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VIRTUAL ASSETS AND DIGITAL CONTENT AS AN OBJECT OF CIVIL LAW

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ABSTRACT

This article summarizes the concept of "virtual assets" in the global context. It is noted that the formation of the virtual asset market in Ukraine began with the popularization of cryptocurrencies in 2013. It was determined that the potential of Ukraine, as one of the leading countries in the field of virtual assets, is huge.

Two draft laws submitted to the Verkhovna Rada were analyzed, according to which virtual assets and digital content belong to the objects of civil law and are subject to the regulations of the Civil Code.

It is noted that on December 17, 2022, draft Law No. 6447 was registered in the Verkhovna Rada. This draft law provides for amendments to be made to the Civil Code, in particular, Articles 115, 177, 179, which define, among other objects of civil rights, digital things, their essence as subject of the digital environment, which is in circulation only in digital form, and in respect of which civil rights and obligations may arise, as well as the circle of digital things, which are virtual assets, is outlined.

It is characterized that the provisions of the related draft law No. 6576 define the sphere of civil legal relations, distinguish subjective and objective criteria for compliance of digital content (services) with the terms of the concluded contract, establish the legal consequences of non-provision of digital content (services) under the contract, as well as non-compliance of content (services).

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Introduction.

Even before the creation of the Ministry of Digital Transformation in Ukraine, there were repeated attempts to one way or another legalize the market of virtual assets, to introduce it into the legal field of the state.

But on the one hand, for the most part, these initiatives were insufficiently worked out, on the other hand, they did not have sufficient capacity, because there was a lack of political will on the part of the state leadership.

Currently it is. On September 2, 2019, the Ministry of Digital Transformation was established, which, according to its regulations, forms policy in the field of virtual assets. The ministry has gathered the strongest expertise in the country on virtual assets for all the years of Ukraine's independence.

Research purpose.

The main purpose of the research is determination of the development of the latest information technologies in the field of civil law, for the approval of relevant laws and regulations, which will be the basis for modeling the legal regulation of civil-law relations.

Research materials and methods.

The article applies general scientific research methods were used: empirical (experiment, observation, description) and theoretical (analysis, synthesis, abstraction, generalization, induction, deduction, explanation, classification), as well as systemic, functional, specifically sociological research methods.

Results.

First of all, it is necessary to understand what exactly the concept of "virtual assets" means in the global context. When it used to refer only to the description of cryptocurrencies, now virtual assets can be called assets that meet the following parameters:

- has a numerical value expression;
- freely traded in the market;
- has a clear circulation and identification system.

Of course, there are certain difficulties in the fact that the regulation of the market of virtual assets is a complex and long process.

On the one hand, some companies are not interested in working legally and contributing to the country's economy. It should also be recognized that virtual assets are often used for so-called money laundering or on the verge of criminal activity [8].

On the other hand, there are companies that are interested in structuring and capitalizing business, expanding activities in the "real" sector, and integrating with the banking system. Of course, this position requires market regulation and legalization of business processes.

In addition, many leading countries already see the huge potential of the market for their economies and have already begun to build a legal environment for companies in this market.

Currently, many jurisdictions are working on regulating this area. In particular, in our work we use the experience of Switzerland, Great Britain, the USA, Malta, Liechtenstein, etc [4].

Each of these cases is illustrative, but it is impossible to completely copy any of them. After all, adaptation to the current Ukrainian legislation is required. Therefore, we choose the best from different countries and look for a way to implement it in Ukraine [3].

In Ukraine, the formation of the virtual asset market began with the popularization of cryptocurrencies: in 2013, the first conferences began to be held, then the first companies were opened.

From 2015 to 2017, a certain ideologically oriented community was formed. These were mostly people who already worked very closely with technology (developers, ideologues).

And when the global cryptocurrency hype began in 2017, it also affected Ukraine. There were a lot of people who didn't understand the technology, got into the industry by accident or just for the money.

Currently, there are mostly those companies and teams that do not chase quick profit, but work for a long-term result. The turnover of the cryptocurrency market, according to unofficial data, is hundreds of millions of hryvnias per day.

The potential of Ukraine, as one of the leading countries in the field of virtual assets, is huge. After all, today, according to the data of the leading analytical company Chainalysis, our country is in the first positions in the world according to the index of the use of crypto-assets among the population.

Why is Ukraine making such progress in the market of virtual assets? First of all, we have one of the world's largest (top 3) blockchain developer communities and a significant crypto community. The second position, Ukraine has a high level of digital awareness of the population (we are in the TOP-5 for non-cash payments in the world), we have a high-quality educational intellectual base [2].

Currently, a significant number of small businesses engage in intermediation in international marketplaces where they use virtual assets for settlement.

Such activity takes place against the background of weak control over the declaration of income and capital by the state, especially in virtual assets.

At the same time, virtual assets have become convenient for Ukrainians to use because we have a number of restrictions in more traditional areas.

For example, there are limited opportunities for Ukrainians to make small investments (there is no stock market, limited access to the global capital market, and entry into the real estate market is high).

In addition, in our country there are limitations of legislation and the banking system on international transfers.

On December 17, 2022, the draft Law No. 6447 was registered in the Verkhovna Rada.

The draft law envisages making changes to the Civil Code, in particular, Articles 115, 177, 179, which define among other objects of civil rights digital things, their essence as a subject of the digital environment, which is in circulation only in digital form, and in respect of which they can civil rights and obligations arise, and the circle of digital things, which are virtual assets, is outlined [1].

The explanatory note states that the continuous and everyday development of the latest information technologies led to the emergence of new objects of civil rights, which are intangible goods that exist exclusively in digital form and are designed to satisfy certain interests of participants in civil legal relations. Today, such objects are defined as virtual assets, digital content, online accounts, money and securities that exist exclusively in digital form [5].

The ability of the specified objects of civil rights to satisfy the interests of individuals and legal entities in the conditions of digitalization of social relations and their involvement in property turnover in the digital environment of economic development leads to the need at the legislative level to determine the legal nature, legal foundations of the functioning of the legal regime of these objects and to develop effective legal mechanisms of their property turnover.

The Verkhovna Rada adopted as a basis two draft laws, according to which virtual assets and digital content belong to objects of civil law and are subject to the regulations of the Civil Code.

According to the information on the website of the parliament, 273 and 261 votes were cast for the corresponding bills No. 6447 and No. 6576 at the January 12, 2023 plenary session, out of the required minimum of votes its 226 [9].

The first document introduces the definition of a "digital thing", which is in circulation only in digital form. Digital things include virtual assets, digital content, online accounts, money and securities that exist solely in digital form.

The provisions of the related draft law No. 6576 define the sphere of civil legal relations, distinguish subjective and objective criteria for compliance of digital content (services) with the terms of the concluded contract, establish the legal consequences of non-provision of digital content (services) under the contract, as well as non-compliance of content (services). In addition, the grounds and legal consequences of the refusal of the contract under which the digital content (service) is provided are determined.

The norms will be the basis for modeling the legal regulation of civil-law relations between the performer and the consumer regarding the provision of digital content (digital service) on the basis of a contract, will contribute to the protection of the rights of consumers who are provided with digital content or the service specified in the explanatory note [7].

Adoption of draft laws is a link in the process of legalization of crypto and virtual assets.

A draft law (No. 6447) is needed in view of the fact that the legalization of crypto- and virtual assets will take place: without changes in the Civil Code, it will be a rather wrong job. The introduction of the conceptual categories of "virtual assets", "digital content" is the right step, which is now being taken by all countries that want to be called civilized and advance in the field of IT.

Serhii Alekseev, deputy of the "European Solidarity" faction, noted: "Virtual digital goods have long become part of everyday reality, they are exchanged, and therefore there is a legal relationship, so the issue must be regulated at the legislative level".

It is noted that both draft laws were developed as part of the implementation into national legislation of the acts of the institutions of the European Union in accordance with the provisions of the Association Agreement between Ukraine and the EU.

There is still no officially registered company dealing with cryptocurrencies in Ukraine.

The reason is actually banal — crypto companies cannot legally formalize their activities in Ukraine, even if they want to — there is no legal space to do this.

Regulation of virtual assets will allow Ukrainian companies specializing in crypto-assets to work officially with the banking system and capitalize their business in the future.

Because currently the value of their business is zero and it does not exist in the legal space of Ukraine. That is, we cannot talk about any investments, bank loans, etc.

If we are talking about cryptocurrency projects from the service sector (crypto-exchanges, crypto-exchanges, wallets), that is, not startups, but companies that already create a certain cash flow, work with client money and have income, the issue of business legalization is already quite acute in them.

At the same time, it is possible to make Ukraine attractive for the work of foreign companies specializing in virtual assets, and thus attract significant investments. This will be possible if we can offer a jurisdiction where it will be convenient to work with the regulator, optimal taxation, etc.

Creation of a legal field for work in the market of virtual assets is also important for the real sector. That is, not only for those companies whose main activity is VA.

A real business will receive a legal framework for asset tokenization (an innovative tool that a business can use in its activities, for example, real estate or loyalty programs, etc.), as well as the ability to legally operate and invest in VA (for example, to contribute VA to the charter fund).

At the same time, individuals will have the opportunity to declare their income in the VA, protect their personal capital, their investments in cryptocurrencies from possible abuse or fraud [6].

What is the Ministry of Digital Affairs doing for the legal development of the market. The first thing without which the implementation of regulation is impossible is the development and adoption of the basic law of the industry. Therefore, the Ministry of Statistics together with the Inter-factional Union of People's Deputies Blockchain4Ukraine initiated the writing of this document.

For this, an expert group was created, which included representatives of the market, top lawyers, auditors, financiers, scientists, as well as a working group with representatives of other ministries and authorities.

This document will give legal status to virtual assets from the point of view of Ukrainian legislation. It defines the basic concepts of what virtual assets are (not only cryptocurrencies), which of the market participants are professional, and also considers issues related to financial monitoring, capital movements, etc.

Conclusions.

So, we can conclude that the market of virtual assets in Ukraine is quite developed and has significant turnover even on a global scale, but most of it is concentrated in the gray zone, which creates potential risks for the state, as well as for businesses and users.

The Verkhovna Rada adopted as a basis two draft laws, according to which virtual assets and digital content belong to objects of civil law and are covered by the regulations of the Civil Code, which means that the regulations will be the basis for modeling the legal regulation of civil-law relations between the performer and the consumer regarding the provision of digital content (digital service) on the basis of a contract, will contribute to the protection of the rights of consumers who are provided with digital content or a service.

We can also note the fact that both draft laws were developed as part of the implementation of the acts of the institutions of the European Union into national legislation in accordance with the provisions of the Association Agreement between Ukraine and the EU.

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