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Utility Digital Rights in the Development of the Digital Economy

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ABSTRACT
Widespread digitalization is one of the main challenges for the development of a modern state. Digital technologies are confidently being introduced into the economy and the main social spheres of the state's life. The active development and implementation of information technologies has an impact on Russian civil law. Based on the analysis of the current civil legislation of the Russian Federation, the article analyzes the novelties of Russian legislation in the digital sphere, based on theoretical provisions on the legal regulation of digital relations. The article examines the norms of the law on the essence and content of utility digital rights, the civil legal regime of utility digital rights, the peculiarities of their implementation. The problems of legal regulation of utility digital rights and the prospects for the development of legislation in this area of relations are outlined. The paper presents the authors' own views and analyzes the theoretical research of scientists in this area.

Keywords: *digitalization, digital rights, utility digital rights, digital evidence, crowdfunding, legal regulation*

1. INTRODUCTION

The rapidly developing scientific and technological progress, global economic and social transformations have brought modern society to a transition to a completely new level of development associated with the digital economy and the digitalization of all major spheres of state and public life. These processes influenced the mechanisms of government, the state of public institutions, the forms of economic organization, changed the ideology and values of society. Today, we can observe how the rapid development of digital institutions is significantly ahead of the legal regulation of relations in the digital economy. Despite the "vague" details of the development of the new digital economy, it is necessary to properly legalize digital economic relations [1, p.12].

The concept of "digital economy" was formulated in 1995 by Professor N. Negroponte [2]. Today this term is used to define a new level of economic relations based on digitalization. According to M. Bauer and F. Erickson, the most serious structural obstacle to the development of digital business in states is regulatory heterogeneity in non-digital sectors of the economy, which makes it difficult for digital business to compete with traditional industries only through the digitalization of traditional business models [3, p. 2].

The development of the digital economy at a high level is associated not only with adequate legal regulation. It is necessary to form cross-sectoral institutions aimed, among other things, at ensuring a digital environment of trust, at regulating the identification of subjects of the digital environment, artificial intelligence and other high technologies. We also need novelties of legal regulation in this area.

Thus, the emergence of digital rights as new objects of civil rights, and their varieties - utility digital rights, creates a new type of legal relationship and forms the basis for a new stage in the development of the digital economy in the Russian Federation. This determines the relevance of the research topic.

2. METHODOLOGY OF THE STUDY

The feasibility of developing a research topic, taking into account the above, is predetermined by an attempt to comprehensively analyze the novels of Russian legislation in the field of legal regulation of utility digital rights.

As the goal of the study, we see the formation of a comprehensive understanding of the essence, content and legal regulation of utility digital rights as an object of civil rights of the Russian Federation.

The methodological basis of the work was formed by the comparative method, the system analysis method, as well as private research methods, such as logical, analytical, etc.

2.1. The concept and essence of digital rights

Transformations in the field of socio-economic relations in the world contribute to the development of joint consumption and economical use of resources based on digital interaction (sharing economy firm) [4, p. 1], which

have replaced individual consumption, new terms are emerging that are used in the provision of services (ride-sharing company [5. p.85], transportation network companies [6], online-enabled car transportation services [7]). These companies are united by the "aggregators" category [8, 9, 10]. In this regard, in the new socio-economic conditions of development of the state, the issues of establishing the legal regime of law are relevant.
The legislator in accordance with Art. 128 of the Civil Code of the Russian Federation provides for the following types of objects of civil rights: corporate rights, liability rights, property rights, exclusive rights, uncertificated securities, digital rights.
In accordance with Art. 141.1 of the Civil Code of the Russian Federation, digital rights are recognized as such in the law as binding and other rights, the content and conditions for the exercise of which are determined in accordance with the rules of the information system that meets the characteristics established by law (for example, in the Blockchain).
Digital rights are proprietary rights along with uncertified securities and non-cash funds. The legal regime of ownership of property rights is not applicable.
Based on the legal nature of digital rights, we can conclude that they are ideal, can exist only in the virtual world and are implemented only according to the rules of the information system within the digital technology of the distributed ledger. Digital rights are expressed on a tangible medium in the form of special characters, combinations of numbers or their combinations and take on a digital form. In this context, taking into account the legal nature of digital rights, the legislator's approach deserves criticism, according to which digital rights are classified as property rights, on a par with obligations, intellectual or other property rights. After all, the latter have a completely different legal nature. To date, this position of the legislator has generated theoretical problems of the following nature:
firstly, the legal regimes of digital, corporate, intellectual and other property rights were mixed;
secondly, the law lacks qualifying distinctive features of digital and others listed in Art. 128 of the Civil Code of the Russian Federation of property rights.
As you know, digital rights arise and are exercised only in relation to the information system (blockchain technology). Thus, it would be more correct at the legislative level to talk about the emergence of a new way of fixing such rights than about the emergence of a new object of civil rights, such as digital rights.

2.2. Token on the blockchain

If we turn to the history of the introduction of the category of "digital law" into the Russian civil circulation, it is worth noting that the bill initially provided for the consolidation of digital rights as a token in the blockchain. Token is a virtual unit operated by the blockchain, which is a kind of digital object code and digital key. The token is able to recognize and identify the entitled subject in the information system, or block the actions of a person who is not a copyright holder.
Blockchain is a decentralized information system that consists of a chain of blocks of transactions. The blockchain provides accounting and storage of data, the identity of data for all participants and confirmation of the validity of the blocks is provided by the consensus of the participants [11, p.74].
According to L.Yu. Vasilevskaya, the token has the function of a digital banknote. "In this case, it is considered as a cryptocurrency token, i.e. as a means of payment that can be exchanged for other digital objects, or paid with them (through a transaction) for the provision of a certain product in reality, the performance of work or the provision of services. In its last value, the token implements the function of fulfilling a monetary obligation for already provided goods, work performed and services rendered, or gives the right to receive them" [12, p.114].
An authorized user can make token payment transactions using cryptocurrency as a unit of calculation.
E.N. Agibalova rightly asserts that the legislator "in the concept of digital law, the term "digital" is used rather as a replacement for the term "token", to which information about property rights is linked" [13, p. 95].
Ultimately, the Federal Law "On Amendments to Parts One, Two and Article 1124 of Part Three of the Civil Code of the Russian Federation" dated March 18, 2019, did not include provisions on digital money, which were originally contained in its draft [14]. Despite this, new categories of "digital financial assets" and "digital currency" have appeared in the domestic legislation, introduced by the federal law dated July 31, 2020, No. 259-FZ "On Digital Financial Assets, Digital Currency And Amendments to Certain Legislative Acts of The Russian Federation" [15]. This law comes into force on January 1, 2021. The law provides for the legal regulation of the circulation of digital currency, but, at the same time, seeks to deprive it of its payment function. Digital currency, in accordance with the law, is a set of electronic data contained in an information system that are offered and/or can be accepted as a means of payment and/or as an investment. However, digital currency is not a national or international currency or unit of account.

2.3. Digital financial assets as a manifestation of the category of digital rights

In accordance with cl. 2 of Art. 1 of the Federal Law "On digital financial assets..." digital financial assets "are digital rights, including monetary claims, the ability to exercise rights to equity securities, the right to participate in the capital of a non-public joint stock company, the right to demand the transfer of equity securities".
In our opinion, digital financial assets, by their legal nature, are not new objects of civil rights. The law imposes special requirements on their form: fixation in the decision to issue a digital financial asset, issue, accounting and circulation only by making entries in a special information

system. That is, in essence, a digital financial asset is a form of fixing monetary claims, claims for the assignment of uncertificated securities, rights to equity securities, shares of non-public joint-stock companies and obligations arising from contracts for the disposal of uncertified securities. The legislator contains in laws similar provisions on the disposal of utility digital rights and digital financial assets.

2.4. Crowdfunding as a sphere of practical application of utility digital rights

It is obvious that understanding utility digital rights directly depends on understanding the scope of their practical application. To date, under the generic features of digital rights listed in Article 141.1 of the Civil Code of the Russian Federation, utility digital rights fall under the legal regulation of which is provided for by the Federal Law dated August 2, 2019, No. 259-FZ "On raising investments using investment platforms and on amendments to certain legislative acts of the Russian Federation" came into force from January 1, 2020, (hereinafter referred to as the Law No. 259-FZ) [16]. This law regulates commercial crowdfunding. In general, crowdfunding and crowd-investing are very popular abroad, the issues of legal regulation of cross-border crowdfunding are topical [17], European scientists are studying the types and economic aspects of crowdfunding [18,19]. Although the Russian legislator has abandoned the concept of "crowdfunding" in the text of the law, it has nevertheless become well established and is actively used in legal literature.

Crowdfunding is an activity aimed at attracting financial and other resources from a large number of individuals or legal entities (donors) who voluntarily pool their resources on crowdfunding sites via the Internet to sell a product or service.

These legal relationships arise in accordance with the investment agreement concluded with the help of the technical means of the investment platform. The parties to the agreement are investors and the person attracting investments. Investment under the contract is carried out only using the investment platform. The agreement is concluded by accepting the investment proposal of the person attracting investments, as a result of which the investors' funds are transferred to his bank account from the operator's nominal account.

Law No. 259-FZ is the legal basis for the creation and operation of investment platforms, which, in turn, serve as the basis for the implementation of utility digital rights in the domestic civil circulation. In accordance with this law, persons who can attract investments include legal entities and individual entrepreneurs.

The legislation of European countries provides an opportunity for individuals to attract investments for socially beneficial projects and innovations.

3. RESULTS OF STUDY AND DISCUSSION OF RESULTS

3.1. Utility digital rights as a kind of digital rights

Law No. 259-FZ provides for the following methods of investment activities using investment platforms:

1) provision of loans;
2) purchase of equity securities;
3) acquisition of utility digital rights.

Article 8 of Law No. 259-FZ names three types of utility digital rights:

1) right to demand the transfer of the thing (things);
2) right to demand the transfer of exclusive rights to the results of intellectual activity and/or the rights to use the results of intellectual activity;
3) right to demand the performance of work and/or the provision of services.

Utility digital rights, based on the meaning of the law, should have the following characteristic features: 1) such rights should initially appear as digital; 2) the basis for their occurrence is an agreement on the acquisition of utility digital rights; 3) the specified agreement must be concluded using the investment platform.

However, the right of claim, which is subject to state registration or notarization, cannot be considered as a utility digital right.

Information about the content, conditions for the exercise of utility digital rights must be posted on the investment platform. After the start of the investment offer for the acquisition of utility digital rights, these conditions cannot be changed. Both the investor himself and the persons who attract investments can act as the copyright holder of utility digital rights. Utility digital rights in accordance with the legislation on the securities market can be recorded by the depositary. Utility digital rights arise, exercise and terminate strictly in conjunction with the investment platform. The same applies to the disposal of utility digital rights.

Utility digital rights arise from the first acquirer from the moment information about this is entered in the investment platform in accordance with the rules of this investment platform.

It should be noted that the utility digital right is enshrined in the investment platform as a property right. At the same time, it is realized as a property or obligation right. As Kamyshanova A.E., Dementyeva I.V., Kameneva P.V. rightly point out, "in this case we are talking about the fact that utility digital law is a "right to right", a kind of two-level construction, of its own legal nature" [11, p.74]. Utility digital law within the information platform can act as an independent subject of transactions.

According to cl. 4 of Art. 8 of Law No. 259-FZ, the recipient of the investment is entitled to determine the content and procedure for the implementation of utility digital rights (essence, composition of the claim, the procedure for its implementation, etc.), since he will

become an obligated person in relation to these rights of claim. Thus, the person who attracts investments establishes on the investment site the forms of "counter-provision" that will be acquired by the investor.

3.2. Termination of utility digital rights

In accordance with cl. 10 of Art. 8 of Law No. 259-FZ "in the event of termination of the obligation (Art. 407 of the Civil Code of the Russian Federation), the rights under which are utility digital rights, information on the termination of these utility digital rights must be entered in the investment platform". From the analysis of this provision, the connection between utility digital law and civil liability is clear. In accordance with Art. 307 of the Civil Code of the Russian Federation "by virtue of an obligation, one person (the debtor) is obliged to perform a certain action in favor of another person (the creditor), such as: transfer property, perform work, provide a service, contribute to joint activities, pay money, etc., or to refrain from a certain action, and the creditor has the right to demand from the debtor to fulfill his obligations". Listed in Art. 307 of the Civil Code of the Russian Federation, actions as the content of a civil obligation are considered as an object of the creditor's right of claim. Based on the reason for its occurrence, such a right of claim is "obligatory". As rightly noted by V.V. Akinfieva, "the legal relationship that is associated with utility digital rights is a binding relationship containing the right of claim, which is called "utility digital", and the corresponding obligation to satisfy this right". [20, p. 404]
Note that the mentioned in cl. 10 of Art. 8 of Law No. 259-FZ, art. 407 of the Civil Code of the Russian Federation contains general rules for the termination of civil obligations. Accordingly, this suggests the possibility of terminating the obligation arising from utility digital rights on the grounds provided for by the Civil Code of the Russian Federation, other laws, other legal acts or an agreement. However, utility digital rights, by definition, only exist within an investment platform. Accordingly, the grounds for termination of utility digital rights may be limited by the rules of the investment platform.

3.3. Digital certificate

The ownership of a utility digital right to its owner can be certified by a digital certificate, which is a non-issue book-entry security that has no par value. The institution of digital certificates, provided for by law No. 259-FZ, is aimed at securitizing digital rights.
In accordance with the law, the owner of the digital certificate is considered the right holder of the utility digital right in respect of which the digital certificate is issued. The law does not provide for restrictions on the circulation of digital certificates certifying that they belong to the owner of utility digital rights. The owner of a digital certificate can transfer it to another person by debiting the digital certificate from the seller's depo account and correspondingly crediting it to the buyer's depo account. A digital certificate provides its acquirer with the opportunity to exercise through the depository the basic rights of the holder of utility digital rights. Registration in the investment platform is not required. The owner of a digital certificate has the right to demand from the depositary the provision of services related to the exercise of utility digital rights or their disposal. This construction proposed by the legislator, as we see it, does not correspond to the nature of the paperless security in terms of the absence of par value. Also, questions arise regarding the need to pile up rights of different nature in relation to one property right.
In accordance with cl. 5 of Art. 9 of Law No. 259-FZ, the procedure for exercising utility digital rights, as well as the rights themselves, certified by digital certificates, must be contained in the conditions for carrying out the depositary activities of the depositary obliging to them.
Taking into account the absence of the nominal value of the digital certificate and the fact that the creditor is not aware of its content, the position of the legislator regarding the possibility of encumbrance and foreclosure of a digital right by levying or encumbrance of a digital certificate is not clear.

4. CONCLUSION

Law, as a regulator of public relations, should develop dynamically in the context of digitalization of all spheres of state and public life. Society and the state need a deep understanding of the new phenomena that have arisen as a result of the next technological revolution. However, in reality, the legal regulation of digital processes lags far behind their actual development, there are gaps in the legal regulation of digital legal relations. This is partly due to the novelty of the concept of "digital economy", and with the rapidly changing digital reality, and with a certain inertia of Russian law.
Law No. 259-FZ provides for legal regulation of only some aspects of investment activities. The essence of utility digital rights, their emergence, implementation and circulation are limited by investment relations. A significant sphere of digitalization of economic, state, public life, based, including on blockchain technologies, for formal reasons cannot be attributed to digital rights at all and remains outside the scope of legal regulation.
We observe a gap in the domestic terminological system in the field of digital legal relations, which complicates the understanding of the essence of the ongoing processes and the adoption of correct legal decisions in the field under study.
Undoubtedly, the digital economy should be implemented in conditions of adequate legal regulation, the formation of novels, intersectoral institutions, within which the introduction and development of new technologies and phenomena should take place.

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