CRYPTOCURRENCY IN RUSSIA: PROBLEMS OF LEGAL REGULATION

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Abstract: The paper is devoted to the main problems of legal regulation of the crypto currency in Russia. The paper gives examples of court proceedings where an example of a dispute was a crypto wallet. The author draws attention to the need for an analysis of foreign experience in the legal regulation of this problem. As a result of a comparative legal study of foreign legislation in several countries, the author comes to the conclusion that there are two ways of legal regulation (normative, informational). The normative way of legal regulation is that a state adopts special legal acts aimed at regulating the legal relationship on the turnover of the crypto currency. The information approach to legal regulation is that a state does not prohibit the use of crypto currency, but informs consumers of financial services about possible economic and legal risks in the process of its application. The author also conducts an examination of all bills on the legal regulation of the crypto currency in Russia. The analysis of bills "On digital financial assets", "On alternative ways of attracting investment (crowdfunding)" and "On introducing amendments to parts one, two and four of the Civil Code of the Russian Federation" was conducted. All these bills have their own advantages and disadvantages. In this regard, the author of the paper developed recommendations aimed at improving the effectiveness of legal regulation of crypto-currency turnover in Russia.

Key words: digital wallet, digital money, crypto currency, foreign practice, bills on the regulation of crypto-currency.

1 Introduction

Modern economic development and the emergence of new types of economic relations directly affect the modernization of existing mechanisms of civil law regulation. In this regard, L.S. Yavich wrote that the economy is primary, the right is secondary (Yavich, 1985). The right cannot outpace the development of the economy. The right must correspond to the economic life of society (Nefyodov, 2015). The modern system of legal regulation, especially in the entrepreneurial sphere, does not yet constitute a sound and complete system of norms, but rather can be characterized as a set of basic provisions that does not encompass all the diversity and manysidedness of business issues (Demieva, 2014).

2 Methodology

The general scientific dialectic methods of cognition, universal scientific methods (system-structural, formal-logical, methods of analysis and synthesis, induction and deduction, and abstraction), as well as special legal methods were used: legal-dogmatic, comparative-legal.

3 Results and discussion

In the last few years, one of the most discussed topics in the legal community is the study of the legal nature of virtual money (crypto currency). According to some experts, there are more than 500 varieties of crypto-currencies in the world; the most popular among them is bitcoin. There is no common opinion among domestic jurists about what the legal nature of a crypto currency is? What legal regulation mechanisms should be used in the course of its turnover? Therefore, the main task before the legal community is to determine the strengths and weaknesses of the crypto currency, and to develop effective mechanisms for its legal regulation.

In Russia there has been formed the practice that before the introduction of reforms (amendments and additions) into the current legislation, legal scholars analyze foreign experience of legal regulation in terms of similar legal relations. However, this practice is not perceived positively by all scientists. So, for example, Yu. K. Tolstoy expresses his criticisms noting that the basis of foreign law (primarily English and American) is the system of Anglo-Saxon law, while the core of Russian law is the Romano-Germanic system (Tolstoy, 2015). Other jurists, for example, V.A. Rybakov, does not exclude the possibility of using foreign experience (foreign law) in the process of reforming Russian legislation, while noting that it is necessary to take into account only the specifics of the formation of Russian law, calling it a "genetic code" (Rybakov, 2007).

Despite the fact that Russian law does not familiar with the legal nature of the crypto currency, at the same time, it has repeatedly become the subject of judicial research, mainly in cases involving bankruptcy of citizens. For example, during the consideration of creditors' claims on the inclusion in a bankruptcy estate of the contents of a crypto-wallet located in the Internet, the court refused to meet the claims of creditors. The court noted that: "Based on a direct interpretation of the law", crypto-currency "does not apply to the objects of the civil right, is outside the legal field in the territory of the Russian Federation, the execution of transactions with the crypto currency, its transactions are not secured by the force of the state. In addition, the lack of a control center in the system of crypto currency and the anonymity of users of crypto currencies does not allow with certainty to determine whether the crypto currency in the crypto wallet belongs to the debtor" (Sulkarnaeva et al, 2018).

Currently, there are no uniform and common international rules, requirements or recommendations that would regulate the turnover of the crypto currency. As a result, each state independently determines the mechanisms for regulating the crypto currency, based on its own national interest.

For example, the Argentine Constitution provides that the only body that has the authority to issue "legally significant" funds is the Central Bank (Pihlainen, 2002; Hutcheon, 1989). Crypto currency (bitcoin) is not a monetary instrument, since it was not issued by the state. In the country there is no special legal act regulating the turnover of the crypto currency, but, despite this, the crypto currency is used. The legal relations related to the circulation of the crypto currency are regulated by the Civil Code (Villalobos Antúnez, 2016).

In Brazil, a special legislative act has been adopted; it provides for the possibility of creating electronic currencies. The law defines an electronic currency as a resource that resides on a device or in an electronic system, and allows to an end user to perform a payment transaction. In this case, the regulation of the crypto currency is carried out by the Brazilian payment system (Sistema de Pagamentos Brasileiro) (Connor, 1996). The Central Bank and the National Monetary Council are responsible for regulating the turnover of the crypto currency.

In Chile, the turnover of the crypto currency is not settled. However, in 2013 a group of American specialists has organized an ancillary organic farm under the name "Galt's Gulch Chile", where financial and economic activities are based on bitcoins (Cooper, 1996).

In Denmark, the Financial Supervisory Authority has issued an official statement for warning the financial service consumers that crypto currency is not classified as a financial service (Shevchenko et al, 2017). It was proposed to consider the crypto currency in the form of an electronic service, and the income received from it should be taxed.

In France, the Central Bank published a report warning of the dangers of "virtual currencies". According to the bank, bitcoin is not a real currency or means of payment. It is noted that bitcoin can be considered as a payment service that should be performed by a specialized supplier and under the control of the Office - Autorité de contrôle prudentiel et de resolution (Breeva, 2014).

The analysis of international practice allows us to conclude that there are two ways of legal regulation of the crypto currency: the *first* is regulatory; it is that the state adopts special legal acts aimed at regulating the legal relationship on the turnover of the crypto currency; *the second* is informational; it consists in that the state does not prohibit the use of crypto currency, but informs consumers of financial services about possible economic and legal risks in the process of its application.

Russia chose the first way, which is legal regulation. In this regard, in March 2018, three draft laws aimed at regulating crypto-currencies were submitted to the State Duma (the parliament of the Russian Federation). Each of the bills has its advantages and disadvantages. Let us analyze them in more detail.

On March 20, 2018, the bill "On Digital Financial Assets" has been introduced (Mrathuzina & Nasrutdinova, 2015). The bill has the status of lex specialis. Its undoubted advantages are that:

- This is the first bill in the history of Russia that aims to systematize legal relations that arise in the process of circulation of the crypto currency;
- The bill discloses such legal concepts as: "digital financial asset", "digital transaction", "digital record", "digital transactions register", "mining", "validator", "crypto", "token", "smart contract", "Operator of digital financial assets exchange", "digital wallet", and many others;
- A legal distinction has been made between the crypto currency and tokens, the procedure for performing transactions for their acquisition and disposal is provided;
- The basis for public attraction of funds through the offering of tokens has been developed.

The bill determines that a crypto currency is a type of digital financial asset that is an asset in electronic form. Ownership is confirmed by making a digital entry in the register of digital transactions. At the same time, digital financial assets are not a legal means of payment in the territory of Russia. The undoubted advantage of the bill is the ability of owners of digital financial assets to make transactions for the exchange of assets into rubles, foreign currency and / or other property that is carried out only through a specially authorized operator.

Despite the obvious advantages of the bill, it also has certain shortcomings, among which we can name, for example:

- The draft law provides for the possibility of making transactions only through a traditional exchange (Article 4 of the draft law). We are convinced that the bill should add the possibility of making transactions through special crypto-exchange exchanges, which must exist alternatively from the traditional exchange. It is necessary to provide that crypto currency exchanges can exist both centrally and decentrally;
- the bill provides that the release of the token is possible only by a legal entity or an individual entrepreneur (art.2. of the bill), while limiting the right of individuals. Therefore, it is necessary to foresee the possibility of issuing tokens also to individuals;

On March 20, 2018, a bill was introduced On alternative ways of attracting investment (crowdfunding). The law regulates the process of attracting investments by commercial organizations or individual entrepreneurs through investment platforms and determines the legal framework for arranging retail financing. The bill should be considered in a "tandem" with the draft law "On Digital Financial Assets". We will not dwell on the advantages of the bill, but pay attention to some shortcomings that need to be worked out, for example:

- The draft law does not provide for the possibility of investing money by non-profit organizations;
- It is necessary to carry out a harmonization between the same definitions used in these bills. We believe that the bill "On alternative ways of attracting investment (crowdfundinge)" should indicate that the token is a digital financial symbol (asset);
- The bill provides an exhaustive list of ways to attract investment through investment platforms. These methods are: 1) provision of loans; 2) purchase of securities; 3) acquisition of the participant's share in the authorized capital of a limited liability company, the share of the participant in the share capital of an economic partnership or an economic partnership; and 4) the acquisition of tokens (Part 1 of Article 5 of the draft law). We are convinced that it is also necessary to give the right for investment platforms to independently develop investment products and offer them to investors. In this connection, it is necessary to make the wording "and in other ways" in the section on attracting investments of the bill, which will expand the methods of investment (for example: it will provide an opportunity for investment using real estate objects).
- It is necessary to provide for a mechanism for compulsory insurance of investments and investment activities of investment platform operators;
- To include in the bill a legal norm regulating protection of the information on investments, investors, and activity of investment platforms. This type of information must be equated to bank secrecy, establish administrative and civil liability for its disclosure;
- It is necessary to develop mechanisms for self-regulation of investment platform operators.

On March 26, 2018, a bill "On Amending Part One, Second and Fourth of the Civil Code of the Russian Federation" was introduced. The bill proposes to introduce the concept of "digital law" and "digital money" into civil law. We are convinced that the bill needs significant conceptual refinement. Let's note that Art. 1 of the bill provides that: "Digital money... in cases and on conditions established by law, can be used by individuals and legal entities as a means of payment (italics – A.D.) ".

Thus, the draft law contains a norm that levels the status of a crypto currency with the status of a payment instrument. This situation is unacceptable, since it will come into conflict, first of all, with Part 1, Article 140 of the Civil Code of the Russian Federation, where it is enshrined that ruble is a single legal tender in the Russian Federation, and with the Constitution of the Russian Federation (Part 1, Article 75) stipulating that: introduction and issue of other money in the Russian Federation are not allowed. The analyzed bill needs in checking up and carrying out the harmonization of its conceptual apparatus and legal provisions with the other two bills mentioned above.

4 Summary

Russia follows the correct way of statutory regulation of the crypto currency. Crypto currency is an object of civil law and, therefore, should be regulated by civil legislation. It cannot be a means of payment or be used instead of money, substituting for itself money (a surrogate of money), because crypto currency is not guaranteed by its legal nature.

5 Conclusions

The adoption of contradictory laws containing conceptual mistakes will lead to the desystemization of legal regulation. In this regard, when drafting one bill, it is necessary to take into account the provisions that are fixed in other draft laws, directly or indirectly aimed at regulating crypto-currencies.

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