

PECULIARITIES OF THE LEGAL CONTROL OF CRYPTOCURRENCY CIRCULATION IN UKRAINE

Svetlana Drobyazko, European academy of sciences

Roman Blahuta, Lviv State University of Internal Affairs

Volodymyr Gurkovskyi, Center for Research on Public Administration Problems

Volodymyr Marchenko, H.S. Skovoroda Kharkiv National Pedagogical University

Larysa Shevchenko, H.S. Skovoroda Kharkiv National Pedagogical University

ABSTRACT

The article discusses the issues of the legal control of cryptocurrency in the system of civil rights under Ukrainian law and bills submitted to the Parliament of Ukraine. It is proved that the emergence of cryptocurrency in developed countries is an evolutionary stage of the cash form. This requires changes in the legislation of legal and tax control, which are able to form a protective mechanism against cybercrime and fraud in the field of cryptocurrency circulation. The possibility of evaluating cryptocurrency as electronic means, currency values, information, money, intellectual law and other property is being considered. The risks of possible fraud of transactions with cryptocurrency as the consequences of unregulated legislation were analyzed. The prospects of the settlement of cryptocurrency circulation in Ukraine were considered.

Keywords: Cryptocurrency, Electronic Money, Intellectual Property, Civil Law, Legal and Tax Control.

INTRODUCTION

In Ukraine, the legal regulations of cryptocurrency and blockchain technology are still only at the development stage. Presently, there are a number of draft laws on the regulation of public relations in the field of using technology of the distributed registry (blockchain), but the issue of the institutional system, the main competence of which would include the function of regulating the activity of using systems based on blockchain technology, has not been studied. In general, the definitions of the mechanisms of legal regulation of public relations related to the use of systems based on blockchain technology in Ukraine remain little studied.

Despite the fact that the cryptocurrency rate is now in decline, however, the topics of studying the legal status of cryptocurrency and its place in the legal system are very relevant and require detailed study, taking into account international developments and achievements.

REVIEW OF PREVIOUS STUDIES

The emergence of cryptocurrency is directly related to the development of the Internet and the invention of electronic money. Since the beginning of the 90s, researchers have been

searching for the creation of such a decentralized payment system that would allow users to send funds to each other in an atmosphere of complete trust (LeMahieu, 2017; Makedon et al., 2019).

Today, the main problem in regulating legal relations with cryptocurrencies, first of all, is the lack of relevant legislative norms that can be applied to cryptocurrencies (Drobyazko et al., 2019).

Another problem of legal regulation of cryptocurrencies in Ukraine is the ambiguous regulation of cryptocurrency in the world. Countries with a strong economy and currency introduce cryptocurrency as means of payment or financial asset. Countries with a weak economy and an unstable currency try to support the national currency by restricting cryptocurrencies as means of payment, but allowing cryptocurrencies as a means of exchange (Hilorme et al., 2019b).

For example, in some US states, cryptocurrency is the object of money transfers in the payment system. In Germany, bitcoins are recognized as a payment unit. In Japan, cryptocurrency is recognized as legal means of payment (Hayes, 2017). In Europe, cryptocurrency is treated as electronic money, and it is not considered as legal means of payment but as means of exchange (Gainsbury & Blaszczynski, 2017). In China, bitcoin transactions are prohibited for banks, but allowed for individuals. In Canada, bitcoin is considered as means of payment. In Spain, the bitcoin system is recognized as the official payment system. Direct legal bans on the use of cryptocurrency exist in Bolivia, Ecuador, Thailand and Vietnam.

Thus, the ambiguous approach to cryptocurrency in different countries of the world creates additional problems for determining the legal status of cryptocurrency. This means that Ukraine needs to develop its own approach to the legal regulation of cryptocurrencies, providing them with a special legal status, based on the current state of legislation and the country's economic development.

METHODOLOGY

The generalization of the practice of using cryptocurrency in various spheres of public life, law enforcement and judicial practice of various countries in the normative regulation of relations on the use of cryptocurrency is carried out using the system method and the method of analysis and synthesis. The comparative analysis method is used to clarify the circumstances that create obstacles to the rule-making work in the field of cryptocurrency.

RESULTS AND DISCUSSIONS

It should be started with the fact that in 2014, the National Bank of Ukraine in its clarification on the legality of using Bitcoin "*virtual currency/cryptocurrency*" in Ukraine, compared cryptocurrency with a monetary substitute that does not have value security and is insolvent for use as means of payment in contradiction to the norms of the current Ukrainian legislation. These words meant that the NBU could not recognize cryptocurrency as a currency due to the lack of a central regulator. The chairman of the National Commission for Securities and Stock Market supported the idea of the head of the NBU and noted that "*cryptocurrencies do not have information support and, especially, protection of investor rights*".

Thus, taking into account the current legislation of Ukraine (Civil Code of Ukraine, Law of Ukraine "*On the National Bank of Ukraine*", Law of Ukraine "*On Payment Systems and Transfer of Funds in Ukraine*", Law of Ukraine "*On Information*", Decree of the Cabinet of

Ministers of Ukraine “*On the System of Currency Regulation and Currency Control*” and others) the concept of “*cryptocurrency*” and the regulation of transactions with it do not fall under any of the following regulatory regimes.

Cash Flow Regime

Since cryptocurrency does not exist in the form of banknotes, coins, records on bank accounts, it cannot be recognized as money (cash, funds and monetary units) in the interpretation of Ukrainian legislation.

Currency Regulation Regime

Since the cryptocurrency is not tied to the currency of any of the states, it cannot be recognized as a currency or means of payment of a foreign country, and is not a currency value in the interpretation of currency legislation.

Regime of Electronic Money Circulation and the use of Means of Payment

Since cryptocurrency is not issued by the bank and is not a monetary obligation of a certain person, it cannot be recognized as electronic money. It also differs from electronic money in that there is no single emission center or central administrator in the cryptocurrency system. Moreover, payments within the framework of a certain cryptocurrency system can be made absolutely anonymously, which means a complete lack of control over payers and recipients of cryptocurrency from the part of any third parties, including government bodies. This is primarily due to the fact that the electronic keys that are used to identify the parties to payments involving cryptocurrency do not contain any personal data of such participants in the payments, and therefore it is impossible to determine and identify such parties to the payments.

Securities Regulatory Regime

The cryptocurrency has no signs of a document and an issuer, namely: there is no established form of a document with the relevant details certifying monetary or other property rights; there is no definition of the relationship between the issuer of the security and the person having the rights to the security, and it does not provide for the fulfillment of obligations on such a security, as well as the possibility of transferring the rights to the security and rights of the security to other persons. Therefore, cryptocurrency cannot be a security.

Intellectual Property Regime

It is known that cryptocurrency is a set of program code, accounting and functioning of which are based on encryption and application of various cryptographic protection methods. That is why the rights to such program code can be considered as the rights to software with the corresponding legal regulation. However, what is the main discord? The fact is that such a code does not have an author. And, since the cryptocurrency issue is decentralized and automated, there is no single issuer for cryptocurrency. Thus, it is incorrect to say that cryptocurrency is software or an object of intellectual property law (for example, in the understanding of the civil law (The Civil Code of Ukraine, 2003) (namely, Articles 418, 420, 421)) and legislation in the

field of intellectual property (namely, Articles 1, 8, 11, 18 of the Law of Ukraine *"On Copyright and Related Rights"* (The Legislation of Ukraine, 1994). It follows that due to the absence of the author on such program code, it becomes impossible to properly regulate cryptocurrencies as an object of intellectual property right (in particular, as a program). Therefore, it is impossible to apply legislation on the transfer of rights to intellectual property rights to operations on transferring rights to cryptocurrency.

Separately, it should be emphasized that the cryptocurrency does not have the signs of a document in the form of banknotes, it does not have an issuer, and there is also no purpose for production. Thus, it cannot be recognized as a monetary substitute (according to its definition in the Law of Ukraine *"On the National Bank of Ukraine"* (The Legislation of Ukraine, 1999).

Based on the foregoing, the risks of loss of funds during the transaction with cryptocurrencies are extremely high. Unfortunately, today even among the regulators of the leading countries of the world, including the countries of the European Union, there is no single approach to determining the legal status of cryptocurrencies and regulating transactions with them.

However, the world does not stand still, and the wide circulation of cryptocurrencies in Ukraine will pose a task for government bodies to focus on resolving this field, since the number of important legal tasks arise: legal determination of the cryptocurrency status and its scope, status of such activities from the point of view of tax legislation, the tax rates of which are involved in circulation participants, risk reduction for individuals and legal entities, etc.

All this makes it necessary to develop legislation in this direction. Thus, legislative initiatives began to arise on the issue of the circulation of digital currencies in Ukraine. The bills were put up for public consideration, and the public in a free form could express their proposals regarding the content of these bills.

RECOMMENDATIONS

Thus, despite the existence of numerous world practices of using cryptocurrencies as a measure of value, means of exchange and accumulation, its complex legal nature does not allow identifying it with any of the related concepts (cash, currency, currency value, means of payment, electronic money, securities, money substitute, etc.). And this, in turn, creates a number of risks for everyone who carries out any transactions using digital currencies in Ukraine. We are talking about transactions of purchase, sale, exchange and conversion in cryptocurrency. Individuals and legal entities must be aware of all these risks before carrying out such transactions. The main risks are:

Possibility of Loss of Funds

Due to the theft, for example, as a result of cyberattacks on cryptocurrency exchange platforms, or the infrastructure of use.

Lack of Guarantees for the Return of Invested Funds in Cryptocurrencies

Savings in cryptocurrencies are not guaranteed by the Deposit Guarantee Fund for individuals, since such savings are not considered as bank deposits.

Possibility of Fraud

Savings in cryptocurrencies can be used to build financial pyramids, which, in connection with the types of risk described above, can lead to the loss of money by investors in a fairly short time. In case of a similar situation with funds in national or foreign currency, the only available form of legal protection may be criminal proceedings. However, due to the uncertain status of cryptocurrencies, state institutions for the protection of consumer rights in Ukraine will not have legal grounds to help both investors and users.

Complexity of using conventional methods for assessing the market value of assets in cryptocurrencies.

Significant price fluctuations of cryptocurrencies and related risks-speculative and unsettled levels of commission fees for transactions in cryptocurrencies.

Lack of Infrastructure

Cryptocurrencies are not generally accepted in trade and service networks. They are not means of payment and are not currency. This means that trading companies do not have a legal obligation to accept cryptocurrency as means of payment.

CONCLUSIONS

If we talk about the financial sector, in particular, the regulation of cryptocurrency circulation in Ukraine, then, although there are still several bills in this area aimed at legislatively determining the legal status of cryptocurrency in Ukraine, they still need to be improved.

For example, terms that are directly related to the blockchain, as well as the technology of a distributed registry should be clearly defined for unmistakable interpretation of the technology by public authorities, courts and users.

They should also be given a clear legal status and a legal regulation regime should be created that takes into account all aspects of the current Ukrainian legislation-the Constitution, civil and commercial law, intellectual property law, information law and the like. It is necessary to clearly define the rules for the functioning of the cryptocurrency market, the rights and obligations of participants in transactions with cryptocurrency, tax rates, and the like.

Thus, if we consider the prospects for a legislative regulation of this issue, it is quite possible that at this stage of the development of the cryptocurrency market in Ukraine it would be advisable to limit ourselves to introducing certain general changes to the laws of Ukraine “*On financial services and state regulation of financial services markets*”, “*On the National Bank of Ukraine*” and some other laws preferring to specify the procedure for carrying out cryptocurrency activities in the relevant by-laws and regulations without adopting a separate law on this.

At the same time, in our opinion, the importance of the legal definition form and the legal content and regime of cryptocurrency are less important than the definition of a clear direction for regulation of this field. Therefore, whether in a separate legislative act or as a supplement to other existing normative legal acts, but the norms regarding the cryptocurrency circulation should not leave reasons for ambiguous interpretation and legal conflicts.

But still, in any case, attempts to legislatively regulate the circulation of cryptocurrencies in Ukraine should be aimed at increasing transparency and trust in cryptocurrency exchanges, as

well as providing an opportunity to officially pay taxes on this type of activity. Therefore, we conclude that only unambiguous, honest and understandable rules of the game for everyone will allow Ukraine to occupy one of the leading places in the list of the most innovative countries in the world.

REFERENCES

- Drobyazko, S., Makedon, V., Zhuravlov, D., Buglak, Y., & Stetsenko, V. (2019). Ethical, technological and patent aspects of technology blockchain distribution. *Journal of Legal, Ethical and Regulatory Issues*, 22(2S), 1-6.
- Drobyazko, S., Potyshniak, O., Radionova, N., Paranytsia, S., & Nehoda, Y. (2019). Security of organizational changes via operational integration: Ensuring methodology. *Journal of Security and Sustainability Issues*, 9(1), 1595-1612.
- Gainsbury, S.M., & Blaszczyński, A. (2017). How blockchain and cryptocurrency technology could revolutionize online gambling. *Gaming Law Review*, 21(7), 482-492.
- Hayes, A.S. (2017). Cryptocurrency value formation: An empirical study leading to a cost of production model for valuing bitcoin. *Telematics and Informatics*, 34(7), 1308-1321.
- Hilorme, T., Lyudmyla, S., Oksana, P., Liubov, L., & Nataliya, B. (2019). Smart grid concept as a perspective for the development of Ukrainian energy platform. *IBIMA Business Review*, 2019(1), 1-9.
- Hilorme, T., Perevozova, I., Shpak, L., Mokhnenko, A., & Korovchuk, Y. (2019). Human capital cost accounting in the company management system. *Academy of Accounting and Financial Studies Journal*, 23(2S), 1-7.
- LeMahieu, C. (2017). *RaiBlocks: A feeless distributed cryptocurrency network*.
- Makedon, V., Drobyazko, S., Shevtsova, H., Maslosh, O., & Kasatkina, M. (2019). Providing security for the development of high-technology organizations. *Journal of Security and Sustainability Issues*, 8(4), 757-772.
- The Civil Code of Ukraine. (2003). Retrieved from <http://zakon.rada.gov.ua/laws/show/435-15/ed20130118>
- The Legislation of Ukraine. (1994). *On copyright and related rights*. Retrieved from <http://zakon.rada.gov.ua/laws/show/3792-12>
- The Legislation of Ukraine. (1999). *On the national bank of Ukraine*. Retrieved from <http://zakon.rada.gov.ua/laws/show/679-14>