

ANNOTATION

Dissertations for the degree of Doctor of Philosophy (PhD) in the specialty - "8D04251 Private Law"

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TOPIC: «Non-cash money, electronic money and cryptocurrency in the system of objects of civil and financial legal relations»

The purpose of the dissertation research. Establishing the legal nature and legal regime of non-cash money, electronic money, cryptocurrency and determining their place in the system of objects of civil and financial legal relations.

The objectives of the dissertation research. To achieve the stated purpose, the following tasks were defined in the study:

1) to analyze the historical and modern theories of classification of objects of civil and financial legal relations and to determine the place of non-cash money, electronic money and cryptocurrency in the system of objects of civil legal relations;

2) to determine the place of non-cash money, electronic money and cryptocurrency in the system of objects of financial legal relations;

3) to explore the historical aspect of appearance of non-cash money in law and to define its modern definition in law, as well as to study the legal regulation of the emission, release into circulation, circulation and withdrawal from circulation of non-cash money;

4) to explore the historical aspect of appearance of electronic money in law and to define its modern definition in law, as well as to study the legal regulation of the emission, release into circulation, circulation and withdrawal from circulation of electronic money;

5) to explore the historical aspect of appearance of cryptocurrency in law and to define its modern definition in law, as well as to study the legal regulation of the emission, release into circulation, circulation and withdrawal from circulation of cryptocurrency.

Research methods. During the dissertation research, various general and special methods of scientific knowledge were used.

The main method of scientific knowledge used by the author of the dissertation is the method of comparative legal analysis. This method was applied in order to study the national and foreign legislation on the legal nature of non-cash money, electronic money and cryptocurrency and identifying similarities and differences in their legal regulation.

During the studying of the technical features and details of the legal regime of non-cash money, electronic money and cryptocurrency presented in legislative acts, scientific works of domestic and foreign scientists, protocols for the creation and operation of payment systems, essential features of the researched objects of legal relations were identified (the analysis method was applied). The identified essential features were combined into the author's definitions of non-cash money, electronic money and cryptocurrency (the synthesis method was applied).

In the first subsections of the second, third and fourth sections the basis of scientific knowledge was the historical method. Using this method, the stages of legal

regulation of all studied objects of history of some foreign countries and in the history of the Republic of Kazakhstan were established. The specific features of legal regulation of non-cash money, electronic money and cryptocurrency were established at all historical stages.

The comparative method was used throughout the dissertation. The non-cash money, electronic money and cryptocurrency were compared with each other. This method was necessary to identify common features and differences between the studied objects and the possibility of classifying them as one generic object. In addition, the stages of functioning of all the studied objects were compared. As a result, the common features and differences of the following stages were identified: creation of non-cash money, electronic money and cryptocurrency, their appearance in law as objects of legal relations, circulation, withdrawal from circulation and cancellation.

An important method of scientific knowledge was the hermeneutics method which is a way of interpreting a text. In this case the legal norms that are the basis for legal regulation of the circulation of non-cash money, electronic money and cryptocurrency in the Republic of Kazakhstan and in foreign countries were subject to interpretation.

The main provisions for defense:

1) The author's concept of legal regulation of money and money circulation in the Republic of Kazakhstan is proposed.

In the author's understanding money is an interdisciplinary object which is regulated by different branches of law at different stages of its functioning. The main idea of the author's concept of legal regulation of money lies in a complex interdisciplinary approach. Money should be regulated by both civil and financial law. The dissertation author believes that money in all forms, various stages of their functioning and other issues of monetary circulation should be regulated by the separate interdisciplinary law of the Republic of Kazakhstan (such as, for example, Law of the Republic of Kazakhstan "On the monetary system"). This interdisciplinary law should include the author's definitions of non-cash money, electronic money and cryptocurrency, as well as the concept of legal regulation of all stages of money functioning proposed by dissertation author.

2) The essential features of non-cash money were identified with the help of which the following definition of non-cash money was formulated and proposed:

Non-cash money is an incorporeal thing expressed in electronic form through the records in bank accounts, electronic wallets and (or) records in other payment systems, performing one or several basic monetary functions: unit of account, medium of exchange, means of payment.

It is proposed to recognize that non-cash money is a type of money as a generic concept.

3) It was identified that Digital tenge is a type of non-cash money and not a third (new) form of money. Digital tenge meets the characteristics of non-cash money and as a result the author of dissertation proposes to recognize that Digital tenge as non-cash money and not as a new form of money.

4) The essential features of electronic money were identified with the help of which the following definition of electronic money was formulated and proposed:

Electronic money is an incorporeal thing expressed in electronic form through the records in electronic wallets, performing one or several basic monetary functions: unit of account, medium of exchange, means of payment.

From the above definition it follows that electronic money is a type of non-cash money.

5) The essential features of cryptocurrency were identified with the help of which the following definition of cryptocurrency was formulated and proposed:

Cryptocurrency is a decentralized incorporeal thing expressed in electronic form through the records in electronic wallets, capable of performing the function of a medium of exchange and (or) the function of a means of payment if there is an agreement or legislative establishment.

The author of dissertation believes that cryptocurrency can be recognized as private money because it performs basic monetary functions.

6) The place of the studied objects in the system of objects of civil and financial legal relations is determined.

Place of non-cash money:

- In the system of objects of civil legal relations: the author of dissertation believes that non-cash money should be recognized as a type of money, the place of which in the system of objects of civil legal relations should be determined in the category of thing. Non-cash money exists and circulates in electronic form therefore it should be classified as incorporeal things.

- In the system of objects of financial legal relations: the place of non-cash money in the system of objects of financial legal relations should be determined as part of money as a generic concept.

Place of electronic money:

- In the system of objects of civil legal relations: based on the conclusions about the legal nature and definition of electronic money the author of dissertation believes that electronic money as a type of non-cash money in the system of objects of civil legal relations refers to incorporeal things.

- In the system of objects of financial legal relations: since dissertation author proposed to recognize electronic money as a variety of non-cash money then the place of electronic money in the system of objects of financial legal relations should be determined as a part of money as a generic concept.

Place of cryptocurrency:

- In the system of objects of civil legal relations: based on proposed definition of cryptocurrency and the identified characteristics and functions of cryptocurrency this object should be referred to incorporeal things in the system of objects of civil legal relations.

- In the system of objects of financial legal relations: cryptocurrency will be recognized as an object of financial legal relations in two cases:

1. Either cryptocurrency will be recognized as legal tender (in that case the state must accept any or individual incomes to its budget if the form of

cryptocurrency and therefore to form, distribute and organize the use of cryptocurrency as a part of the state budget);

2. Or state will establish financial law regulation of cryptocurrency (for example the state will assign to the National Bank supervisory functions for the emission, release into circulation and circulation of cryptocurrency).

7) The stages of functioning of non-cash money, electronic money and cryptocurrency are identified, characterized and standardized, and the author's concept of legal regulation of each of these stages is proposed: emission, release into circulation, circulation, withdrawal from circulation and cancellation.

1. Emission stage.

The emission of non-cash money is the actions of the central bank based on a regulatory legal act for the initial reflection of non-cash money units on the emission account of the central bank.

The emission of electronic money is the actions of the issuer based on a regulatory legal act or the rules of the payment system for the initial reflection of units of electronic money on the issuer's emission wallet.

Cryptocurrency emission is the protocol-based actions by participants in a payment system that lead to the initial creation of cryptocurrency units (tokens) within the payment system.

2. Stage of release into circulation.

The release into circulation of non-cash money is the actions of the issuer based on a regulatory legal act to transfer newly issued units of non-cash money for a fee from the issuer's emission account to the correspond bank accounts.

The release into circulation of electronic money is the actions of the issuer based on a regulatory legal act or a private deal to transfer newly issued units of electronic money for a fee from the issuer's emission wallet to the electronic wallets of the owner's.

The release into circulation of cryptocurrency is the protocol-based process for the transfer of newly issued cryptocurrency units (tokens) for a fee to the electronic wallets of the payment system participants.

3. Circulation stage.

Circulation of non-cash money is the movement of non-cash money from one person to another ensuring the transfer of goods, the performance of work, the provision of services and (or) the making of private and (or) public payments.

Circulation of electronic money is the movement of electronic money from one person to another ensuring the transfer of goods, the performance of work, the provision of services and (or) the making of private and (or) public payments.

Circulation of cryptocurrency is the movement of cryptocurrency from one person to another ensuring the transfer of goods, the performance of work, the provision of services and (or) the making of private and (or) public payments.

4. Withdrawal from circulation stage.

Withdrawal from circulation of non-cash money is the actions of the central bank based on a regulatory legal act to transfer previously issued and released into circulation units of non-cash money for a fee or free from the correspond bank accounts to the emission account of the central bank for the purpose of their

following cancellation with the termination of the legal regime of the object of legal relations in relation to withdrawn from circulation non-cash money.

Withdrawal from circulation of electronic money is the actions of the issuer based on a regulatory legal act, private deal or a court decision/sentence that has entered into legal force to transfer previously issued and released into circulation by the issuer units of electronic money for a fee or free from the owner's electronic wallets to the issuer's emission wallet for the purpose of their following cancellation with the termination of the legal regime of the object of legal relations in relation to withdrawn from circulation electronic money.

Withdrawal from circulation of cryptocurrency is a process based on the decision of the absolute majority of payment system participants for the gratuitous automatic write-off of previously issued and released into circulation cryptocurrency units from the owner's electronic wallets for the purpose of their following cancellation with the termination of the legal regime of the object of legal relations in relation to cryptocurrency units withdrawn from circulation.

5. Cancellation stage.

Cancellation of non-cash money is the actions of the central bank based on a regulatory legal act to write-off withdrawn from circulation non-cash money from the emission account of the central bank the result of which is the termination of the existence of units of non-cash money as objects of the material world.

Cancellation of electronic money is the actions of the issuer based on a regulatory legal act, private deal or a court decision/sentence that has entered into legal force to write-off withdrawn from circulation electronic money from the issuer's emission wallet the result of which is the termination of the existence of units of electronic money as objects of the material world.

Cancellation of cryptocurrency is a process based on the decision of the absolute majority of payment system participants for the gratuitous automatic write-off of previously issued and released into circulation cryptocurrency units from the owner's electronic wallets the result of which is the termination of the existence of cryptocurrency units as objects of the material world.

Description of the main results of the research.

The objectives of the dissertation research were fully resolved, thus: the author of dissertation proposed the author's concept of legal regulation of money and money circulation in the Republic of Kazakhstan; the author of dissertation proposed the author's concept of the place of the studied objects in the system of objects of civil and financial legal relations; based on the results of the research the author of dissertation proposed the author's definition of non-cash money; based on the results of the research the author of dissertation defined that Digital tenge is a type of non-cash money and not a third (new) form of money; based on the results of the research the author of dissertation proposed the author's definition of electronic money; based on the results of the research the author of dissertation proposed the author's definition of cryptocurrency; based on the results of the research the author of dissertation identified, characterized and standardized the stages of functioning of non-cash money, electronic money and cryptocurrency, and the author's concept of

legal regulation of each of these stages is proposed: emission, release into circulation, circulation, withdrawal from circulation and cancellation.

The dissertation was discussed at an extended meeting of the Higher School of Law “Adilet” of the Caspian Public University.

The results, main provisions and conclusions of the dissertation were tested and reflected in journals, included in the Scopus database, in journals recommended by the Science and Higher Education Quality Assurance Committee, as well as in the materials of international scientific and practical conferences. The scientific works published by the author of dissertation cover the main content of the dissertation research.

Justification of the novelty and importance of the obtained results.

The dissertation contains new scientifically based theoretical results the complex of which is important for the development of private and public law. It should be noted that in Kazakhstan there are no special monographic works devoted to non-cash money, electronic money and cryptocurrency in the system of objects of civil and financial legal relations. There are scientific articles of famous civilists on certain money issues, the international conferences were held, but there are no such a comprehensive, interdisciplinary and complex research of studied objects.

The author of dissertation proposes the author’s definitions of non-cash money, electronic money and cryptocurrency and presents his own concept of their place in the system of objects of civil and financial legal relations. The work describes the stages of functioning of non-cash money, electronic money and cryptocurrency and their legal regulation (emission, release into circulation, circulation, withdrawal from circulation and cancellation). This systemic approach to money and cryptocurrency was tested for the first time in Kazakhstan legal science, that is corresponds to originality requirements and ensures the deepening of existing scientific concepts.

Compliance with scientific development directions or government programs.

The dissertation was completed in accordance with the main directions of legal development approved by the Concept of legal policy of the Republic of Kazakhstan until 2030.

One of these directions of legal development is the improvement of civil law in terms of determining the legal nature and legal regime of objects of civil legal relations and determining their classification.

The Concept of legal policy of the Republic of Kazakhstan until 2030 also points to the need to form relevant legal regulation in the field of innovative digital technologies.

From 2022 to 2024 in the field of financial relations the President gave instructions to ensure stability of the national currency, expand the use of digital instruments for budget planning and execution and carry out complete digitalization of tax control and etc.

On February 7, 2024 the President gave instructions to the Government of the Republic of Kazakhstan to actively use the Digital tenge in financing government projects.

The dissertation corresponds with the Main directions of implementation of the digital agenda of the EAEU until 2025. The main purposes of implementing the digital agenda are to create conditions for the development of industries of the future, digital transformation of the EAEU member states, and the creation of new digital models and digital assets.

Description of the doctoral student's contribution to the preparation of each publication.

On the topic of dissertation the author of dissertation published 14 scientific papers, 5 of them were published in scientific journals recommended by the Science and Higher Education Quality Assurance Committee, 1 article was published in foreign journal included in the Scopus database, which have a non-zero impact factor, 6 articles were published in the materials of international scientific and practical conferences, 2 of which are foreign, 4 - other journals, 1 article was published on the online.zakon.kz website and 1 article was published in the “Tax Expert” journal, included in the list of peer-reviewed scientific publications of the Ministry of Science and Higher Education of the Russian Federation.