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Financial Assets in Digital Form and How They Influence Classification of Crime

Aleksey Nikolaevich Lyaskalo
National Research University Higher School of Economics, 20 Myasnitakaya Str., Moscow 101000, Russia, lyaskalo@list.ru

Abstract

The approval of new legislative acts regulating the financial assets in digital form, including digital rights, digital currencies and the digital ruble, gives grounds for rethinking their legal status and influence on the sphere of criminal law enforcement. The purpose of the study is to identify the legal nature of financial assets in digital form, taking into account the current state of legal regulation of their turnover, to assess the existing approaches and develop recommendations for the qualification of crimes in which the subject or means of committing them are digital rights, digital currency, digital ruble or electronic cash. From these perspective are considered the issues of qualification of crimes against property, drug crimes, corruption crimes, laundering of money or other property acquired by criminal means, bankrupt crimes, malicious evasion of repayment of accounts payable, concealment of funds or property from the collection of taxes, fees, insurance premiums. The general conclusion based on the results of the study is that financial assets in digital form, representing property rights, must be considered as a sign of these crimes, except when their actual involvement is beyond the scope of the crime. In order to determine the dimensional characteristics of the relevant crimes, the issues of assessing the value of digital rights and digital currencies are considered.

Keywords

cryptocurrency; crimes qualification; digital rights; digital financial assets; utilitarian digital rights; digital currency; digital ruble; electronic money.

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Introduction

One of the most popular topics of academic research nowadays is the study of how the global digitalisation affects modern social relations and how to discover the search the best ways of their legal regulation in the digital transformation. Following this trend, the criminal law theory includes more and more new works dealing with the substantiation and systematisation of digital crimes, revision of criminal policy related to the criminalisation of socially dangerous acts in the digital sphere, and the forecast of new criminal risks generated by digitalisation of social relations [Dyakonova M.O., Efremov A.A., Zaitsev O.A. et al., 2022]; [Russkevich E.A., 2022]; [Russkevich E.A. et al., 2022]; [Khilyuta V.V., 2021]; [Grachyova Yu.V. et al., 2020].

Offering a criminalist's perspective on the issue of digitalisation in its narrow utilitarian aspect, the author of the study considers the relevance for modern law enforcement practice of qualification of crimes committed in relation to or with the use of financial assets in digital form.

Author define digital financial assets as property values in digital form (in the form of a digital code), the circulation of which is effected with the use of information systems and regulated by Russian financial legislation, namely digital rights (including utilitarian digital rights, digital financial assets), digital currency (including cryptocurrency), digital rouble, and electronic cash[1].

Law enforcers consider the current state of legal regulation of their circulation and criminal law protection to be insufficient, that point forces them to give new meaning to classical legal constructions, expanding their content to adequately respond to modern challenges and threats caused by the emergence of new and the widening circulation of known financial assets in digital form.

When conducting the research, author used general methods of scholar cognition, among them analysis, synthesis, induction, deduction, logical

[1] The author leave out of the scope of this study traditional (analogue) non-cash money, non-cash precious metals and uncertificated securities, as well as varieties of so-called "digital money", including virtual currencies of multiplayer online games and corporate currencies (bonuses, points, discounts, etc.), which are not regulated in financial legislation.

and functional methods, that allowed to shape conceptual framework of the study. Also were used special methods of academic cognition. It was implemented the formal legal method to analyse modern financial legislation in order to identify the peculiarities of regulation and legal nature of financial assets in digital form. Was used the systemic-structural method to investigate the elements of offences related to the circulation of digital financial assets. Statistical analysis and interpretation of the law were useful to analyse law enforcement practice and to develop rules for the classification of these offences.

1. Current Legal Regulation and Legal Nature of Digital Financial Assets

The first form of so-called "digital money" realised in the Russian legislation is electronic funds, which means funds that one person (the "money provider") has provided in advance to another person who takes into account information on the amount of the provided funds without opening a bank account (the "liable person") to fulfil the financial obligations of the money provider before third parties and in respect of which the money provider is entitled to transmit orders exclusively using electronic means of payment (Clause 18, Article 3 of Federal Law 27 June 2011 No. 161-FZ "On the National Payment System").

Electronic funds are a special case of non-cash funds and, like them, represent the customer's contractual rights of claim to the credit organisation, which is the operator of electronic funds [Baibak V.V., Ivanov O.M., Karapetov A.G. et al., 2019].

Supreme judicial authorities have also commented on the contractual nature of non-cash funds[2].

Federal Law No. 34-FZ 18 March 2019 "On Amendments to Parts One, Two and Article 1124 of Part Three of the Civil Code of the Russian Federation" (hereinafter — Civil Code) has introduced the concept of "digital rights" as a type of property rights (Article 128 of Civil Code).

[2] See, e.g.: Resolution of the Russian Federation Constitutional Court of 27.10.2015 No. 28-P "On the case of verification of the constitutionality of paragraph 1, Article 836 of the Civil Code in connection with the complaints of citizens I.S. Biler, P.A. Guryanov, N.A. Guryanova, S.I. Kaminskaya, A.M. Savenkov, L.I. Savenkova and I.P. Stepanyugina" // SPS Consultant Plus.

According to Clause 1 of Article 141.1 of Civil Code, digital rights are contractual and other rights named as such in the law, the content and conditions for the exercise of which are determined in accordance with the rules of an information system that meets the characteristics established by law. The exercise, disposal, including transfer, pledge, encumbrance of the digital right by other means or restriction of the disposal of the digital right is only possible in the information system without recourse to a third party.

The approval of Federal Law No. 259-FZ 02 August 2019 "On Attracting Investments with the Use of Investment Platforms and on Amendments to Certain Legislative Acts of the Russian Federation" led to the emergence of the first kind of digital rights — utilitarian digital rights. They are understood as rights acquired, alienated and exercised in the investment platform, including the right to demand item(s); the right to demand transfer of exclusive rights to intellectual property and (or) rights to use the intellectual property; the right to demand performance of work and (or) provision of services. Utilitarian digital rights are recognized as contractual rights (rights of claim) [Efimova L.G., 2022]

The approval of Federal Law 31 July 2020 No. 259-FZ 'On Digital Financial Assets, Digital Currency and Amendments to Certain Legislative Acts of the Russian Federation' (hereinafter — Federal Law No. 259-FZ) regulating in detail the circulation of digital financial assets and lays the foundations for regulating the circulation of digital currencies has became another major step.

By virtue of part 2 of Article 1 of this Federal Law digital financial assets are digital rights, including monetary claims, the possibility of exercising rights under 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, which are provided for by the decision to issue digital financial assets in the manner prescribed by law, the issue, recording, and circulation of which is possible only by making (changing) entries in the information system on the basis of the distribution of financial assets. The doctrine of civil law does not recognize digital rights a new object of civil rights, but considers them as a new form of fixation of traditional property rights (including obligatory, corporate, exclusive rights) [Sukhanov E.A., 2021]; [Vasilevskaya L.Y., 2019]; [Konobeyevskaya I.M., 2019: 332]. By the method of recording digital rights are close to book-entry securities [Rozhkova M.A., 2021: 39], particularly digital financial assets that record the rights to participate in the capital of a non-public joint-stock company ("digital shares").

The differences between digital rights and book-entry securities boil down to the infrastructure supporting their circulation [Guznov A., Mikheyeva L. et al., 2018]. A more modern distributed ledger system (DLT technology[3]), including blockchain, is used to record and enforce digital rights.

Digital financial assets are also compared to non-cash funds [Shevchenko O.M., 2022].

In accordance with part 3, Article 1, Federal Law No. 259-FZ, digital currency means a set of electronic data (digital code or designation) contained in the information system, which are offered and (or) may be accepted as a means of payment that is not a monetary unit of the Russian Federation or a monetary unit of a foreign state, and/or international monetary or settlement unit and/or as an investment and in respect of which there is no person liable to each holder of such electronic data, except for the operator and/or nodes of the information system, whose only obligation is to ensure the compliance of the procedure of issuance of this electronic data and actions on making (changing) entries in such information system with its rules.

Norms of part 5, Article 14 of this Law prohibits Russian residents from accepting digital currency as a counter-payment for goods they transfer, work they perform, services they render or in any other way that allows them to assume payment for goods (work, services) with digital currency.

As a consequence, some sources say that the movement of means of payment not related to the movement of goods (works, services), including donation, granting a loan (credit), payment of interest, return of unjust enrichment, compensation for damage, payment of contractual damages, contribution to the charter capital, payment of income (dividends), inheritance, does not fall under the above prohibition [Novosyolova L. A., 2021: 6].

Other papers conclude that Russia has not realised the payment function of digital currency and can only use its investment function [Staroverova O.V., 2022].

The legal nature of cryptocurrency, as the most common form of private digital currency based on cryptography technologies, is a widely debated topic. The range of opinions is impressive: cryptocurrency is not recognized as an object of civil rights under Article 128 of Civil Code [Sidoren-

[3] DLT: Distributed Ledger Technology.

ko E.L., 2018], it has signs of a thing [Sazhenov A.V., 2019]; [Babina K.I., Tarasenko G.V., 2018]; [Kostko V.S., Sklovsky K.I., 2018], of other property [Tolkachev A.Y., Zhuzhalov M.B., 2018]; [Savelyev A.I., 2016], and of property rights [Belomytseva O.C., 2014: 26].

It seems that given the current state of legal regulation of digital currencies and in the context investment transactions with digital currencies of prevailing in circulation (their exchange for fiat money and vice versa), they manifest themselves as property rights close to absolute rights, although without full correspondence [Rozhkova M.A., 2020: 76]; [Yankovsky R.M., 2020: 50].

The approval of Federal Law No. 339-FZ 24 July 2023 "On Amendments to Articles 128 and 140 of Part One, Part Two and Articles 1128 and 1174 of the Civil Code" has led to the emergence of a new form of non-cash funds, namely the digital rouble, transactions with which will be carried out by the Russian Federation Central Bank using the digital rouble platform and digital rouble accounts.

High-ranking employees of the Central Bank have announced there will be marking ("colouring") of the digital rouble, which will be a unique code that will allow tracking the chain of transactions throughout the life of the digital rouble, including control over its intended use. According to the regulator's representatives, it will make it possible to increase the transparency of the use of the digital rouble and de-anonymise transactions involving it[4].

In the author opinion, the above-mentioned undoubted advantage of the digital rouble over other forms of non-cash and cash funds, while contributing to increased control over its circulation in legal economic activities, hardly excludes it from the sphere of criminal interests. The use of fake digital currency account holders and the possibility that it may always be transferred outside the digital currency platform into other less transparent forms of fiat money does not preclude the use of digital currency as a subject or instrument of crime.

Digital currencies of central banks are opposed to private digital currencies [Dyakonova M.O., Efremov A.A., Zaitsev O.A. et al., 2022], which can act as an actual (contractual) means of payment, but are not universally recognised as such.

[4] O. Skorobogatova, First Deputy Chairman, Bank of Russia, and A. Zabotkin, Deputy Chairman, Bank of Russia. Russian Central Bank prepares 'coloured' roubles without competition for savings. 8 December 2020. Available at: URL: https://cbr.ru/press/event/?id=8345 (accessed: 25 July 2023)

In civil law doctrine the digital rouble as a kind of non-cash money is usually described as an object of law of obligations [Sarnakova A.V., Zhizhin N.C., 2022].

In summary of the peculiarities of financial and legal regulation and doctrinal views on the legal nature of financial assets in digital form, we can conclude that they correspond to such an object of civil rights as property rights, in respect of which appropriate digital methods of their fixation are applied.

2. Digital Financial Assets in Property Offences

In the light of the identified legal nature of digital financial assets, the most pressing issue is whether they can be recognized as the subject of property offences.

The classical concept of the subject of crime as a tangible value or other object of the material world in the conditions of modern information (digital) society loses its universality and requires revision.

'Property' as a feature of property offences is also traditionally associated with material form

In accordance with this classical understanding of "property"in Note 1 to Article 158 of the Russian Federation Criminal Code (hereinafter — Criminal Code) discloses the concept of "theft". Obviously, such attributes as "unlawful uncompensated seizure and/or conversion of another person's property to the use of the perpetrator and other persons, causing damage to the owner or other legal holder of this property", assume the proprietary nature of another person's property.

The material form of another person's property is confirmed by such a method of fraudulent actions as "acquisition of the right to another person's property", which is identified along with theft, and by the "right to property" in extortion, which is envisaged as an alternative to another person's property.

Despite doctrinal conservatism of criminal law, more and more authoritative academic research says about the need to expand the concept of "property" for the purposes of application of criminal law prohibitions set out in Chapter 21 of the Criminal Code [Lopashenko N.A., 2005: 36-44]; [Bezverkhov A.G., 2002: 90]; [Kochoi S.M., 2000: 91].

Judicial practice also follows the path of expanding the concept of "property" and the related concept of "theft" to include objects related to property rights in the subject of theft.

By virtue of Para 5 of the Resolution of the Plenum of the Supreme Court of the Russian Federation 30 November 2017 No. 48 "On Judicial Practice in Cases of Fraud, Appropriation and Embezzlement", non-cash funds, including electronic funds, are recognised as the subject of fraud in the form of theft of other people's property[5].

But, in fact, the supreme judicial authority of the state has confirmed the approach already established in court practice, when fraud with non-cash funds is recognised as theft of such funds[6]. It would be logical to extend the legal position mentioned above to the new form of non-cash money, i.e. the digital rouble.

Law enforcers often recognise uncertificated securities as an object of theft as well[7].

As for immovable property, the dominant judicial practice so far recognises it as the subject of fraud in the form of acquisition of the right to another's property[8], although in some cases the courts confirm the possibility of its theft[9].

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[5] The legislator has recognised theft as a way of unlawfully taking possession of non-cash funds, including electronic funds, by criminalising the qualified offence of theft from a bank account, as well as in relation to electronic funds (Para D, Part 3, Article 158 of RF Criminal Code).

[6] Verdict of Kirovsky District Court of Tomsk 24 June 2015 in case No. 1-18/2015; verdict of Severouralsky City Court of Sverdlovsk region 17 June 2015 in case No. 1-93/2015; verdict of Sovetsky District Court of Stavropol Area 03 February 2015 in case No. 1-6/2015. Available at: URL: https://sudrf.ru (accessed: 23.07.2023)

[7] Verdict of the Ukhta City Court of the Republic of Komi 25 November 2016 in case No. 1-492/2016; verdict of the Podolsk City Court of the Moscow region 14 February 2012 in case No. 1-3/2012; verdict of the Tagansky District Court of Moscow 28 March 2011 in case No. 1-47/2011. Available at: URL: https://sudrf.ru (accessed: 23.07.2023)

[8] Appeal ruling of the Kamchatka Regional Court 06 June 2023 in case No. 22-479/2023; cassation ruling of the Eighth Cassation Court of General Jurisdiction 20 September 2022 in case No. 77-4240/2022; appeal ruling of the Moscow City Court 20 December 2021 in case No. 10–20218/2021; verdict of the Povorinsky District Court of the Voronezh region 16 February 2021 in case No. 1-22/2021; verdict of the Moscow Garrison Military Court 13 August 2019 in case No. 1-49/2019. Available at: URL: https://sudrf.ru (accessed: 23.07.2023)

[9] Cassation definition of the Third Cassation Court of General Jurisdiction 28 January 2021 in case No. 77-152/2021. Available at: URL: https://sudrf.ru (accessed: 23.07.2023)

Thus, in the author opinion, criminal law doctrine and practice are gradually coming to an agreement on the concept of "property" in property offences, applying a more flexible approach to its interpretation and endowing it with content close to its civil law analogue.

As a consequence, there should be no obstacles in classifying digital rights and digital currency, which are objects of property rights, as the subject of theft, thus making it possible to fully cover all known criminal ways of illegally taking possession of them through the application of existing criminal prohibitions.

There are some other researchers who recognise digital rights and digital currency as a subject of theft [Obrazhiyev K.V., 2022]; [Mochalkina I.S., 2021]; [Prostoserdov M. A., 2019: 79].

However, the supporters of the classical approach, who deny cryptocurrency as a subject of theft, thus narrowing the range of criminal forms of encroachment on "digital property" do not give up either [Nemova M.I., 2020: 118–119]; [Khilyuta V. B., 2018: 58–68].

Some researchers recognise digital currency as an object of criminal protection with the controversial restrictive clause that its owner must meet the requirements of Part 6 of Art. 14 of the Federal Law 31 July 2020 No. 259-FZ on informing the tax authority of cases of possession of digital currency, transactions and operations with it [Arkhipov A.V., 2020].

Theft of electronic money is the most common among property offences committed against digital financial assets.[10] Cryptocurrency has more often been the subject of fraudulent theft[11], but it has also been the subject of illegal possession through robbery[12] and robbery with violence[13].

[10] Verdict of Verkh-Isetsky District Court of Yekaterinburg 15 November 2019 in case No. 1-503/2019; verdict of Leninsky District Court of Saratov 17 July 2019 in case No. 1-344/2019; verdict of Kovylkinskiy District Court of the Republic of Mordovia 17 June 2019 in case No. 1-50/2019; verdict of Leninsky District Court of Makhachkala 11 June 2019 in case No. 1-281/2019; verdict of Sovetsky District Court of Novosibirsk 16 March 2017 in case No. 1-103/2017. Available at: URL: https://sudrf.ru (accessed: 23.07.2023)

[11] Ruling of the Sovetsky District Court of Makhachkala 09 March 2021 in case No. 1-499/2021; verdict of the Oktyabrsky District Court of Tambov 15 February 2019 in case No. 1-134/19; verdict of the Leninsky District Court of Cheboksary 07.03.2019 in case No. 1-58/2019; verdict of Kirovsky district court of Kazan 25 April 2019 in case No. 1-37/2019; appeal determination of the Supreme Court of Tatarstan 18 October 2019 in case No. 22-7705/2019. Available at: URL: https://sudrf.ru (accessed: 23.07.2023)

[12] Verdict of the Kirovsky District Court of Kazan 25 April, 2019 in case No. 1-37/2019. Available at: URL: https://sudrf.ru (accessed: 23.07.2023)

[13] Appeal determination of the Leningrad Regional Court 04 March 2020 in case No. 22-106/2020. Available at: URL: https://sudrf.ru (accessed: 23.07.2023)

3. Digital Financial Assets in other Offences

Perhaps the earliest references to digital currency in criminal proceedings relate to its use in drug offences. Cryptocurrency was used in these offences long before of the approval of Federal Law No. 259-FZ, that has laid the foundations for the legal regulation of the circulation of digital currencies. Since then, it has taken root in criminal settlements for drugs and psychotropic substances and is constantly mentioned in judicial practice in the corresponding category of cases[14].

At the same time, it should be noted that the paid nature is not a mandatory feature in transactions involving narcotic drugs and psychotropic substances, and criminal remuneration remains outside the objective side of drug offences.

Digital currencies are also used as a means of criminal settlements in other offences related to illicit trafficking in restricted items (e.g., weapons[15]), but are, likewise, not considered as an element of these offences. The doctrine considers others (less common) crimes related to circulation of cryptocurrency that is not theirs attitude, including illegal activities of crypto exchanges as illegal entrepreneurship (Truntsevsky Yu.V., Sukharenko A.N., 2019], and computer crimes related to illegal mining of cryptocurrency [Russkevich E.A., Malygin I.I., 2021].

Cryptocurrency is becoming a popular form of illicit reward in corruption offences.

By virtue of para 9, Ruling of the Plenum of the Russian Federation Supreme Court 09 July 2013 No. 24 (24 December 2019 version) "On Judicial Practice in Cases of Bribery and other Corruption Offences", money, securities, other property, illegal rendering of services of a property nature and granting property rights (including digital rights) are recognised as the subject[16] of

[14] Verdict of the Yaroslavsky District Court 02 March 2021 in case No. 1-45/2021; verdict of the Volokolamsk City Court of the Moscow Region 24 November 2020 in case No. 1-198/2020; verdict of the Penza District Court of the Penza Region 28 September 2020 in case No. 1-86/2020; verdict of the Sovetsky District Court of Tula 26 December 2019 in case No. 1-153/2019; verdict of the Petropavlovsk-Kamchatsky City Court 19 February 2018 in case No. 1-107/2018; verdict of the Yakutsk City Court 22 February 2018 in case No. 1-180/2018. Available at: URL: https://sudrf.ru (accessed: 23.07.2023)

[15] Verdict of the Perovsky District Court of Moscow 17 June 2019 in case No. 01-0603/2019. Available at: URL: https://sudrf.ru (accessed: 23.07.2023)

[16] In reality, illicit reward is not an subject but a means of committing corruption offences.

bribery (Articles 290, 291, 291.1, 291.2 of Criminal Code) and commercial subornation (Articles 204, 204.1, 204.2 of it).

In 2019, when supplementing that ruling, the supreme judicial authority mentioned digital rights as a possible object of bribery and commercial subornation, as this type of property rights was already provided for in Articles 128 and 141.1 of the Civil Code. Digital currency was not mentioned, probably due to the uncertainty of its legal status at the time. The approval of Federal Law No. 259-FZ[17] has, in opinion of the author of present paper, created the necessary prerequisites to fill the gap mentioned.

The following so far rather unique case is of interest in the context of the issue of the corruption offences committed using cryptocurrency as illicit reward.

Persons employed in the Investigative Department of the Federal Security Service of Russia before, were convicted for taking a bribe in the cash form in a particularly large amount (RUB 60 million), for taking actions in favour of the bribegiver to create more favourable conditions during the preliminary investigation and for illegal actions to mitigate the charges against the bribegiver's father, with extortion of the bribe, by an organised group, under Part 6, Article 290 of the Criminal Code. The first tranche of the bribe in the amount of RUB 3 million was converted into bitcoin cryptocurrency (7.64664403 BTC) at the request of one of the convicts and transferred to a crypto purse belonging to him, following which it was partially cashed out[18].

On appeal against the verdict, the defence referred to the incorrect assessment of the subject of the bribe as cash, although cryptocurrency was transferred, the actual value of that cannot be determined, which is not an object of civil rights and cannot be considered the object of a bribe. However, the appellate instance disagreed with these arguments and pointed out that the object of the bribe was correctly defined, based on the intent of the perpetrators to receive money, and the conversion of part of the demanded bribe into cryptocurrency and its transfer to a crypto purse controlled by one of the convicted persons was recognised as a legalised way of transferring a bribe in the form of cash[19].

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[17] Digital currency has also been recognised as property for the purposes of application of the Federal Law 25 December 2008 No. 273-FZ "On Combating Corruption" (Part 10, Article 8) // Body of Laws of the Russian Federation. 2008. No. 52. Art. 6228.

[18] Verdict of the Second Western District Military Court 26 February 2021 in the case No. 1–7/2021 Available at: URL: https://sudrf.ru (accessed: 23.07.2023)

[19] Appeal determination of the Military Court of Appeal 17 May 2022 in case No. 55-115/2022. Available at: URL: https://sudrf.ru (accessed: 23.07.2023)

While the subject matter of the bribe in this case is somewhat controversial, it should be noted that in the context of the uncertainty of the legal status of cryptocurrency the courts have taken an interesting approach by ignoring the intermediate state of the subject of the bribe in the form of cryptocurrency, which is similar to the position of the supreme judicial authority on money converted from virtual assets (cryptocurrency) as a subject of money laundering.

According to paragraph 1 of the Ruling of the Plenum of the Russian Federation Supreme Court of 07.07.2015 No. 32 (ed. of 26.02.2019) "On Judicial Practice in Cases of Legalisation (Laundering) of Money or Other Property Acquired by Criminal Means, and on The Acquisition or Sale of Property Known to Have Been Obtained by Criminal Means", not only money or other property, the illegal acquisition of which is an element of a specific offence (e.g., theft or bribery) are recognised as the subject of offences under Articles 174 and 174.1 of the Criminal Code; the same classification also applies to money or other property received as material reward for a committed offence (for example, for murder for hire) or as payment for the sale of items restricted in civil turnover. In the latest amendments, the same paragraph of the ruling includes a provision that the subject of these offences may be money converted from virtual assets (cryptocurrency) acquired through the commission of the offence.

As a consequence, the supreme judicial authority has evaded a direct answer to the question of the possibility of classifying cryptocurrency as money laundering, which again can probably be explained by the ambiguity of the legal status of digital currencies in this case.

Prior to these clarifications, judicial practice in criminal proceedings sometimes recognised cryptocurrency (usually obtained as part of the sale of narcotic drugs or psychotropic substances) as "other property" and its conversion into non-cash or electronic money as a "financial transaction" within the meaning of Articles 174 and 174.1 of the Criminal Code[20].

After the highest court clarified its position on this issue, the courts began to follow it, skipping the stage of conversion of cryptocurrency into

[20] Verdict of the Kirovsky District Court of Ufa 07 February 2018 in case No. 1-14/2018; verdict of the Kirovsky District Court of Perm 05 February 2018 in case No. 1-11/2018; verdict of the Zheleznodorozhny District Court of Penza 14 February 2018 in case No. 1-15/2018; verdict of the Yalta City Court 30 August 2017 in case No. 1-337/2017. Available at: URL: https://sudrf.ru (accessed: 23.07.2023)

fiat money and evaluating subsequent transactions and activities therewith from the laundering perspective.

However, the Supreme Court of the Russian Federation later has issued a decision that many perceived as a change in its position regarding the possibility of recognising cryptocurrency as a subject of money laundering. This decision overturned the acquittal verdict and appeal ruling in a case involving the legalisation of the cryptocurrency "bitcoin" worth RUB 8.2 million received as a reward for the illegal production of the narcotic drug "mephedrone". The lower courts saw no laundering in the exchange of cryptocurrency for non-cash money transferred to the front man's bank accounts, cashed and received by the defendant. The supreme judicial authority disagreed, returning the case for a new trial[21].

Proceeding from the reasoning of this decision, it is difficult to say that the Supreme Court recognised that it was legal to launder cryptocurrency, since the existence of a legalisation purpose is explained by the totality of financial transactions to convert cryptocurrency into non-cash and then into cash. Although, without considering cryptocurrency as a laundering object, the supreme judicial authority would likely have ignored the first financial transaction to convert cryptocurrency into non-cash money.

In any case, in the author opinion, the current state of legal regulation of the digital currencies circulation allows to consider them as "other property" within the meaning of Articles 174 and 174.1 of Criminal Code[22].

Can digital financial assets, as property rights, be the subject of other offences relating to illicit transactions and financial operations?

Bankruptcy offences (Articles 195-197 of Criminal Code) are usually committed through such transactions with the debtor's property that result in the impossibility of using it in settlements with creditors.

By virtue of Articles 131 and 132 of Federal Law 26 October 2002 No. 127-FZ "On Insolvency (Bankruptcy)", the bankruptcy estate includes all property of the debtor available as of the date of opening of bankruptcy

[21] Cassation ruling of the Judicial Board for Criminal Cases of the Supreme Court of the Russian Federation 08 July 2023 in case No. 6-UDP23-6. Available at: URL: https://sudrf.ru (accessed: 23.07.2023)

[22] Digital currency is also recognised as property for the purposes of application of Federal Law No. 115-FZ 07 August 2001 "On Combating Legalisation (Laundering) of Proceeds of Crime and the Financing of Terrorism" (Part 3, Article 3). // Corpus of Laws of the Russian Federation. 2001. No. 33. Art. 3418.

proceedings and identified during the bankruptcy proceedings, except for property withdrawn from circulation, property rights related to the debtor, and certain other types of property stipulated by law.

Property rights are explicitly mentioned as an alternative subject of the offence under Part 1, Article 195 of the Criminal Code, and are implied in other bankruptcy offences.

As for digital currency, illegal transactions involving it in bankruptcy offences are not yet common. However, in insolvency (bankruptcy) cases, the issue of including cryptocurrency in the bankruptcy estate has repeatedly become a matter of dispute.

Judicial practice in arbitration proceedings started with a complete denial of cryptocurrency as a negotiable property value[23]; however, arbitration courts gradually began to recognise it as property within the meaning of Article 128 of the Civil Code and include it in the bankruptcy estate[24].

In the author opinion, after the approval of Federal Law No. 259-FZ[25] the issue of including digital currency in the bankruptcy estate alongside with the related issue of its recognition as a subject of bankruptcy offences should be resolved positively.

According to the prevailing judicial practice, transactions with the debtor's property, which make it impossible to use it in settlements with creditors, are a method of malicious evasion from repayment of accounts payable (Article 177 of the Criminal Code).

As part of enforcement proceedings for the recovery of accounts payable on the basis of Federal Law No. 229-FZ 02 October 2007 "On Enforcement Proceedings" it is allowed to foreclose, *inter alia*, on digital currency (Part 4, Article 68), electronic money (Part 12, Article 70) and property rights (Articles 75 and 76).

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[23] Ruling of the Arbitration Court of Moscow 05 March 2018 in case No. A-40-124668/17-71-160F. Available at: URL: https://sudrf.ru (accessed: 23.07.2023)

[24] Ruling of the Arbitration Court of the Altai Territory 15 November 2021 in case No. A03-3048/2021; Ruling of the Arbitration Court of the Perm Territory 24 December 2021 in case No. A50-6372/2018; Ruling of the Ninth Arbitration Appeal Court 18 April 2019 № 09AP-17044/2019; ruling of the Ninth Arbitration Appeal Court from 04 February 2020 № 09AP-76537/2019; ruling of the Ninth Arbitration Appeal Court from 15 May 2018 № 09AP-16416/2018. Available at: URL: https://sudrf.ru (accessed: 23.07.2023)

[25] Digital currency is also recognised as property for the purposes of application of Federal Law dated 26 October 2002 No. 127-FZ "On Insolvency (Bankruptcy)" (Part 2, Article 2) // Corpus of Laws of the Russian Federation. 2002. No. 43. Art. 4190.

If, in the presence of an enforceable judicial act ordering the debtor to pay accounts payable, the debtor performs transactions or financial operations with the said property in order to prevent it from being used to pay accounts payable, such actions of the debtor, if there are grounds, may be classified under Article 177 of the Criminal Code.

Concealment of money or property of an organisation or individual entrepreneur using which tax arrears should be recovered (Article 199.2 of the Criminal Code) also implies transactions and other financial operations that lead to the impossibility to recover money or other property of an organisation or individual entrepreneur in payment of tax arrears, fees, insurance contributions.

However, this criminal prohibition applies to concealment of property rights only in the form of non-cash money and uncertificated securities due to the restriction provided by paragraph 2, Article 38 of the Tax Code.

At the same time, there is a rather contradictory law enforcement practice, when concealment within the meaning of Article 199.2 of the Criminal Code was recognised as the disposal of the property right to claim receivables[26].

With the above limitation in mind, the subject of the tax offence in question may be financial assets in the form of electronic money, digital rouble and digital financial assets (tokens) related to securities, while other types of digital rights and digital currencies are outside the scope of its objective side.

4. Defining Dimensional Attributes of Financial Assets in Digital Form

In recognizing digital financial assets as an indicator of relevant offences, one cannot ignore the issue of determining their value, which determines the mandatory dimensional characteristics of the offence.

As is clear, electronic cash and the digital rouble are themselves equivalents of value, and the dimensional characteristics of the offence are determined by their face value.

The value of digital rights that are based on an underlying asset (e.g., a stock, bond or physical commodity) is determined by reference to the

[26] Verdict of the Sosnogorsk City Court of the Komi Republic 28 December 2011 in case No. 1-298/2011; verdict of the Novovyatsky District Court of Kirov 30 May 2011 in case No. 1-64/2011; verdict of the Drozhanovsky District Court of the Republic of Tatarstan 26 October 2011 in case No. 1-33/2011. Available at: URL: https://sudrf.ru (accessed: 23.07.2023)

market value of that asset. Digital financial assets that record the rights to participate in the capital of a non-public joint-stock company (so-called "digital shares") or cash claims have an independent market value[27].

Determining the value of decentralised digital currencies, including cryptocurrencies, which are not backed by real assets and whose market value is determined by speculative demand poses a serious challenge indeed[28].

The legal literature has repeatedly drawn attention to the difficulties in determining the value of cryptocurrencies due to the high volatility of their rate, the lack of an official source of information about it and the organised cryptocurrency market itself [Nemova M.I., 2019; Yani P.C., 2018].

The market value of digital currencies may be determined using federal valuation standards developed and adopted in accordance with Federal Law No. 135-FZ "On Valuation Activities in the Russian Federation" 29 July 1998.

These standards are also applied when conducting forensic cost (valuation) examinations to the extent that they do not contradict the criminal procedural legislation and Federal Law No. 73-FZ "On State Forensic Expert Activity in the Russian Federation" 31 May 2001. In the state system of forensic expert institutions, such examinations are carried out by the Forensic Expert Centre of the Investigative Committee.[29]

E.g., it is proposed to use the income approach (discounted cash flow method) and the comparative approach (method of analogues) envisaged by Federal Appraisal Standard 5[30] when valuing digital assets [Loseva O.V., Kosorukova I.V. et al., 2022: 25].

Some specialists propose to determine the market price of cryptocurrency through its weighted average rate based on information obtained from cryptocurrency exchanges [Nemova M. I., 2020: 90–91].

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[27] Development of digital asset market in the Russian Federation / Bank of Russia. Report for public- 2022. P. 13. Available at: URL: https://cbr.ru/Content/Document/File/141991/Consultation_Paper_07112022.pdf (accessed: 25.07.2023)

[28] Cryptocurrencies: trends, risks, measures / Bank of Russia. Report for public-2022. P. 10. Available at. URL: https://cbr.ru/Content/Document/File/132241/Consultation_Paper_20012022.pdf (accessed: 25.07.2023)

[29] The Investigative Committee of the Russian Federation Order No 77 24 July 2020 "On Procedure for Determining and Reviewing the Level of Qualification and Certification of Experts of the Federal State Institution "Forensic Expert Centre of the Investigative Committee" for the Right to Independently Produce Forensic Expertise." // Consultant Plus Legal Reference System (in Russian)

[30] Ministry of Economic Development Order No. 200 14 April 2022 On Approval of the Federal Valuation Standard "Valuation Approaches and Methods (FAS 5)" // Ibid.

In judicial practice in cases of offences involving cryptocurrency, its value was usually determined by the amount of money used to purchase cryptocurrency or received from its sale (agreed to be received)[31], and in some cases by the exchange rate of the cryptocurrency exchange[32].

Conclusion

Financial assets in digital form are an object of increased criminal interest and are actively used in economic and corruption offences. The emergence of new and expanding circulation of already known financial assets in digital form requires timely and full-fledged regulation, including the necessary protective mechanisms, among them criminal law protection.

Unfortunately, domestic legislation so far lags behind and cannot offer adequate regulatory material in response to the rapid expansion of digital assets into public life.

However, even the outlines of legal regulation of digital asset circulation that have been created to date are encouraging and make it possible to determine the vector of normative and law enforcement solutions. In such conditions the law enforcer justifiably assumes initiative and tries to adapt the "inconvenient" legal concepts to the rapidly changing realities.

Pending final clarity in the legal framework, the supreme judicial authority could well support this initiative by explicitly clarifying the qualification of offences committed with respect to or using digital rights and digital currencies.

References

1. Arkhipov A.V. (2020) Digital objects as the subject of theft. *Ugolovnoe pravo*=Criminal Law, no. 6, pp. 16–23 (in Russ.)

2. Babina K.I., Tarasenko G.V. (2018) Legal regulation of cryptocurrency in the Russian legislation. *Pravo i ekonomika*=Law and Economy, no. 1, pp. 26–29 (in Russ.)

[31] Verdict of the Ryazan Regional Court 17 June 2022 in case No. 2-6/2022; verdict of the Sovetsky District Court of Ivanovo 01 April 2019 in case No. 1-70/2019; verdict of the Surgut City Court of the Khanty-Mansiysk Autonomous Okrug — Yugra 13 November 2017 in case No. 1-762/2017; verdict of the Supreme Court of the Komi Republic 15 May 2017 in case No. 2-5/2017. Available at: URL: https://sudrf.ru (accessed: 23.07.2023)

[32] Verdict of the Kirovsky District Court of Kazan 25 April 2019 in case No. 1-37/2019; Appellate determination of the Supreme Court of Tatarstan 18 October 2019 in case No. 22-7705/2019. Available at: URL: https://sudrf.ru (accessed: 23.07.2023)

3. Baibak V.V., Ivanov O.M. et al. (2019) Loan, credit, factoring, deposit and account: article-by-article commentary to Art. 807–860.15 of the Russian Civil Code. Moscow: Logos, 1282 p. (in Russ.)

4. Bezverkhov A.G. (2002) Property crimes: issues of criminalization and systematization. *Yuridicheskyi analiticheskyi zhurnal*=Law Analysis Journal, no. 2, pp. 88–95 (in Russ.)

5. Belomyttseva O.S. (2014) Concept of cryptocurrency. Bitcoin within the framework of financial regulators opinions and the context of private and electronic money. *Problemy ucheta i finansov*=Accounting and Finances, no. 2, pp. 26–29 (in Russ.)

6. Dyakonova M.O., Efremov A.A., Zaitsev O.A. et al. (2022) Digital economy: current directions of legal regulation: a guide. Moscow: Norma, 376 p. (in Russ.)

7. Efimova L.G. (2022) Legal nature of non-cash money, digital currency and digital ruble. *Civilist*=Civilian Lawyer, no. 4, pp. 6–15 (in Russ.)

8. Gracheva Yu.V. et al. (2020) Criminal legal risks in the digital technologies field: issues and proposals. *Russkyi zakon*=Lex russica, no. 1, pp. 145–149 (in Russ.)

9. Guznov A., Mikheeva L. et al. (2018) Digital assets in system of civil rights objects. *Zakon*=Law, no. 5, pp. 16–30 (in Russ.)

10. Khilyuta V.V. (2021) Digital reformatting criminal law. *Vestnik Moskovskogo universiteta MVD Rossii*=Bulletin of Interior Ministry University, no. 1, pp. 123–128 (in Russ.)

11. Khilyuta V.V. (2018) Cryptocurrency as a subject of theft (or on the issue of reformatting the subject of crimes against property). *Biblioteka ugolovnogo prava i kriminologii*=Library of Criminal law and Criminology, no. 2, pp. 58–68 (in Russ.)

12. Konobeevskaya I.M. (2019) Digital rights as a new object of civil rights. *Izvestiya Saratovskogo Universiteta*=Bulletin of Saratov State University, no. 3, pp. 330–334 (in Russ.)

13. Kostko V.S., Sklovsky K.I. (2018) The concept of a thing. Money. Real estate. *Vestnik ekonomicheskogo pravosudia*=Bulletin of Economic Justice, no. 8, pp. 115–143 (in Russ.)

14. Kochoi S.M. (2020) Liability for selfish crimes against property. Moscow: Profobrazovaniye, 288 p. (in Russ.)

15. Lopashenko N.A. (2005) Crimes against property: theoretical and applied research. Moscow: Leks Est Press, 408 p. (in Russ.)

16. Loseva O.V., Kosorukova I.V. et al. (2022) Assessing value of digital intellectual assets: principles, factors, approaches and methods. *Finansy*: *teoriya i praktika*=Finance: Theory and Practice, vol. 26, no. 4, pp. 6–28 (in Russ.)

17. Mochalkina I.S. (2021) Classification of crimes against property, the subject of it are digital currency and digital rights. *Rossiyskiy sledovatel'*=Russian Investigator, no. 10, pp. 56–59 (in Russ.)

18. Nemova M.I. (2020) Alternative means of payment as a subject and means of committing economic crimes. Candidate of Juridical Sciences Thesis. Moscow, 236 p. (in Russ.)

19. Nemova M.I. (2019) Use of cryptocurrency in the legalization (laundering) of funds or other property acquired by criminal means: analysis of practice. *Ugolovnoye pravo*=Criminal Law, no. 4, pp. 63–68 (in Russ.)

20. Novoselova L.A. (2021) Prohibition of using cryptocurrencies in the Law on Digital Financial Assets. *Khozyaystvo i pravo*=Economy and Law, no. 3, pp. 3–8 (in Russ.)

21. Obrazhiev K.V. (2022) Criminal attacks on digital financial assets and digital currency: qualification and legislative regulation. *Zhurnal rossiyskogo prava*=Journal of Russian Law, no. 2, pp. 71–87 (in Russ.)

22. Prostoserdov M.A. (2019) On determining the subject of theft in the era of digital technologies. *Ugolovnoye pravo*=Criminal Law, no. 4, pp. 75–79 (in Russ.)

23. Rozhkova M.A. (2021) Digital law, digital rights and digital currency in Russian law. In: *Pravo tsifrovoy ekonomiki*=Law of Digital Economy. Annual Review. M.A. Rozhkova (ed.). Moscow: Statut, pp. 10–68 (in Russ.)

24. Rozhkova M.A. (2020) Property rights to new intangible objects in the system of absolute rights. Ibid. Pp. 5–78 (in Russ.)

25. Ruskevich E.A. (2022) Criminal law and digital crime: issues and solutions. Moscow: Norma, 351 p. (in Russ.)

26. Ruskevich E.A. et al. (2022) Crisis and degeneration of criminal law under digitalization. *Vestnik Sankt-Peterburgskogo universiteta*=Bulletin of Saint Petersburg University, vol.13, no. 3, pp. 585–598 (in Russ.)

27. Ruskevich E.A., Malygin I.I. (2021) Crimes related to circulation of cryptocurrencies: qualification features. *Pravo. Zhurnal Vysshey shkoly ekonomiki*=Law. Journal of the Higher School of Economics, vol. 14, no. 3, pp. 106–125 (in Russ.)

28. Sarnakova A.V., Zhizhin N.S. (2022) The relationship between non-cash funds, electronic funds and the digital ruble. *Yurist*=Lawyer, no. 5, pp. 26–33 (in Russ.)

29. Savelyev A.I. (2016) Electronic commerce in Russia and abroad. Moscow: Statut, 640 p. (in Russ.)

30. Sazhenov A.V. (2019) Cryptocurrency as a new type of incorporeal things. In: Information technologies and law. Moscow: Statut, pp. 157–179 (in Russ.)

31. Sidorenko E.L. (2018) Cryptocurrency as a subject of theft: qualification problems. *Mirovoy sud'ya*=Justice of the Peace, no. 6, pp. 18–24 (in Russ.)

32. Shevchenko O.M. (2022) Legal nature of shares in the form of digital financial assets. *Predprinimatel'skoye pravo*=Business Law, no. 1, pp. 75–80 (in Russ.)

33. Staroverova O.V. (2022) Legal regulation of digital financial assets and digital currency. *Civilist*=Civilian Lawyer, no. 3, pp. 6–15 (in Russ.)

34. Sukhanov E.A. (2021) On the civil law nature of "digital property". *Vestnik grazhdanskogo prava*=Bulletin of Civil Law, no. 6, pp. 7–29 (in Russ.)

35. Tolkachev A.Yu., Zhuzhalov M.B. (2018) Cryptocurrency as property: analysis of current legal status. *Vestnik ekonomicheskogo pravosudiya*=Bulletin of Economic Justice, no. 9, pp. 91–135 (in Russ.)

36. Truntsevsky Yu.V., Sukharenko A.N. (2019) Countering use of cryptocurrency for illegal purposes. *Mezhdunarodnoye publichnoye i chastnoye pravo*=International Public and Private Law, no. 1, pp. 41–45 (in Russ.)

37. Vasilevskaya L.Yu. (2019) Token as a new object of civil rights: aspects of qualification of digital law. *Actualnye problemy rossiyskogo prava*=Issues of Russian Law, no. 5, pp. 111–119 (in Russ.)

39. Yankovsky R.M. (2020) Cryptocurrencies in Russian law: surrogates, "other property" and digital money. *Pravo. Zhurnal Vysshey shkoly ekonomiki*=Law. Journal of the Higher School of Economics, vol. 13, no. 4, pp. 43–77 (in Russ.)

39. Yani P.S. (2018) Unlike fraud, the elements of abuse of power can be called rubber ones. An interview. *Zakon*=Law, no. 10, pp. 6–16 (in Russ.)

Information about the author:

N.A. Lyaskalo — Doctor of Sciences (Law), Professor.

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