despite the “vigorous introduction” of digital constructions into legal reality, the Law “On Amendments to the Civil Code of the Russian Federation” retains the traditional, “pre-digital” model of making a will. Thus, clause 1 of Article 1124 of the Third Part of the Civil Code of the Russian Federation is supplemented with a paragraph that does not allow the making of a will using electronic or other technical means. In this regard, it is also necessary to note the amendments made to paragraph 1 of clause 3 of Article 67.1 of the Civil Code of the Russian Federation, which is supplemented after the word “decision” with the words “by means of in-person voting”.

V. CONCLUSION

With the adoption of the law “On Amendments to the Civil Code of the Russian Federation”, citizens and businesses received guarantees that their rights and legal interests, including the fundamental right to judicial protection, are respected. The law establishes a frame regulation of digital rights based on the principle of technological neutrality, which allows you to create basic conditions for the introduction of acts into legislation, that regulate the issue and turnover of digital rights, and also simplify transactions in electronic form. From a legal point of view, it is important that the legislator admitted the current practice of using electronic documents and automation of documents circulation. The law correctly minimizes the excess trusteeship (paternalism) of business on the part of the legislator, leaving the decision of many issues to the discretion of market participants.

At the same time, with the adoption of this law, which became the basis for further legislative activity in this direction, the work on legislative regulation of the development of the digital economy does not end there. Thus, an essential aspect of the Law is the exclusion of special provisions on the so-called digital money (cryptocurrency) and their use as a means of payment. According to the legislator, the introduction of digital money into civil circulation is premature, but it is quite possible in the future. Adoption of a whole block of federal laws is actual, which will define the

rules that information systems must comply with, as well as the types of digital rights and the specifics of their emission. The law “On Amendments to the Civil Code of the Russian Federation” practically does not regulate the blockchain, tokens and smart contracts in any way. Per se, the introduced digital rights are as close as possible in status and functions to uncertified securities.

The legal nature of cryptocurrency and mining, as well as some other aspects, such as the inheritance of digital financial assets, etc., need to be determined. It is necessary to make changes to corporate legislation, without which, the basic principles, established by law, will not be enough to issue and organize the circulation of digital corporate rights.

Thus, despite the fact that the adopted law is far from perfect and does not solve all the issues in this sphere, it shows that Russia does not follow the path of prohibitions, but try to work out its own optimal way of legal regulation of the digital economy and civil law relations in the information environment.

References

- [1] Novoselova L. A. "Tokenization" of civil law objects // *Economy and law*. 2017. No. 12. P. 29–44.
- [2] Markevich D.S. Information processes in law in the conditions of the development of the digital economy // *Information technologies and law: Legal informatization - 2018. Compilation of records of the VI International Scientific Practical Conference*. Edited by E.I. Kovalenko. Minsk. 2018. P. 217-222. P. 221.
- [3] Swan M. *Blockchain: Blueprint for a New Economy*. O'Reilly Media, Inc., 2015. – 128 p.
- [4] Objects on digital media, digital rights and money: trends of legal theory and practice // *information and legal portal GARANT.RU* // URL: <https://www.garant.ru/article/1220358/>
- [5] The State Duma adopted a law on digital rights // *Lawyer of the company* // URL: <https://www.law.ru/news/20946-gosduma-prinyala-zakon-o-tsifrovyyh-pravah>
- [6] Sitdikova R.I., Sitdikov R.B. Digital rights as a new type of property rights // *Property relations in the Russian Federation*. 2018. No. 9 (204). P. 75–80.
- [7] The law “On digital rights” will not work without the law “On digital financial assets” - experts explain // URL: <https://forklog.com/zakon-o-tsifrovyyh-pravah-ne-budet-rabotat-bez-zakona-o-tsifrovyyh-finansovyh-aktivah-obyasnyayut-eksperty/>
- [8] Kostikova G.V. Digital rights as new objects of civil rights // *Technique and security of objects of the correctional system. Compilation of records of the International Scientific Practical Conference*. Voronezh. 2018. P. 346–349.
- [9] The main trends in the development of intellectual property rights in the modern world, including new objects of intellectual rights and global protection / Team of authors: Akhmedov G.A., Voynikanis E.A., Glazunova K.D. et al. By order of the joint-stock company "Russian Venture Company". M., 2017 // URL: http://www.rvc.ru/upload/iblock/85d/Trends_in_Intellectual_Property.pdf
- [10] Kolontaevskaya I.F. Legal securing of electronic commerce // *Actual problems of modern society and ways to solve them in the transition to a digital economy: Records of the XIV International Scientific Conference*: in 4 p. M., Publishing House: Moscow University named after S.Y. Witte. 2018. P. 103–110.