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Digital Rights *Derechos digitales*

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ABSTRACT

In this paper, T.G. Makarov and E.V. Kobchikova considered digital rights in the system of objects of civil legal relations. The features of digital rights are highlighted. The authors emphasize that digital rights can consolidate rights of various types, in particular, rights to things, property rights, intellectual rights, etc. The application of all these rights is possible using electronic tools in the appropriate information system. The authors concluded that the consolidation of digital rights in russian legislation is terminologically not quite accurate, as well as their assignment to the number of objects of civil rights is not entirely accurate.

Keywords: Cryptocurrency, digital asset, digital law, smart contract, token.

RESUMEN

En este artículo, T.G. Makarov y E.V. Kobchikova consideraron los derechos digitales en el sistema de objetos de relaciones legales civiles. Se destacan las características de los derechos digitales. Los autores señalan que los derechos digitales pueden consolidar derechos de diversa índole, en particular, derechos sobre las cosas, derechos de propiedad, derechos intelectuales, etc. La aplicación de todos estos derechos es posible utilizando herramientas electrónicas en el sistema de información adecuado. Los autores concluyeron que la consolidación de los derechos digitales en la legislación rusa no es terminológicamente del todo precisa, así como su asignación al número de objetos de derechos civiles tampoco lo es.

Palabras clave: Activo digital, contrato inteligente, criptomoneda, derecho digital, token.

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INTRODUCTION

When regulating social relations, the law must unambiguously regulate them. Considering the changes occurring in society, it must take into account changes in existing relations and, undoubtedly, they have in mind the emergence of fundamentally new relations (Fedorenko&Hejgetova: 2019). A revolutionary challenge for the legislator in this aspect is modern technologies, artificial intelligence systems, and crypto assets, which are changing today's society at a tremendous speed (Konobeevskaya: 2019, pp.330-334; Ogorevc: 2019).

With the advent of the Internet, economic relations have undergone a major transformation. Nowadays, electronic negotiations, the conclusion of transactions and settlements using the Internet are no longer a rarity. One of the factors that significantly influenced commercial relations is digital assets (cryptoassets), namely cryptocurrencies and tokens (Konobeevskaya: 2019, pp.330-334; Sichinava: 2019). In this regard, the study of digital rights seems to be very relevant and significant today.

METHODOLOGY

The main methods used to study the nature of digital rights are dialectical and intersectoral methods. Due to the dialectical method, it is possible to understand the relationship between the processes associated with the legislative consolidation of digital rights. We have managed to combine civil and other legal means with the help of an intersectoral method in the study of digital rights.

RESULTS

In accordance with Article 128 of the Civil Code of the Russian Federation, objects of civil legal relations include various types of tangible and intangible property, the results of intellectual activity, etc (Butler: 2007). Digital rights in the system of objects of civil legal relations now occupy a special place and relate to the type of intangible property.

Federal Law No. 34-FZ dated March 18, 2019 introduced into the Civil Code of the Russian Federation a new article 141.1 named "Digital rights". According to this article, digital rights are "obligations and other rights named in such a capacity in the law, the content and conditions of implementation of which are determined in accordance with the rules of the information system that meets the characteristics established by law" (Korobeinikova: 2020; Rusakova et al.: 2020).

It should be noted that such an extensive interpretation of digital rights in the Civil Code of the Russian Federation is not accidental. Apparently, the legislator will concretize it in the future. In the meantime, paragraph 1 of Article 141.1 in the Civil Code of the Russian Federation contains such phrases as "named as such in the law" and "meeting the characteristics established by law". The question remains as to what rights are digital from the point of view of the Law. Federal Law No. 34-FZ adopted on March 18, 2019 simply stated that digital rights "exist and they are tied to the information system (Konobeevskaya: 2019, pp.330-334)."

Digital rights are human rights in the Internet age. For example, these are the rights to privacy on the Internet and freedom of expression of opinion, which are an extension of the equal and inalienable rights enshrined in the United Nations Universal Declaration of Human Rights (Rosamond: 2015). Digital rights are considered the same basic human rights that exist in the offline world, but only in the online world. In 2012, the UN Human Rights Council agreed in its resolution that human rights online should be protected as well as rights offline. This means that the United Nations has recommended the extension of existing human rights to cyberspace (Nitsche&Hairsine: 2020). It should be recognized that laws regarding the Internet should be flexible enough to cover a wide range of theoretical and practical aspects, given the complexity and breadth of the Internet (Digiaco: 2019). Therefore, the further development of legislation on digital rights will directly depend on the quality of Internet governance.

Analysing the nature of digital rights, one should point out the following features. Firstly, they must be enshrined in this capacity in legislation. Secondly, the disposal of such rights can be carried out purely within the framework of the relevant information system. Thirdly, the owner of a digital right is a subject who can dispose of this right, unless otherwise provided by law. Fourthly, the consent of the debtor for the transfer of digital rights under the transaction is not required. And finally, fifthly, the law establishes the negotiability of digital rights, i.e. digital rights are negotiable objects of civil legal relations (Bazhina: 2020).

An interesting fact is that digital law is capable of consolidating (enshrining) rights of various types: these are rights to things, property, intellectual rights, etc. These rights apply using electronic tools in the appropriate information system. Personal intangible goods cannot act as objects of digital rights. That is, in fact, digital rights certify the rights to ordinary objects of civil legal relations (Ovchinnikov&Fathi: 2019, pp.104-112).

The official response of the Government of the Russian Federation to the draft Federal Law No. 424632-7 "On Amendments to Parts One, Two and Four of the Civil Code of the Russian Federation" states that digital rights "are actually a way of formalizing traditional property rights." These rights exist in electronic form "without creating a new type of objects of civil rights (Konobeevskaya: 2019, pp.330-334)."

Digital rights are also mentioned in the Russian Federal Law dated 02.08.2019 No. 259-FZ "On attracting investments using investment platforms and on amending certain legislative acts of the Russian Federation" (Ovchinnikov&Fathi: 2019, pp.104-112), according to which an investor can be provided with utilitarian digital rights, giving him/her the right to demand the transfer of things, exclusive rights, performance of work and (or) the provision of services (Ovchinnikov&Fathi: 2019, pp.104-112) The right to claim property, "the rights to which are subject to state registration, or transactions with which are subject to state registration or notarization," cannot be utilitarian.

DISCUSSION

V. Zorkin, Chairman of the Constitutional Court of the Russian Federation, believes that digital rights should be considered "the rights of people to access, use, create and publish digital works", "the right to freely communicate and express opinions online and the right to inviolability of the private information sphere (Ovchinnikov&Fathi: 2019, pp.104-112)".

L.Yu. Vasilevskaya, in turn, is of the opinion that digitalization of rights means only a digital way of enshrining them, while new property rights do not arise (Vasilevskaya: 2019, pp.111-119).

Are digital rights generally rights in the proper sense of the word? To answer this question, it is necessary to consider the so-called digital assets (cryptoassets) (Konobeevskaya: 2019, pp.330-334).

Digital assets include tokens (digital codes for transactions), digital currencies (bitcoins, ethereum, monero, etc.), big data, domain names and accounts, and virtual game property. A digital asset exists in electronic form and has economic value (Bazhina: 2020).

Digital currency (cryptocurrency) is understood as an alternative form of currency that is created and circulated online, without having a physical form (Andryushin: 2018, pp.4-14). It is a type of digital financial asset created and recorded in a distributed ledger of digital transactions using blockchain technologies (Belykh&Egorova: 2019, pp.140-147). Blockchain technology is a digital technology of a distributed ledger, in which all records of transactions are stored in the form of digital codes (Vasilevskaya: 2019, pp.111-119).

Speaking of a token, it should be noted that it represents "a unit of accounting in cryptocurrencies or a unique symbol in the blockchain system." We can distinguish application tokens, credit tokens, and stock tokens (Kasatkina: 2017, pp.22-25).

L.A. Novoselova characterizes the tokens by their legal regime as "uncertified securities" (Novoselova: 2017). A.I. Saveliev calls the token "digital security" (Guznov et al.: 2018).

Speaking of digital assets, one cannot fail to mention such a concept as a smart contract, which is increasingly used today in literature and legal practice. A smart contract is not a stand-alone transaction. At

its core, this is a condition for the automatic execution of any civil law contract (sale and purchase agreement, work contract, and others). An example is the automatic debiting of funds from the card to pay for utility bills. Pressing the "OK" button in the corresponding application or online store is considered the way of expressing will to conclude a deal (Bazhina: 2020).

It can be concluded that both cryptocurrencies and tokens are ways of securing rights in a specific decentralized registry (Konobeevskaya: 2019, pp.330-334). They are not any new objects of civil legal relations. "It is difficult to consider a block in a decentralized blockchain registry, that is, in fact, just a chain of symbols, as a new object of law (Konobeevskaya: 2019, pp.330-334)."

We would also like to say a few words about the consequences of introducing digital rights into Russian legislation. The first is taxation. "The Association of Russian Lawyers has proposed to exempt operations with digital assets from value added tax and from personal income tax if a citizen has owned assets for more than a year (Bazhina: 2020)." Secondly, it is consumer protection. In 2013, the Moscow City Court considered a case on a player's claim against the administration of a computer game for the recovery of money, a fine and compensation for moral damage in connection with the blocking of his account for violating the rules, but after he spent money on the purchase of additional services for the game (Definition of the Moscow City Court dated 06.05.2013 No. 4g / 1-1017). "The Moscow City Court has explained that the requirements related to participation in the games are not subject to judicial protection. The introduction of the concept of digital rights gives digital asset owners the opportunity to protect their rights (Bazhina: 2020)." In this definition, we see a great advantage of enshrining digital rights in legislation.

We live in a period of profound social changes associated with the adoption of digital technologies. Protecting human rights in the 21st century depends on our ability to apply human rights in a digital context. Digital technologies are the means by which human rights are realized and simultaneously violated around the world. The Internet has become an indispensable tool for realizing a range of human rights and accelerating economic development. However, every day there are new examples of how digital technology plays a role in undermining human rights. A practical step that can be taken to strengthen the advancement of human rights in a digital context would be to support the further development of a multilateral approach to Internet governance (Donahoe: 2020); it is necessary to regulate in detail all relations related to cyberspace for this, in particular, not just enshrining digital rights, but also scrupulously prescribing in the law the specifics of their implementation.

According to Peter Martin, expressed by him back in 1995, "digital law should be much more effective and fairer. It should offer great opportunities for those working in the field of artificial intelligence and law (Peter: 1995)."

CONCLUSION

On the whole, the consolidation of the concept of "digital rights" in the legislation is, in principle, terminologically not entirely accurate, just as their attribution to the objects of civil rights cannot be considered entirely accurate. In our opinion, digital rights are another legal fiction, the use of which in legislation contributes to the extension of the property rights regime to cryptocurrencies and tokens (Konobeevskaya: 2019, pp.330-334).

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BIODATA

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