European Proceedings of
Social and Behavioural Sciences
EpSBS

www.europeanproceedings.com
e-ISSN: 2357-1330

DOI: 10.15405/epsbs.2021.06.03.7

AMURCON 2020
International Scientific Conference

RUSSIAN LEGAL POLICY REGARDING DIGITALIZATION

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Abstract

The importance of understanding digital technologies and their interaction with the law is evidenced by the fact that a number of processes remain unregulated, thus, persons participating in them are deprived of legal guarantees. It is also important that not only the conclusion of contracts, but also the use of virtual currencies as a means of payment is moving into the virtual sphere. It is obvious that transactions which are not under the control of the state can undermine the financial system of any country. So, the issues of using virtual currency for making investments become topical. Also, technologies that rely on the use of self-learning artificial intelligence to make deals may actualize some questions. Thus, the issue of legal regulation of digital economy was raised at the highest level. This article analyzes named Decree and the main directions of legal regulation of digitalization in Russia. The author identified the risks that accompany the establishment of a digital economy on the territory of the Russian Federation, including those related to the sphere of investment. The article points out that unregulated character of cryptocurrency in Russia leaves investors without legal protection. At the same time, the legalization of smart contracts without their standardization, on the contrary, may violate the legitimate interests of investors, including in the retail segment of the financial market.

Keywords: Digital economy, artificial intelligence, cryptocurrency, smart contract, digital signature, investments

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1. Introduction

In Russia, the digital economy is defined in subparagraph p of paragraph 2 of Chapter 1 of the Decree of the President of the Russian Federation dated 09.05.2017 No. 203 On the Strategy for the Development of the Information Society in the Russian Federation for 2017 - 2030 (hereinafter - the Strategy for the Development of the Information Society in the Russian Federation). According to the Decree the digital economy is an economic activity in which the key factor of production is digital data, the processing of large volumes and the use of the analysis results of which, in comparison with traditional forms of management, can significantly increase the efficiency of various types of production, technologies, equipment, storage, sale, delivery of goods and services. Recognizing the lag behind the world leaders in digitalization, the competent state bodies are taking action to eliminate the gap by issuing legal acts aiming to permit official use of digital technologies (Horian & Gorian, 2020).

Therefore, the doctrinal provisions of the Strategy for the Development of the Information Society in the Russian Federation were embodied in the Passport of the National Program Digital Economy of the Russian Federation. It contains six main areas: regulation of the digital environment, information infrastructure, human resources for the digital economy, information security, digital technologies, digital public administration. According to all of them Russian Government is elaborating drafts of federal laws.

2. Problem Statement

The objective of this study is to analyze the section Legal regulation of the digital environment of the national program Digital Economy of the Russian Federation. This area includes the establishment of a unified digital environment of trust: improving the electronic signature by amending the Federal Law of 06.04.2011 No. 63-FZ On Electronic Signatures and other regulations; settlement of electronic forms of transactions and "self-executing" contracts, as well as procedures for storing electronic documents; clarification of the requirements for anonymization of personal data, the draft law on a "digital profile" - a platform that will collect various information about citizens; adoption of the federal law on digital financial assets, as well as the federal law on crowdfunding activities; stimulating the development of the digital economy; the introduction of digital technologies in the judicial process and the commission of notarial acts, as well as the creation of electronic systems for fixing legal acts, etc.

3. Research Questions

The Strategy for the Development of the Information Society in the Russian Federation highlights necessity to establish legal rules for digital financial assets. In 2020 Russian State Duma issued the Law On digital financial assets. It established legal framework for digital tokens which is mostly similar with securities. Meanwhile, the law doesn’t have rules concerning transactions involving cryptocurrency. Therefore, the uncertainty in the status of cryptocurrency in Russia and, as a result, the vulnerability of investors is significant problem associated with the digital economy (Alekseenko, 2020). Moreover, implementation of blockchain technologies and legalization of smart-contracts raised the problem of their inconsistency with principles of civil law. Artificial intelligence technologies are named as priority tasks in

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the Passport of the national program Digital Economy of the Russian Federation. Therefore, another problem is related with legal regulation of artificial intelligence and establishment the rules of legal liability for persons using robotic technologies. The next question is development of Russian legislation on Electronic Signature. Since the entry into force of the Federal Law No. 63-FZ On Electronic Signature, an agreement in electronic form signed with an electronic digital signature (simple electronic signature, enhanced qualified and unqualified electronic signature) by participants in electronic interaction, is recognized as a document equivalent to a signed paper.

4. Purpose of the Study

The aim of the study is to analyze Russian legislation related to digitalization and identify risks that may arise as a result of the digital transformation of the Russian economy and subsequent changes in legislation.

5. Research Methods

The article uses methods such as analysis, synthesis, induction, deduction, as well as the formal legal method. The interpretation of Russian legal terminology led to the use of the hermeneutic method.

6. Findings

In pursuance of the second task of the national program, the Federal Law of 18.03.2019 No. 34-FZ On amendments to parts one, two and article 1124 of part three of the Civil Code of the Russian Federation was adopted. It changed the article 128 of the Civil Code of the Russian Federation by including digital rights as a property right in the list of the objects of civil rights. Also, a new article 141.1 was added. The article 141.1 introduces the definition of digital rights as obligation 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. In my opinion, this concept was formulated according to the model of describing a security and does not disclose electronic codes as the basis for exercising this right. In addition, the aforementioned federal law amends Article 160 of the Civil Code of the Russian Federation and provides for a new way of making transactions in writing - the exchange of data using electronic or other technical means.

It seems that the legislator has decided to limit changes by a few amendments to the Civil Code of the Russian Federation, thereby considering a huge layer of processes for the implementation of digital rights and transactions executed in electronic form to be settled. Meanwhile, there are still open issues related to the acquisition of digital rights (Grin et al., 2019). Thus, the legislator does not give an answer to the question how the owner's rights will be implemented (in article 141.1 only the order is named), whether the owner is counted as the owner of digital rights. Special attention should be paid to the design of means of protecting civil rights, because none of the methods of protection listed in Article 12 of the Civil Code of the Russian Federation is suitable. The most important question on which the legislator still don’t have an answer is how a transaction concluded by electronic or other technical means (for example, a smart contract) will be recognized as invalid.

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Currently, artificial intelligence (AI) is becoming an integral part of the daily life of a modern society. The most widespread are intelligent robots (military robots, robotic lawyers, robotic consultants, medical robots, unmanned vehicles and others), software products (computer vision, natural language processing, speech analytics and others), in this connection, the legal community is faced with the question concerning the rules of interaction between humans and artificial intelligence, as well as determining the legal status of a robot with artificial intelligence (Ponkin & Redkina, 2018). Researchers noted that the issue of the possibility of recognizing legal personality (legal capacity and legal capacity) for artificial intelligence, as an independent participant in civil legal relations, requires close attention (Gadzhiev, 2018).

The modern nature of robotics is unlimited in performing certain types of activity. Self-learning autonomous systems, has the ability to make independent decisions and carry them out uncontrollably. It leads to the increasing similarity of AI and traditional persons in civil law. Therefore, by the virtue of the new legal paradigm, it is proposed to transfer AI from the category of an object of civil law ("property") to the category of a subject of law, which will act on the basis of equality, autonomy of will and property independence. However, it is not right, because the autonomy of will and decision-making by artificial intelligence are procedural (technical) in nature and depend on the elaboration of the control program laid down by the developer. If AI is recognized a subject of civil law, does it have, for example, personal non-property rights? Establishing and protecting the right to a robot's name (its identification number) will certainly be problematic and run counter to the general principles of civil law. In addition, the central issue of the phenomenon under consideration is the establishment of independent property responsibility of AI for its own actions (inaction).

At the moment, responsibility for improper performance of work or services under the contract rests with the inventor, user / owner, industrial manufacturer or software developer (as a legal entity) of a source of increased danger (Iriskina & Beljakov, 2016). In addition, it is not robotics that also bears tort liability for non-contractual harm (Article 1079 of the Civil Code of the Russian Federation). Therefore, the issue of endowing AI with the status of a subject of law is a legal fiction. This phenomenon does not meet the criteria of legal personality of an individual; an intelligent robot will always act under the control of a human.

The electronic signature is an identifier of the subject of economic turnover in an impersonal digital space. However, in connection with the simplified procedure for obtaining an electronic signature, there is a risk of entering into an obligation relationship with an unscrupulous counterparty who has an electronic signature obtained illegally. When concluding electronic transactions, participants in civil turnover bear information risks due to the digital environment of their conclusion (Gorian, 2020). Subjects often use the "Electronic-Paper" model of making a contract. A classic example of the conclusion of such an agreement is concluding a contract in electronic form using an electronic signature and subsequent duplication on paper. However, the emergence of smart contracts, as well as the technological vulnerability of the created digital infrastructure, can lead to the problem of the ability to reproduce the contract on paper.

It should be noted that smart contracts are executed regardless of the subsequent will of the parties and they cannot be canceled unilaterally. Moreover, after the smart contract is concluded, its further execution is subject to the algorithm of the computer program and, as a general rule, cannot be changed, annulled, etc. This means that after its conclusion, it will be impossible to evade from payment for goods,

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create obstacles preventing execution of the transaction. All subsequent operations will be performed in accordance with the directions that are laid down in the program. At the same time, the terms of the contract are definite and clear; and the program code developer is responsible for all technological errors (Nagrodskaya, 2019). Considering that all this helps to ensure the good faith of the parties, such innovations can be assessed positively. The researchers noted, the introduction of blockchain technology by business structures can significantly increase the level of competitiveness of Russian enterprises and the Russian economy at the global level, ensure technological independence, efficiency and safety of the infrastructure used to sell goods and provide services to Russian citizens and organizations, which completely corresponds to the goals and objectives of the Strategy for the Development of the Information Society in the Russian Federation (Egorova et al., 2019).

In Russia, the possibility of use of self-executing contracts is guaranteed by par. 2 of article 309 of the Civil Code of the Russian Federation. Meanwhile, despite all the advantages that the use of distributed ledger technology gives in terms of guaranteeing the enforceability of the contract and ensuring the good faith of the parties, the problem arises of observing consumer rights, including rights of participants of the financial market services. The Art. 25 and paragraph 4 of Art. 26.1 of the Law of the Russian Federation On Protection of Consumer Rights gives the right to return goods of good quality to a consumer. Is impossible to do if we talk about a self-executable transaction embedded in the algorithm using blockchain technology. If the parties executed the transaction via smart-contracts, then one cannot talk about changing it, for example, demanding a non-qualified transaction -or product indicators. In addition, it is not clear how the provisions on void and voidable transactions will be implemented in this regard. So, for example, according to clause 3 of Article 167, if it follows from the essence of the contested transaction that it can only be terminated for the future, the court, recognizing the transaction as invalid, terminates its validity for the future. If a party uses a self-executing contract, then the court will not be able to terminate such a transaction. It will be executed despite the court's decision. In this connection, it becomes difficult to determine the fate of what was received under the transaction. So, smart-contracts call into question the binding nature of court decisions. However, the most dangerous thing is that one of the most significant principles of contract law disappears - the possibility of changing and terminating the contract. It is obvious that the self-executability of the concluded contract means that the provisions of Art. 450-452 of the Civil Code of the Russian Federation cannot be applied in any way.

The Federal Law on Digital Financial Assets proclaimed rules for issuance of digital tokens. Since the first of January 2021 it also will legalize virtual currency. Unfortunately, it didn’t set any rules concerning cryptocurrency and virtual currency transactions. Meanwhile, it is necessary to solve a lot of problems appearing in the judicial practice. In Russia bankruptcy cases, where a requirement is made to include a cryptocurrency in the bankruptcy estate, are becoming quite frequent. This is due to several reasons, firstly, cryptocurrency is a valuable resource for Internet users that costs fiat money. Secondly, unscrupulous debtors sell property, and try to hide money with the help of cryptocurrency. They hope that the court will not include cryptocurrency it in the bankruptcy estate due to the lack of a position in relation to it, because it is still unclear what kind of object of civil rights it is and whether is it an object of civil rights at all.

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The difficulty in this issue is given by the fact that there is no regulatory framework that allows to clearly define the legal status of the cryptocurrency, and, thereby, ensure and guarantee the rights of its owners, as well as creditors in cases where the requirement to include the cryptocurrency in the bankruptcy estate is stated. For example, in one of the cases, the defendant stated that he returned the loan amount, but he did it in cryptocurrency, and not in cash. The plaintiff believed that the return of the debt in cryptocurrency does not mean that the obligation has been fulfilled. Having considered these cases, the court came to the conclusion that the defendant's arguments about the return of funds received from Magna Trading Ltd under a loan agreement from March 15, 2016, but not in the form of $ 5 million received in cash, but in the form of cryptocurrency (virtual money), does not confirm the fact of payment of funds to the defendant.

7. Conclusion

Making the analysis of the features of civil law turnover in the digital environment, it can be concluded that there are civil legal relations that have the specifics of implementation through information and communication technologies and legal relations that arose exclusively within the framework of digital reality. From the above, it becomes obvious that digitalization in Russia is accompanied by a number of risks (Ovchinnikov et al., 2019). The main of which we have identified: risks associated with the procedural aspects of proof of the transaction in electronic form; business risks; risks associated with digital objects; risks associated with personal data of individuals; technological risks. The greatest danger, of course, is borne by the risks associated with the possibility of unauthorized use of information, which requires the government to stimulate the development of mechanisms and methods for creating reliable digital signatures, as well as the impossibility of making entries in digital registers in an arbitrary way.

Russian Government launched significant reform which aiming to encourage development of digital technologies in the country. Despite of amendments of Russian Law, there is still a lot of work to do. Legalization of smart contracts is a greatest step forward. Meanwhile, both sides of electronic transactions bear specific risks due to specific features of digital environment. The main risks are associated with ensuring cybersecurity. At the same time, the investment sphere is characterized by specific risks associated with insignificant regulation of the use of new technologies in this area. In order to increase the level of protection of Russian investors, it is necessary to determine key principles of cryptocurrency turnover. This will allow the cryptocurrency to be included in the bankruptcy estate in bankruptcy cases.

Acknowledgments

The reported study was funded by RFBR, project number 20-011-00454 «Ensuring the rights of investors in the banking and financial sectors in the context of the digitalization of the economy in the Russian Federation and the leading financial centers of East Asia: a comparative legal aspect».

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