

VIRTUAL CURRENCY AS AN OBJECT OF CIVIL RIGHTS IN RUSSIA¹

Alexey I. Ovchinnikov^{1*}, Artur G. Kravchenko², Alexey Yu. Mamychev³, Valentina I. Fatkhi⁴

¹Professor of the Department of Constitutional and Municipal Law of the Russian Presidential Academy of National Economy and Public Administration, Russian Federation, Rostov-on-Don, Bolshaya Sadovaya str., bld. 105/42, Russia, ²Professor of the Department of Theory and History of State and Law of the Rostov Branch of the Russian State University of Justice, Russia, ³Dr. Habil. in political science, Ph.D. in legal science, prof. Moscow State Institute of International Relations, Moscow, Russia, ⁴Candidate of Law, Head of the Department of Civil Law Disciplines, Rostov Law Institute of the Ministry of Internal Affairs of Russia, Russian Federation, Rostov-on-Don, Eremenko str., bld. 83, Russia.
Email: ^{1*}²K_fp3@mail.ru, ³mamychev@yandex.ru, ⁴v.i.fatkhi@gmail.com

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Abstract

Purpose: The purpose of the article is to conduct a scientific analysis of the place of cryptocurrency in the system of objects of civil rights in Russia.

Methodology: This research applies a system of general scientific, special scientific, and special methods of cognition of socio-legal and socio-economic phenomena, including historical-legal, comparative-legal, formal-logical methods, the method of dialectics, the method of system analysis.

Result: Digital information technology has become a global trend in world economic development. This article deals with the study of the current state and prospects of legal regulation of virtual currencies (cryptocurrency) in Russia.

Applications: This research can be used for universities, teachers, and students.

Novelty/Originality: In this research, the model of Virtual currency as an object of civil rights in Russia is presented in a comprehensive and complete manner.

Keywords: *Business, Virtual currency, Analysis, Russia, Economy.*

INTRODUCTION

For a long time, the issues of legal regulation of the circulation of virtual currencies or, as they are also called, cryptocurrencies have not been the subject of close analysis and research in the legal literature. For the first time, the creation of a decentralized monetary unit became known in 2008 after the publication of the article "Bitcoin: A Peer-to-Peer Electronic Cash System", published by the author or group of authors under the pen-name Satoshi Nakamoto. Currently, according to data from the website investing.com, there are 2,528 different cryptocurrencies in the world, which can only attract the attention of both economists and lawyers. However, there is still no consensus on the legal nature of tokens and cryptocurrencies, various jurisdictions consider digital currency either as a means of payment or as an object of property rights and a medium of exchange. Thus, today we can talk about the technical development of the world economy based on digital technologies and innovations that have gone far ahead of the law, about the lagging of the legal regulation of relations between subjects in the sphere of payments and payments by digital assets behind the needs of the practice.

The term "cryptocurrency" took root in science and civilian circulation after the publication by Satoshi Nakamoto. However, the very possibility of the emergence of cryptocurrency was predicted for a long time. In 1983, American cryptographer David Chaum, who founded the International Association for Cryptographic Research (IACR), invented anonymous cryptographic electronic money, called electronic money. A little later, in 1989, he founded the electronic cash company - DigiCash, which was used in 1994 for the world's first electronic payment via a computer network. David Chauma's company introduced its own e-currency - eCash and launched a payment system of the same name. The absence of national regulators of electronic currencies at that time allowed digital currency to be inaccessible for tracking by the issuing bank, the government, or any third party ([Urlin, 2018](#)).

In June 1996, the NSA published an article entitled «How to make a mint: The cryptography of anonymous electronic cash» reflecting the basic principles of cryptographic methods for implementing secure electronic money systems. Further, in 1998, cryptographer and scientist Wei Da introduced the electronic money system - b-money, which allowed digital aliases to conduct money circulation through a decentralized network and ensure the implementation of contracts between themselves without a third party.

The first decentralized cryptocurrency - Bitcoin - appeared, as already mentioned, in 2008. This led to numerous studies by legal scholars, economists, engineers in various countries. In March 2018, the concept of "cryptocurrency" was included in the largest American explanatory dictionary - Merriam-Webster.

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In Russia, people started talking about cryptocurrency in 2014, however, due to the complete lack of control in Bitcoin circulation and, as a result, the ability to actively use it to pay for banned goods in the Russian Federation has developed a negative attitude to cryptocurrency.

In 2016, A.I. [Saveliev](#) prepared the monograph “Electronic Commerce in Russia and Abroad: Legal Regulation”, which contains the following distinctive features of cryptocurrency:

1. Anonymity (no registration or identification required).
2. Decentralized nature (lack of a single emission center or centralized management and control body).
3. Mathematical algorithm - the basis of the value of Bitcoin.
4. The absence of a trusted third party to verify transactions ([Saveliev, 2016](#)).

In the scientific literature, the issues of further development of legal regulation of cryptocurrencies are studied today by scholars, lawyers, and economists. According to E.V. Voskremenskaia, “the development of a terminological apparatus applicable for the legal regulation of relations arising in the use of virtual currencies is a top priority, since the terms and definitions are the supporting structures of the corresponding legal regime (civil, tax, currency, etc.)” ([Voskresenskaia E.V., 2018, P. 149](#)). E.V. Kudriashova believes that progressive and conservative approaches to the legal regulation of cryptocurrencies are possible. According to the first, a neutral positive attitude of the legislator towards the development of institutions of the cryptocurrency market, including its legal taxation, is possible. The conservative approach assumes that “a “point-like” legal regulation is possible with a neutral approach to the phenomenon” ([Kudriashova E.V., 2018, P. 11](#)). N.A. Ryzhov considers it necessary to create an international legal framework for cryptocurrency regulation, since “the issue of cryptocurrency regulation only at the national level will not be able to achieve the goals set by the state to protect national interests” ([Ryzhov N.A., P. 65](#)). A group of authors, studying cryptocurrency as one of the elements of the process of digitalization of law, believe that digital law is gradually becoming an independent branch of legislation. It is considered that in the new paradigm of law it is possible to speak not only about a new branch, but also a new system of law created in a completely different form than the existing one ([Ovchinnikov A.I., Fatkhi V.I., 2018, P. 133](#)).

METHODS

This research applies a system of general scientific, special scientific, and special methods of cognition of socio-legal and socio-economic phenomena, including historical-legal, comparative-legal, formal-logical methods, the method of dialectics, the method of system analysis.

The use of such methods allowed applying an integrated approach in the study of cryptocurrency as an object of civil rights in Russia.

RESULTS AND ITS DISCUSSION

Currently, the virtual currency in the Russian Federation is outside the legal field, in the absence of not only the rule of law governing its turnover mechanism but also a terminological vacuum. However, the absence of legal regulation of transactions with cryptocurrency does not entail its lack of performance due to the absence of a direct prohibition. Cryptocurrency transactions are made in Russia. For example, the metropolitan bar network - KILLFISH - since December 11, 2013, offers its visitors to pay with cyber money, replenishing the balance of the card with Bitkions through a personal account/Internet resources containing information on operations with cryptocurrency ([Dolgieva M.M., 2018, P. 85-88](#)). Let us explain why. [Alimbek, K. \(2016\)](#).

In accordance with the position of the Bank of Russia, cryptocurrencies are a “money substitute”, and the use of cryptocurrencies during transactions is the basis for considering whether such transactions (operations) are classified as financing terrorism. The Federal Tax Service adheres to a similar position, which in 2016 prepared a letter “On control over the circulation of cryptocurrencies, including bitcoins, in the Russian Federation” (On control over the circulation of cryptocurrencies (virtual currencies). As a result, Internet sites specializing in the purchase and sale of virtual currency are blocked, but there is also no sufficient jurisprudence on resolving property disputes with the use of cryptocurrencies that are not recognized as an object of “property rights”, and are not included in the debtor’s competitive mass and not subject to recover in bankruptcy procedure. [Kuzmina, I. D., & Bogdanova, I. S. \(2019\)](#).

In accordance with the materials of judicial practice, namely, Decision No. 2-160/2017 2-160/2017~M-129/2017 M-129/2017 of April 26, 2017, in case No. 2-160/2017 of the Ryazan District Court (Ryazan region) “the existence of cryptocurrencies outside the legal field does not allow the plaintiff ***** to implement legal mechanisms for imposing on the defendant's responsibility in the form of the latter forfeit payment, non-pecuniary damage and fines provided for by the RF Law No. 2300-1 dated February 7, 1992, "On Consumer Protection". [Fedorenko, N. V., & Hejgetova, S. E. \(2019, April](#)

In 2017, cryptocurrencies gained particular popularity in our country. The concept of state policy, which negatively perceives the circulation and emission of cryptocurrencies, has been replaced by the approach of their legalization. In July 2017, the “Digital Economy of the Russian Federation” program was approved by a government decree. The key point of

the program is the development of “end-to-end technologies”, among which the blockchain is mentioned. The Order of the Federal Agency for Technical Regulation and Metrology No. 2831 “On the establishment of a technical committee on standardization - “Software and hardware for distributed registry technologies and blockchains” was issued on December 15, 2017. On December 28, 2017, under the State Duma Committee on Economic Development, Industry, Innovative Development, and Entrepreneurship, an expert council on the digital economy and blockchain technologies was created, the purpose of which, according to the coordinator of the expert council, Dmitrii Sazonov, is a need to ensure at the legislative level the necessary conditions for the development of the digital economy.

An important milestone in the development of legal regulation of cryptocurrency in Russia can be considered a meeting held on October 10, 2017, on the use of digital technologies in the financial sector, held by President of the Russian Federation Vladimir Vladimirovich Putin. Following the meeting, the President instructed the Government of the Russian Federation, together with the Bank of Russia, to ensure amendments to the legislation of the Russian Federation providing for the determination of the status of digital technologies used in the financial sector and their concepts based on the obligatory ruble as the only legal tender in the Russian Federation; the establishment of requirements for the organization and implementation of production based on the principles of cryptography in the distributed registry environment (“mining”), including the registration of business entities engaged in such activities, as well as the determination of the procedure for its taxation; regulation of public attraction of cash and cryptocurrency by placing tokens by analogy with the regulation of the primary placement of securities. Orders must be executed before July 1, 2018. As a result, in 2018 Russia showed a “legislative” surge of projects in the field of normative regulation of the circulation of virtual currencies.

There is no unified approach to determining the legal status of cryptocurrency in world practice. In 2012, the European Central Bank in its report called virtual currency “unregulated funds that are released and controlled by their developers, are used and accepted by members of a certain virtual community”. In accordance with the laws of Japan, since April 1, 2017, cryptocurrency is a legitimate means of payment. In Israel, bitcoins and other virtual currencies for tax purposes are recognized as property. In Switzerland, virtual currencies are recognized as assets, the use of which for the purchase of goods or payment for services does not require a special permit. In Egypt, Iraq, and the United Arab Emirates, cryptocurrency turnover is prohibited. Even in one state, two approaches can be formulated simultaneously to the legal status of virtual currency. For example, in the United States for tax purposes cryptocurrency is defined as property; in the financial sector, cryptocurrency is defined as a decentralized virtual currency. [Vovchenko, G. N., Tishchenko, N. E., Epifanova, V. T., & Gontmacher, B. M. \(2017\)](#)

On January 25, 2018, the Ministry of Finance of the Russian Federation on the official website presented the draft law “On digital financial assets”, which gives a legitimate definition to the terms such as validator, cryptocurrency, token, mining, smart contract and other concepts. Cryptocurrency and token are not recognized as legal tender, but receive legislative recognition as property, namely digital financial assets, which evidence of the right of ownership is registration in the register of digital transactions. In accordance with the draft law, owners of digital financial assets will have the right to conduct transactions on the exchange of digital financial assets of one type for digital financial assets of another type, rubles, foreign currency, the property only through the exchange operator of the said assets. Thus, the cryptocurrency and token as a property can be legally acquired and exchanged, but not used to pay for monetary obligations.

However, we shall try to figure out whether it is possible to include cryptocurrency in the property. To date, the legal definition of property in the Russian Federation is not determined. The “basic” concept of property as an object of civil rights is given in Art. 128 of the Civil Code of the Russian Federation. Article 128 of the Civil Code of the Russian Federation (Part One) No. 51-FZ of 30.11.1994 contains a list of objects of civil rights, not including the cryptocurrency. In accordance with civil law, “objects of civil rights include things, including cash and documentary securities, other property, including non-cash money, non-documentary securities, property rights; results of work and provision of services; protected results of intellectual activity and equated to them means of individualization (intellectual property); intangible benefits”. At the same time, cash refers to goods, and non-cash money - to other property. [Vovchenko, G. N., Tishchenko, N. E., Epifanova, V. T., & Gontmacher, B. M. \(2017\)](#)

Cryptocurrency, of course, is not a subject of the material world, but it presents material value for a person due to the current opportunity to make a profit. In accordance with Part 1 of Article 75 of the Constitution of the Russian Federation, the monetary unit in the Russian Federation is the ruble, and the introduction and issue of other money in the Russian Federation are not allowed. Cryptocurrency should not be confused with electronic money, as the latter represents a virtual version of money emitted by any internationally recognized state. Cryptocurrency differs from noncash securities at least in the fact that the storage of its records is completely decentralized. Virtual currency is not a property right, although such a point of view is often found in legal literature. It is also impossible to call cryptocurrency as a result of intellectual property, because cryptocurrencies are not created due to human mental activity, but are generated by the network node each time it finds a solution to a mathematical problem for obtaining a new unit (for cryptocurrencies that imply mining). The courts in the Russian Federation adhere to a similar position, declaring that “Bitcoin is not a foreign currency (clause 2, part 1, article 1 of the Federal Law No. 173-FZ of 10.12.2003 “On Currency Regulation and Currency Control”) and does not fall under the objects of civil rights listed in Art. 128 of the Civil Code of the Russian Federation, not being a thing (goods), cash or non-cash money, non-documentary securities, and property rights”.

At the same time, in relation to the category of property, the rule of Art. 128 of the Civil Code of the Russian Federation can be called open since it presupposes the existence of "other types of property", in particular, those that may later appear in circulation. Accordingly, we believe it is possible to call a cryptocurrency a different, special type of property, namely, "the subject of virtual property" or "virtual property", which, in addition to cryptocurrency, should also include the rights to virtual property acquired for real money in games.

It is, of course, doubtful whether the term "cryptocurrency" can be legislated. The analysis of the basic concepts from the Federal Law No. 173-FZ of 10.12.2003 "On Currency Regulation and Currency Control" allows us to conclude that the term currency in the Russian Federation is used as a designation of legal means of cash payment in the Russian Federation or in a foreign country, when it comes to foreign currency. Therefore, the legislative consolidation of the term cryptocurrency will allow speaking about the existence in the Russian Federation of "legal tender" created using cryptographic methods. Moreover, if taking literally the basic definitions of the above law, if the corresponding cryptocurrency is recognized as a legal means of payment by at least one foreign state, it acquires the status of foreign currency in Russia. [SHULGA, A. V., GALIAKBAROV, R. R., & SAPRUNOV, A. G. \(2018\)](#)

On March 26, 2018, the Deputies of the State Duma of the Federal Assembly of the Russian Federation presented to the members of the Council of Federation of the Federal Assembly of the Russian Federation a draft Federal Law No. 424632-7 "On Amendments to Parts One, Two, and Four of the Civil Code of the Russian Federation (on Digital Rights)", which understand digital law as a right to objects of civil rights, certified by a set of electronic data. As the author of the draft law, P. Krashennikov, rightly noted, "without fixing basic concepts in the Civil Code of the Russian Federation, it will be impossible to regulate the market of digital objects and enact special laws in quickly developing "digital economy". Digital rights become objects of civil rights, being property rights. Digital money as an aggregate of electronic data can only be used in cases defined by law as a means of payment by individuals and legal entities. The terms "digital law" and "digital money", in the opinion of the authors of the draft law, will replace the concepts of tokens and cryptocurrency.

However, this draft law raises a number of questions. In particular, defining cryptocurrency as "digital rights" there is an analogy with a subjective, property law, while the draft law of digital rights is defined as a set of electronic data (digital code, designation), which certifies rights to objects of civil rights, which contradicts the very definition of "right".

CONCLUSION

Today, cryptocurrencies in Russia are the subject of close attention from both research scientists and law-makers. From the point of view of the current Russian legislation, cryptocurrency can be considered as other property. However, the legitimate consolidation of virtual currency as a property raises even more questions, at least from which point the entry made in the distributed registry becomes property.

What legal difficulties can be encountered today by a participant in transactions with cryptocurrency, in addition to financial risks and the very fact that the cryptocurrency is outside the legal field? Here are only some of them.

Firstly, how will the fact of making a deal with such property be proved? Recall that the essence of cryptocurrency turnover is that all transactions are public, based on the use of private and public keys, and secrecy is achieved by the lack of personification of address owners. Moreover, its creator, Satoshi Nakamoto, to preserve the anonymity of users, recommends creating separate addresses for each transaction. Here is an example from the judicial practice of what it can lead to, namely to Decision No. 2-776/2017 2-776/2017~M-723/2017 M-723/2017 dated October 11, 2017, in case No. 2-776 of Zavodoukovsky District Court (Tyumen region). Plaintiff S.A. Smalko filed a suit against A.A. Podolian on the recovery of unjust enrichment. In accordance with the materials of the case, on 01.07.2017, a transfer of funds in the amount of 99,800 rubles from the account of Smalko S.A. to the account ... **** ... Podolian A.A. The plaintiff believes that Podolian A.A. unjustly enriched for the above amount without the statutory grounds due to Smalko S.A. The respondent on the merits of the claim objected, arguing that the said amount was transferred under the contract ... as announced ..., namely, the transfer was made for the sale of 0.62467530 units of Bitcoin currency (BTC) to the plaintiff. However, the defendant was unable to submit to the court the evidence that the buyer indicated was the plaintiff Smalko S.A., and therefore evidence of the respondent's receipt of the specified amount from the plaintiff for the transaction or conclusion of any other transactions with the plaintiff on the basis of which the plaintiff could transfer the specified amount to the respondent, also was not presented to the court.

Secondly, how will the civil law protection of ownership of virtual currency be carried out? In particular, in "virtual wallets" there is no possibility of restoration or recognition of property rights, namely, loss of access to such a wallet leads to the fact that a virtual currency is lost forever, it cannot be restored or re-generated, despite the actual existence in such a wallet. It is also not possible to cancel the virtual currency transfer operation at the present time. Thus, even in the event of a court ruling on a claim for the return of unjustifiably acquired or saved property, the restoration of the previous position of a person at the expense of which the other party enriched itself is possible only through a voluntary return of property. According to Decision No. 2-776/2017 2-776/2017~M-723/2017 M-723/2017 dated October 11, 2017, in case No. 2-776 of Zavodoukovsky District Court (Tyumen region), "the actual location of cryptocurrencies outside the legal field does not provide an opportunity to implement legal mechanisms for ensuring the fulfillment of obligations by the parties to the

transaction. For example, if payment is made, but the service or product is not received, then there are no guarantees for the return of such a payment”.

Thirdly, there are difficulties with the inheritance of cryptocurrency, due to the fact that in the most popular cryptocurrency systems the owner is impersonal and it is impossible to obtain confirmation of ownership in any form. Accordingly, without having received confirmation of the ownership of the property by a specific testator, it is impossible to include this property in the estate, and it is impossible to find it, due to the anonymity of the owner of the virtual wallet. Similar difficulties arise with the seizure of such property.

Cryptocurrency transactions are aleatory, or risky. Counterparties are always at risk of losses. According to the information of the Central Bank of the Russian Federation of January 27, 2014 “On the use of “virtual currencies”, in particular, Bitcoin” for making “virtual currencies”, there is no security and no subjects legally bound thereon. In accordance with the materials of judicial practice, it is possible to make an unequivocal conclusion that today the judicial authorities of the Russian Federation do not protect the interests of legal entities investing or using virtual currencies due to the lack of legal regulation of cryptocurrencies in Russia.

Regulatory consolidation of the legal status of cryptocurrency, despite the existing risks due to anonymity, lack of control and security, in terms of digitalization of the economy has several advantages for the state. Firstly, virtual currencies can be considered as a source of income to the national budget from entrepreneurial activities related to the circulation of cryptocurrencies, which requires strict legislative recognition of the possibility of controlling the use of cryptocurrencies for tax purposes, levying other fees and charges. Secondly, the legal definition of cryptocurrency, the possibilities of carrying out relevant operations will entail a decline in the share of the shadow economy, counteraction to money laundering, legalization of income, and uncontrolled withdrawal of capital outside the Russian Federation. In particular, according to the Information Letter of the Bank of Russia No. IN-014-12/54 of August 14, 2018, the Rosfinmonitoring report on the national risk assessment of money laundering (2017-2018) in 2017 established the use of Bitcoin cryptocurrency in the financial structure of an illegal drug trafficking in the territory of 23 entities of the Russian Federation. Thirdly, the undoubted advantage of using virtual currencies is the acceleration of payments, which makes it possible to minimize the time and cost barriers to the economic growth of business entities. Earlier, the media raised the question of the possibility of creating in Russia its own national cryptocurrency - crypto-ruble. A similar national cryptocurrency was created in Belarus under the name “Taler”, and in Venezuela under the name “El Petro”.

As already noted, the emergence of cryptocurrency occurred under the influence of technical progress, therefore, the formation of a legislative framework that creates the basis for regulating the legal status and circulation of cryptocurrencies must be approached comprehensively, through the synthesis of knowledge and practical skills in finance, law and information technology.

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