

LEGAL ISSUES OF FORMATION AND DEVELOPMENT OF DIGITAL LAW IN THE KYRGYZ REPUBLIC

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The subject of the study is to study the development of digital law issues in the legislation of the Kyrgyz Republic.

Relevance. The relevance of the article is due to the presence of gaps in the field of digital law of the legislation of the Kyrgyz Republic.

The objectives of the article are to analyze the application of digital law in the field of creating the Digital Code of the Kyrgyz Republic and make proposals for its improvement.

Methodology. The authors use scientific methods: general methods (analysis, synthesis, induction, deduction, comparison); special methods (legal, formal legal).

Main results. In the process of creating the Digital Code of the Kyrgyz Republic, a number of problems were identified that affect legislation in the field of digitalization, such as: absence, i.e. creation of a codified act aimed at developing the digital economy of the Kyrgyz Republic; clarification and development of separate rules for a specific group of digital relations in the digital environment; determination of a special regulator of changes in the NLA, a body that can make changes to the national legislation; defining the scope of digital ecosystems, digital resources and digital services, between the consumer and suppliers of goods and services; determination of legal relations to foreign persons and stateless persons; consent of the subject of the right to data processing.

Relevant proposals were made: Change the procedure for special regulation of the digital environment and make changes and additions to the Digital Code, including changing the wording of Article 21 “Digital data, digital records and digital resources that are objects of digital interaction”, adding obligations of subjects of legal relations to Article 26 in the digital environment in the form of compliance with legal requirements, in the field of digital ecosystems, detail Article 2, include separate sections in the field of electronic state, electronic commerce, inheritance of digital rights. In the field of digital citizenship, develop a full-fledged program with a detailed description of what digital citizenship is, its capabilities, functions, and software. Additionally, develop and adopt legal acts (in the format of a law)

in the field of critical information infrastructure with the designation of objects, subjects, principles of critical infrastructure, security systems, etc. Create a register of critical information infrastructure objects.

Conclusion. Digital law is becoming a key area for improving legislation in the field of information technology, where it needs to be adapted to the existing realities. In the Kyrgyz Republic, a new direction and development of legal regulation on the basis of the draft Digital Code being developed is possible, but at present, sufficient actions are needed for the full functioning of the legislation of the Kyrgyz Republic in the midst of digital transformation.

1. Introduction.

The formation of the information component in the 20th century as a dominant in the sphere of information space remains key in the 21st century, and information becomes a factor in economic development [1, p. 9-10]. Information relations generated by legal entities can be the subject of international law and generated with applied areas such as computer law (associated with the use of computing systems for working with information and information data flows), legal cybernetics (associated with research in the field of state and legal systems). The generation of various related disciplines allows us to consider and analyze information relations in various categories and ways, where information has become a phenomenon studied from the standpoint of culture, technology, cybernetics, philosophy [2, p. 11-13], where it is necessary to approach carefully and accurately the emergence of new information relations and varieties of legal norms [3, p. 879].

The Internet has become one of the legal institutions of information law, which is reflected in the developed legal sources (Okinawa Charter on the Global Information Society of 2000, Geneva Declaration of 2003, Tunis Agenda of 2005, International Telecommunication Regulations, in particular Resolutions PLEN/3, item b). In 2011, the UN issued a special report A/HRC/17/27, where in Part 67 the Internet is recognized as one of the elements of the information society and serves as a platform for working with information and information flows¹.

Digital law is a logical continuation of the development of information relations that tend to collect new constructs of self-organization, moving away from the static nature of law and its stagnation, a phenomenon that asks questions and tries to explain - What is it? What is it for? Transformation of law into its new beginnings, such as digital law or Internet law with the formation of

the subject and method of legal regulation, form digital relations in the digital reality of the Internet space [4, p. 105]. Emerging information relations in the Internet space (the presence of a technical code capable of interacting in the information infrastructure of networks and programs), the subject unity of blocks (based on the objects of information law - virtual currency, security, etc.), are built only in the virtual space [4, p. 106]. The peculiarities of relations can be expressed in various classifications that structure digital law according to a number of features, such as the relationship with the state (with mandatory provision of the will of the state, which is expressed in the form of amendments to legislation, the emergence of conceptual documents approving the direction of development of digitalization of the country, industry, etc.), normativity (mandatory application of approved rules of conduct for subjects of law), general binding nature of legal norms, modification of the principle of security of rights (expressed in the emergence of various methods and technologies capable of independently ensuring the fulfillment of obligations of one subject in relation to another subject) [5, p. 114-117]. Digital law is a normative legal mechanism implemented in virtual space, where the network and network space play a vital role in relations with subjects of law [6, p. 18]. Digital law itself forms a space that serves as a basis for information relations, and legal scholars are trying to define the legal nature of digital law from different approaches, with its own characteristics, but there is no common unified approach yet.

2. The main part.

In the Kyrgyz Republic (KR), the first foundations for the formation of digital foundations were laid in Article 22 of the Civil Code², Part 1 in the form of information as an object of civil rights, in Article 1 of the Law "On Electronic Management", where state and municipal bodies carry out legal interaction with individuals and legal entities in the

¹ Report of the special rapporteur on the promotion and protection of the right to freedom of opinion and expression. Human rights council. 17 session. Adopted on May 16, 2011. A/HRC/17/27. URL: https://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf (Accessed 08/15/2023)

² Civil Code of the Kyrgyz Republic. Part 1. Adopted on May 8, 1996, № 15. URL: <http://cbd.minjust.gov.kg/act/view/ru-ru/4?cl=ru-ru> (Accessed 08/15/2023)

field of using electronic documents³, in Article 1 of the Law "On Electronic Signature"⁴, where legal entities can use an electronic signature when concluding civil law transactions, etc. An important part of the formation of digital law was the adoption of the Cybersecurity Strategy of the KR for 2019-2023, which, according to paragraph 8, is aimed at ensuring the appropriate level of security of legal entities in the digital space⁵. Further issues of formation of digital law were reflected in the National Development Strategy for 2018-2040, where clause 4.7., where the goal of digital transformation of the state in the «Taza Koom» project was set, which includes the creation of a digital infrastructure that will create a technological and legal basis for both the private and public sectors with the transition to the digital economy⁶. The main result of the digital transformation should be the emergence of an electronic state, with its own legal institutions, such as a digital government, digital parliament, digital justice, with the functioning of digital services, which is confirmed by clause 15.2 of this strategy. In general, the plans and tasks are extensive, since the Internet space is becoming key, and it is in it that it will be possible to create new opportunities for society and the state. Therefore, the development and adoption of the Concept of digital transformation "Digital Kyrgyzstan 2019-2023" begins, including a roadmap that details the previous strategy and introduces, under part 4.2, the improvement of the regulatory framework capable of adequately ensuring the

digital transformation of the state⁷. Important components of this concept are the digital transformation of the economy, light industry, energy, and agriculture. Thus, in agriculture, it is supposed to create a new electronic environment that should establish new opportunities for trading agricultural products through Internet resources, where it is supposed to introduce information and communication technologies with the provision of accounting and control of goods from the producer to the consumer (creation of a producer-consumer scheme), the formation of databases of agricultural producers on the basis of an authorized state body, etc. [7, p.16-17].

In 2020, by the Decree of the President of the KR, a decision was made to develop a draft Digital Code (DC), which will combine a number of regulatory legal acts (RLA) and will become a full-fledged source of law, taking into account international practices⁸. The deadline for developing the draft DC under paragraph 2. of this Decree was set until May 1, 2021, with submission for consideration to the Zhogorku Kenesh (Parliament) of the KR, but the draft DC has not been developed by this deadline, therefore, in 2021, a decision was made at the level of the Government of the KR to create an interdepartmental working group⁹. The result of the work of the interdepartmental working group in 2023 was the draft DC.

Accordingly, a specialized concept was first developed, where the main goal is to create a codified act aimed at developing the digital economy of the KR¹⁰. The best practices of various

³ Law of the Kyrgyz Republic "On Electronic Management". Adopted on July 19, 2017, № 127. <http://cbd.minjust.gov.kg/act/view/ru-ru/111634?cl=ru-ru> (Accessed 08/15/2023)

⁴ Law of the Kyrgyz Republic "On Electronic Signature". Adopted on July 19, 2017 № 128. URL: <http://cbd.minjust.gov.kg/act/view/ru-ru/111635> (Accessed 08/15/2023)

⁵ Cybersecurity Strategy of the Kyrgyz Republic for 2019-2023. Approved by the Resolution of the Government of the Kyrgyz Republic dated July 24, 2019, №. 369. URL: <http://cbd.minjust.gov.kg/act/view/ru-ru/1547> (Accessed 08/15/2023)

⁶ National Development Strategy of the Kyrgyz Republic for 2018-2040. Approved by the Decree of the President of the Kyrgyz Republic dated October 31, 2018, №. 221. URL: <https://www.gov.kg/ru/programs/8> (Accessed 08/15/2023)

⁷ The concept of digital transformation "Digital Kyrgyzstan 2019-2023". Approved by the Decision of the Security Council of the Kyrgyz Republic dated December 14, 2018, №. 2. URL: <https://www.gov.kg/ru/programs/12> (Accessed 08/15/2023)

⁸ Decree of the President of the Kyrgyz Republic "On urgent measures to enhance the implementation of digital technologies in public administration of the Kyrgyz Republic". Adopted on December 17, 2020. № 64. URL: <http://cbd.minjust.gov.kg/act/view/ru-ru/430271?cl=ru-ru> (Accessed 08/15/2023)

⁹ Order of the Prime Minister of the Kyrgyz Republic dated March 17, 2021 №. 183. URL: <http://cbd.minjust.gov.kg/act/view/ru-ru/218466?cl=ru-ru#p1> (Accessed 08/15/2023)

¹⁰ The concept of the Digital Code of the Kyrgyz Republic. URL:

international organizations were taken as the basis for developing the draft of the DC. Including the Cancun Declaration, developed on the basis of the Organization for Economic Cooperation and Development, which should lay down global technical standards for an open and accessible Internet [8, p.37-38].

In the concept of the developed DC, in the section on the subject of the Code, the following is indicated: the subject is public relations on the processing of digital data, including using the Internet. A special task is to form the basis for creating an interaction environment based on digital services. The DC project consists of 7 sections, a general and a special part¹¹. The general part includes sections on the basics of legal regulation, legal relations in the digital environment. The special part includes sections on the processing of digital data, digital resources, digital services and ecosystems, digital technological systems.

Separately, Article 12 specifies special regulation of the digital environment, which can be introduced by a decree of the President of the KR at the initiative of the subject of legal relations in the digital environment. The subject of law is understood to be any individual or legal entity in accordance with Article 26. As a result, the Decree of the President of the KR must establish separate rules for a specific group of digital relations. At the same time, the subject of legal relations in the digital environment applying special regulation is obliged to warn other entities with which it enters into legal relations in the digital environment about this by indicating this on its website, in applications, texts of agreements and in other similar ways. It is unclear how this will happen in relation to ordinary users (individuals) who do not have their own electronic resources (website, application, digital service) or separate agreements. Moreover, in the KR there is an authorized state body (the Ministry

of Digital Development), which is engaged in specialized industry policy in the field of digitalization and it should be assigned the functions of special regulation of RLA.

An important component of the DC project is the objects of legal relations in the digital environment, where such objects are:

- digital data, digital records and digital resources, but here there is an explanation immediately under Part 2 of Article 21 that if digital data are freely available and there are no restrictions, then they are not objects of legal relations. This clause raises certain questions. It is impossible to exclude digital data or records that are freely available from objects. Today there are no restrictions, but tomorrow they will be introduced by fixing them in a civil contract, and then there will be some kind of selective approach? This should not be. The owner of digital data can distribute the data belonging to him, both in limited and free access. At the same time, paragraph 5 of Article 21 specifies the rights to digital records, which are virtual assets. Virtual assets are used in the tax law of the KR, in the field of mining, as an already formed legal institution [9, p. 76]. It turns out that this project of the DC will regulate mining, but there is no such information in the draft code;

- digital services and digital ecosystems. There are also some peculiarities in the field of digital resources. The draft code does not provide a detailed designation of uniform rules for digital ecosystems. It is also not specified what kind of interaction there will be in the field of digital ecosystems between the consumer and suppliers of goods and services. Optimally, the digital ecosystem should fully satisfy the needs of the consumer with the least time and effort [10, p.31];

- digital technological systems (DTS), presented in the form of data processing centers and telecommunication networks. At the same time, paragraph 2 in Article 133 of the DTS can be used as encryption mechanisms in the field of cryptography for users of digital signature and seal services. The concept of digital seal does not exist in the current legislation of the KR, there is only an electronic signature. The elements of the digital seal are not specified in the draft of the DC;

- lands, buildings, structures, facilities and

https://drive.google.com/file/d/1D_2D3LsRYgRuoUCe0ExMcD6Z9buPFpwm/view (Accessed 08/15/2023)

¹¹ Draft Digital Code of the Kyrgyz Republic. Unified portal for public discussion of draft regulatory legal acts of the Kyrgyz Republic. URL: <http://koomtalkuu.gov.kg/ru/view-npa/2927> (Accessed 08/15/2023)

other similar objects in terms of access to them by owners of the centralized transport system, who can process digital data. What does the wording mean in terms of access to them by owners of the centralized transport system? Simply receiving data through the centralized transport system (software) by the owner. But such centralized transport systems can be in various forms of ownership (state, municipal, private) and what should a user do who wants to check the data? Write official requests to the owners? On the other hand, if there is access to real estate through electronic resources and the centralized transport system, then electronic transactions can be made. In turn, electronic transactions with real estate are prohibited according to paragraph 3 of Article 1 of the Law "On Electronic Commerce" ¹².

Further, it is possible to note the section Digital identification, where the possibility of identification of subjects of law in the digital space is noted, which can be done using various methods, such as fingerprint, iris, voice, password entry, use of ID-card [11, p.46-47]. No one can be forcibly identified, except for cases established in national legislation. Also, in order to develop the identification of subjects of law, it is proposed to create a Unified Identification System under Article 45, which will be used by state and municipal bodies of the KR, and users of state and municipal services. In this system, there will be a division according to paragraph 2 of Article 45 into two categories - citizens and legal entities. Why are citizens singled out, and not individuals? Recipients of these services may be foreign nationals, stateless persons.

Article 26 establishes the rights of subjects of legal relations in the digital environment, which is expressed in the form of a number of rights, such as the right to access digital data, the right to create, distribute and use digital data, etc. Digital rights are fully defined, but there are no digital obligations that can be expressed in the form of proper behavior of subjects of legal relations provided for by legal norms expressed by digital

codes or designations on the basis of and within the framework of information systems recognized by law [12, p. 166] or compliance with the requirements of the law, as well as the rights and legitimate interests of citizens and organizations [13, p. 92-93]. To do this, if there is a profile on a social network / on an electronic resource, you should post an email address for sending legally significant messages, your last name, initials, etc. Thus, digital rights and obligations must be fully defined, where the right to access information dominates, and in the category of obligations, entry into the information field with reliable information, which is not always observed [14, p.30-32].

Disputes in the digital space can be resolved through appeals to higher state and municipal authorities or to the court. As for disputes in digital communities, according to Article 63, they are resolved in accordance with internal (local) acts of a particular community, which allows for the application of the principle of self-regulation. In addition, a decision on a dispute made within a digital community in accordance with the rules of this digital community is binding on all participants in the digital community. Consequently, it is possible that a digital mediator will appear who is capable of resolving disputes in the digital space. There are different opinions on this issue, so some scientists see the possibility of expanding classical mediation into an electronic format, where services will be provided online [15, p.10-11], on various digital platforms (including electronic trading platforms (ETP)), which will resort to the services of mediators to resolve disputes between the buyer, seller or ETP in the field of digital relations [16, p.49,52], as well as in the involvement of appropriate software capable of resolving a dispute in the shortest possible time between the parties (artificial intelligence) [17, p.32]. Therefore, this approach with a digital mediator should be proposed.

Chapter 11, Article 76 introduces the procedure for data processing (including the conclusion of an agreement, protection of the interests of legal entities, etc.), where the presented procedure fully lists the data processing. The consent of the legal entity to the data processing must be added to this list. Since the user must control the data processing process by related organizations.

¹² Law of the Kyrgyz Republic "On Electronic Commerce". Adopted on December 22, 2021 № 154. URL: <http://cbd.minjust.gov.kg/act/view/ru-ru/112333> (Accessed 08/15/2023)

The concept of "Digital Citizenship" was separately added to the project as a stable legal connection between subjects within the digital environment, forming such a digital environment. "Digital Citizenship" should be based on the level of the electronic state, where citizens have the right to directly influence the development of society and the state, including taking part in elections (online), in the development of draft RLA, etc. [18, 19, 20]. To do this, it is necessary not only to make a number of changes to national legislation, but also to form a technological environment where electronic resources with identification of the citizen's electronic profile will be created [21, p. 127-128]. This does not exist yet. There are separate electronic resources, but this idea has not been fully implemented.

In general, the DC project is mainly aimed at regulating management relations concerning databases, digital records, data processing, etc. It briefly touches upon issues of electronic commerce by ordinary users (although there are digital ecosystems, Article 24, which have not yet been fully formed at the national level). But issues such as electronic government (in the form of electronic government, parliament, local government bodies), inheritance law (inheritance of digital rights) remained undefined. Issues of critical information infrastructure (CII) were also not defined, and only Article 53 referred to the Law "On Cybersecurity of the KR", which does not exist. CII is the most important link for the functioning of the Internet space, communications, data exchange, which in turn is the basis for information/digital relations [22,23]. Therefore, a modern state must be prepared for possible challenges (cyber attacks, information wars), both from the technical side (countermeasures) and from the legal side (administrative and criminal-legal impact), where the experience of the Russian Federation, China, Singapore, Japan, etc. can be taken as a basis [24,25]. Thus, it is necessary to make appropriate proposals to the national legislation of the KR.

3. Suggestions:

In the area of the DC project:

1. Change the procedure for special regulation of the digital environment in Article 12, which can be introduced by decree of the President

of the KR on the initiative of an authorized state body that has professional competencies and functions, since an ordinary user (an individual or legal entity), as a subject of law, does not have the necessary competence and functions.

2. In Article 21, paragraph "digital data are freely transferred between any persons and processed for these purposes without restrictions and cannot in themselves be an object of digital rights" should be deleted, since all transferred data must be regulated by RLA.

3. Add to Article 26 the obligations of subjects of legal relations in the digital environment in the form of compliance with the requirements of the law, as well as the rights and legitimate interests of citizens and organizations, etc. Digital rights without obligations cannot function properly.

4. In the area of digital ecosystems, detail Article 2 "interaction of subjects of relations in the digital environment according to uniform rules." Define the concept and approach to uniform rules.

5. Include in the DC project separate sections in the field of electronic government, electronic commerce, and inheritance of digital rights, which will expand the scope of digital interaction in the KR. The idea of digital transformation in the KR began with the formation of a digital economy, which should give impetus to the development of society and the state, and its basis is entrepreneurial/economic relations. Therefore, close attention should be paid to this issue.

6. In the area of digital citizenship, it is necessary to develop a full-fledged program with a detailed description of what digital citizenship is, its capabilities, functions, and software. There must be funding for the implementation of this program.

7. Understand the legal nature of the "digital mediator" and what it can be attributed to: the provision of mediation services in electronic format, the allocation of a separate category of dispute resolution - digital disputes or disputes related to the digital environment, software (referring to a bot or artificial intelligence that will resolve disputes). Dispute resolution in the digital space will lead to the emergence of this type of mediator. Consequently, after analyzing the legal nature, appropriate changes will be made to the RLA.

8. Develop and adopt RLA (in the form of a

law) in the field of critical information infrastructure with the designation of objects, subjects, principles of critical infrastructure, security systems, etc. Create a register of critical information infrastructure objects with the designation of the levels of significance of objects in the KR (energy, telecommunications, banking services, etc.).

4. Conclusion.

To sum up, it can be noted that the emergence of new possible branches of law is a matter of time. It does not matter what the new branches of law will be, but they must have their own institutional base, with their own constructs, and most importantly, have their own justification. Any branch of law must have its own structure, the more complex it is, the higher the indicator of its perfection, legal regulation and social significance [26, p. 187]. The structure of law is always a set of regulation methods, methods of influencing public relations, possessing a subject and target criterion, having the composition of RLA. Based on the creation of the DC, an additional element of development can be the presence of codification of law, which will constitute its own separate direction, as has already developed with civil, family, labor and other law. It is the codification of law that enshrines the specifics of the branch of law.

Digital law in legal science has an ambiguous idea, but it is becoming key in connection with the development of digital processes in society, so today it must be adapted to existing realities. In the KR, a new branch of law called "Digital Law" may appear, developed on the basis of the DC project, but a lot of effort must still be made so that this branch can fully function. Currently, the legislation of the KR has all the possibilities for the implementation of the digital transformation of the state and society.

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