ISSN (Print) : 0974-6846
Indian Journal of Science and Technology, *Vol 9(14), DOI: 10.17485/ijst/2016/v9i14/91094, April 2016* ISSN (Online) : 0974-5645

Place of Electronic Currency Regulations in the Legal System

Kayrat Kulbayevich Tastekeyev*, Samat Zhumagaliyevich Smoilov, Yerkin Asetovna Temirova, Kairbek Tulendinovich Arystanbekov, Bolat Ramazanovich Sergazinov and Askar Mamyrbekovich Sansyzbayev

Kazakh Humanitarian Juridical Innovative University, Kazakhstan;
tast-67@mail.ru, smoilovs@mail.ru

Abstract

Background: This study is aimed at investigating the position, role and significance of electronic currency regulations in the body of laws, studying the process of building the structure of electronic settlement norms in legislative system. **Methods:** Scientific principles and methods of investigation have been applied based on the requirements for the objective and comprehensive analysis of the processes and phenomena in the noncash settlement legislation, as well as based on the requirements for the operating elements of electronic currency regulations. The study employs the following methods: Systemic approach; structural, functional; historical and legislative; logical; statistical investigations; comparative and legislative analysis; and forecasting. **Findings/Improvements:** The basic theoretical guidelines and recommendations have been formulated to specify the place of electronic currency regulations in the legal system, to improve active legislation of Kazakhstan and the ways of its practical application. Defining the place of electronic currency regulations in the legal system will help covering the sphere of electronic trade, banking transactions and electronic services with the state legislation. In its theoretical aspect, the study allows determining the position of electronic currency norms to improve the legislative regulations within the sector of cashless settlements. The subject matter of the research proves to be unique, as this issue has hardly ever been touched upon in legal literature. The problems of electronic money circulation have been studied predominantly in economic literature. In this study, an attempt has been made to adapt electronic money to the system of legal institutions, to introduce the key ideas defining the principles and system of electronic currency norms within the legal system together with the main trends for developing the norms for cashless settlements. **Application/Improvements:** The proposed ideas will facilitate improving the noncash legislation. A new efficient legal mechanism is created to regulate electronic currency and electronic commerce resulting in the increased turnover of goods and services.

Keywords: Electronic Currency, Financial Legislation, Legal System, Legal Rules, Law, Place of Regulations

1. Introduction

1.1 Relevance of the Problem

Development of market relations ultimately depends on clear legislative regulations on those relations implemented by the state. Market relations are impossible without developing the financial sector of the economy. Modern financial relations stipulated establishment of the new rules to regulate those relations by the government.

Under these conditions, the function of the norms regulating cashless payments, including electronic currency circulation, acquires special significance.

However, presently existing legislative mechanism for regulating electronic currency transactions does not represent a comprehensive picture; it consists of separate, not always clearly interrelated elements.

To ensure successful implementation of this mechanism, an investigation should be undertaken to study the reasons for its poor efficiency, to develop recommendations and proposals for establishing the optimum system of legislative groundwork for all elements of this mechanism.

Thus, it is evident that the problems of defining the place of electronic currency regulations are urgent and requiring close attention of science that should develop a theoretical thought about the roles of the state and law

* *Author for correspondence*

in the process of establishing conceptually new model of financial policy; science should also suggest new financial and legal instruments for its effective implementation under the present conditions.

1.2 Correlation of the Study with Other Scientific and Research Works

The selected subject matter is placed at the intersection of economical and legal disciplines, therefore, a major part of the fundamental studies have been developed by the economists.

Up to now, general scientific problems related to governmental and legal aspects of electronic currency circulation have hardly ever been considered. Those issues have predominantly been studied from the point of view of their economical, general technical and philosophical contents. Thus, the problems of economical contents and institutional development of plastic cards have been studied in the works[1,2]. In general technical context this problem has been researched by such scientists as[3,4]. Philosophical aspects have been elaborated by such distinguished scientists as[5,6] etc.

The effect produced by plastic cards on the banking sector of the economy was studied by[7–9] and others.

A considerable contribution to studying this issue has also been made by such foreign scientists as[4,10,11].

Thus, this great number of the studies dedicated to purely economic aspects resulted in certain informational and legal vacuum. In the authors' opinion, some important consequences of this vacuum are now manifested through the defects in legislative regulations on electronic currency circulation.

1.3 Hypotheses and Objectives of the Study

Major purpose of this study is to investigate comprehensively the legal problems of interpreting the place of electronic money regulations in the legal system, to study the contents of social relations within the system of electronic currency regulations, to consider the mechanism for implementing electronic money regulations in legislative system, to analyze the groundwork for economical control over the legal relations occurring in the course of electronic transaction practices, to study the system of legal coverage in the process of economical control over the relations occurring in studying the place of electronic money regulations by analyzing the relevant legislative norms of law and the law enforcement activity of the state in the sphere of executing economical functions, to consider interrelation between governmental authorities and specifically authorized bodies in the sphere of economical regulations.

Given all mentioned above, the following objectives have been set:

- Study the place of electronic currency regulations in the legal system.
- Carry out a legal analysis of the contents of electronic currency regulations.
- Determine the structure of electronic currency regulations in the system of banking law.
- Identify the problems of improving electronic currency regulations.
- Analyze legal sources of electronic currency regulations.

1.4 Correlation of Hypotheses

This problem requires quite a profound and comprehensive legislative analysis which stipulates the necessity for theoretical researches and for developing proposals and recommendations on identifying the precise place of electronic currency regulations in the legal system.

There are ambiguities in the legal interpretations of the place of electronic currency regulations in the body of laws, the controversies in the social relations pertaining electronic currency regulations; a number of terms describing financial legal relations associated with electronic currency regulations are used with different meanings and are interpreted in different ways thus violating theoretical principles of financial law; not all of the standard legislation instruments regulating financial legal relations possess social focus on protecting the rights and legitimate interests of private individuals and legal entities.

Currently existing mechanism for financial and legislative regulation of electronic currency transactions does not represent a single comprehensive picture; it consists of separate, not always clearly interrelated elements.

To ensure successful implementation of this mechanism, the place of electronic currency regulations in the legal system should be established more precisely.

1.5 Theoretical and Practical Conclusions

- Electronic currency regulation norms of law should be recognized as complex ones, where these norms are formed based on interrelation between constitutional, administrative and civil law.

- The notions and ideas should be established and used in those norms as independent complex institutions. Particularly, this should be applied to the legal nature of electronic currency, to legal regulations on electronic payments, to the legal status of an electronic account, etc.
- The norms of law on electronic currency should be separated from the norms of financial law. These norms include structurally the directives regulating financial activity of the state. The notion of financial activity should be studied as an extensive institution. It should be understood in the context of differentiated approach in which the investigation is aimed at separate institutions of the activity itself, particularly, at the monetary system institution that includes noncash settlements.
- Noncash payments should be distinguished and electronic payments should be further separated due to the availability of a special legal regulatory mechanism. The necessity for delimitation and separation from general financial activity is explained by the fact that financial activity regulations cover just basic principles whereas separate institutions are not regulated by the rules of general legislation; there is a need for special legislation. The lack of legislation results in establishing a separate regulatory mechanism.

2. Method

Scientific principles and methods of investigation have been applied based on the requirements for the objective and comprehensive analysis of the processes and phenomena in the noncash settlement legislation, as well as based on the requirements for the operating elements of electronic currency regulations.

In the course of studying the problem of identifying the place of electronic currency regulations in the system of noncash settlements a functional approach method has been applied. Systemic approach was used for studying the elements of electronic currency regulations. In particular, this method was applied for analyzing the objects of electronic currency regulations, for describing the subjects of electronic payments and the contents of electronic currency regulations. Structural method was applied for studying the elements of the norm of law, particularly, the disposition and the hypothesis of the norm. Structural method helped find the interrelation between the hypothesis and the disposition of the norm in the noncash settlement legislation. Functional method was introduced for studying electronic currency regulations in the context of imperative and dispositive method of legal regulations. Applying imperative method facilitates establishing the purpose of the legal effect of these norms in social relations. Historical and legal method made it possible to trace the dynamics of developing the noncash settlement legislation and to identify the place of electronic currency regulations in the framework of the legal system. Logical method was applied to investigate the interrelations and conditionality of the phenomena in electronic currency regulations. Logical method could prove the legal nature of the elements in the structure of electronic currency regulations. Statistical methods helped determining the general dynamics of applying electronic currency regulations to control the noncash relations. Comparative and legal method made it possible to recognize the differences and commonalities in legal regulations on electronic payments in foreign countries. Forecasting method facilitated tracing further development of the process of establishing the place of electronic currency regulations in the legal system.

3. Results

Investigating the problem of determining the place of electronic currency regulations makes it possible to obtain the following results:

- Formulating a new approach to determine the essence of noncash settlements with an aim to extend its interpretation in more broad and profound sense. It is necessary to give definition to noncash settlements as financial and legal instruments, i.e., to characterize them as a payment phenomenon associated, in the first place, with the financial means transfer. A close attention should be paid to their unambiguous legal characteristics.
- Noncash settlements should include the cashless settlements effected by means of plastic cards. Noncash settlements are the financial and legal instruments to be used exclusively for teller and transfer operations.
- Solving the problem of further governmental and legal improvements to noncash circulation, which essence implies governmental control over applying the plastic cards in practice, not only for debit but also for credit operations. In this regard, the following measures are to be recommended: 1. Introduce amendments to the law "On money payments and transfers" envisaging the credit cards use under governmental control, because it is exactly under such state control

that the monetary means should be transferred from the settlement banks to beneficiary banks; 2. Extend governmental and legal control over depositing financial means to debit and credit cards; 3. Exercise state control within the regulations for using financial means by esquire banks, in order to prevent any unlawful operations associated with financial investments i.e., to specify the period for keeping financial capitals at the banks' accounts, to establish the order for investing the available financial means by the banks.

- Establishing state control over formulating provisions on rights and responsibilities as well as over governmental and legal guaranties for the plastic card owners.
- Justifying the advisability to pass a number of subordinate legislative norms regulating the mechanism of plastic card circulation. This is required, in the first place, for regulating the amount of the issued plastic cards. It is also recommended that an instruction "On the amount of issued plastic cards" should be released. To set the interest rate in a most effective way, the instruction "On the order of setting the interest rate" should be adopted. To ensure the efficient emission, the instruction "On plastic cards issue prospectus" would be helpful.
- Investigating and introducing the following regulations stipulating the legal relations between the card holders and the bank:
- Complex of rights and obligations pertaining plastic card emission.
- Legal relations associated with payment card servicing by esquire banks.
- Establishing the responsibilities of the plastic card holders and the card issuing banks.
- Establishing the rules and mechanisms for protecting the rights and legitimate interests of the card holders, including the following:
- System of the issuing banks' and esquire banks' responsibility.
- State measures for controlling payment card emission.
- State control over the order of payment card circulation by means of licensing.

4. Discussion

Considering the question of the type of the norm covering the plastic card noncash settlements, various opinions have been set forth in the literature. Generally, they could be represented as three groups.

The representatives of the first group of opinions suggest that the norms of law covering noncash settlements are not complex but public.

To advocate this suggestion, they propose following assumptions.

The noncash settlement norms belong to the norms of administrative law[12].

It should be noted at once that practically no one now shares such an opinion. At any rate, most scientists do not presently consider the noncash settlement norms to be the part of administrative law. Though, it should also be acknowledged that there are certain complexities in delimitating the administrative law and the noncash settlement norms. This is particularly true for delimitation in the sphere that is called "management in financial sector" and that covers the control over the norms of law by the executive authorities of the state.

Moreover, the public interests of the state in the noncash settlement norms of law do not fully justify their meaning as the norms aimed at realizing the tasks of the noncash settlements. It should be noted that publicity should, in the first place, include fulfillment of the state interests, but upon having given sufficient consideration to the noncash settlement norms of law in the relevant studies, the expression of private interests became evident. According to professor[13] there are three groups of subjects: 1. Individual; 2. Collective; 3. Authorized body of the state. Such grouping is consistent with the theory of financial law.

Based on such principal subdivision, the public interests (interests of the state) will constitute only a part of the relations to be regulated by the plastic card noncash settlement norm of law.

Any rule of law is meant to cover in full all the relations occurring between the subjects.

However, assuming that the norms are absolutely public it would not be possible to consider the interests of the subjects to the full extent and this should be accepted as a fact.

In the authors' opinion the plastic card noncash settlement norms are complex, consisting of the norms of constitutional, administrative and civil law. This judgment, though it has been initially proposed a long time ago, has, with the course of time, acquired new outlines, including special approach to complexity of its own.

According to[14] there are complex institutions that include the norms of law from different branches. Importantly, the complex branches do include complex institutions.

In this regard, some general theoretical issues of financial law should be touched upon. Admitting possible

existence of the complex legal formations, it will be assumed that the notion of "norms of law" is associated with personified types of social relations. Hence, first, the rules of law should not overlap and interfere with each other; second, each norm of law could belong to just one branch of law; third, any type of social relations could be the subject of only one completely definite branch, for example, financial legal relations are related to financial law; fourth, the rules of law differ from each other objectively to the same very extent, as the types of social relations which those rules regulate objectively differ from each other; fifth, the differences between the rules of law originate from the differences between the types of social relations regulated by the law; sixth, the system of norms is predetermined by the system of social relations i.e., the existence of norms of law has been predetermined by the existence of some certain type of social relations which in this case would be represented by financial legal relations. More accurately speaking, the existence of a certain type of social relations, that is a subject of legal regulation, predetermines the existence of the branch of law that corresponds to this type of social relations[15].

Theoretical constructions leading to inconsistencies between the norms of law and the system of social relations are primarily explained by limitations and imperfection of our knowledge. At the present state of science, the system of social relations (including financial and economic relations) has not been perceived to a full degree. Nor have been fully perceived the objective laws of this system's interaction with the system of the rules of law. Ultimately, the system of the norms of law itself has not been comprehensively perceived. Therefore, juxtaposing the two insufficiently perceived phenomena (the system of social relations on the one hand and the system of rules on the other hand) will never result in an adequate picture. Besides, regardless of whether we want it or not, the system of norms is being perceived through the prism of the legislative system which, being a subjective construction, distorts the objective picture of correlation between the law and social relations even more drastically. At the same time, it should be noted that a lawmaker, spirited by practical needs, improves legislation continuously, attempting, on the one hand, at minimizing the gap between the law and the system of social relations (i.e., adjusting the law superstructure to match the economic basis, or, on the contrary, trying to alter this basis with the help of this superstructure) and, on the other hand, perceiving the system of social relations continuously (where practice is key), and builds the system of legislation in accordance with those needs. As a result, the system of the rules approximates its ideal, the system of legislation, and thus the correspondence of the latter to the system of social relations becomes more evident[16].

Considering financial legislation, it could be maintained that the belonging of the noncash settlement norms is obvious. Those norms regulate financial legal relations. A statement by[14] claiming that the norms of financial law are not complex does not reflect the actual situation, because financial legal relations are complex in their nature.

It still has to be proved that these social relations are complex. Having this in mind, consider the structures and attributes of financial legal relations.

Financial legal relations occur in the process of financial activity of the state and other subjects. The obligatory subjects are represented by the state and by other subjects interacting with it. Thereat, those subjects come to interact in terms of relations directly concerned with the finances of the state. Financial legal relations are of "power and subjugation" nature. Herewith, the ruling subject of the legal relations is represented by the state (in general or personified by an authorized body), and the subordinate subject is represented by another subject of those relations.

However, notwithstanding the fact that the subject is in possession of subjugating power, in some cases it acts as an equal element of financial relations. Consequently, financial legal relations are recognized as complex relations. The elements of civil and legal relations are incorporated into the idea of financial activity. Particularly, it is true for national loans. The state is forced to establish civil and legal relations as a subject. Obviously, financial legal relations are formed by incorporating civil legal relations. Material financial legal relations become the means for financial motion.

The process of transferring financial means is complex, i.e., it is associated with both public and private relations, though the element of governmental participation is of considerable significance as well.

The order of transferring financial resources can vary. This can be represented by money moving from payer to this or another state fund thus causing its aggregation.

It can also be exemplified by the tax payment transferred from the payer to the budget. In other cases money moves from a fund to a recipient which can illustrate the process of a monetary fund distribution. Thereat, it should be noted that the financial legal relations

would also include the relations of monetary nature. The transfer of money through electronic payments should be considered as realization of material legal relations.

Assuming that the basis of the financial and legal norms and, in particular, the basis of the electronic payment regulation norm is founded on financial legal relations, it is possible to see its legal nature as a unified complex institution. The complexity of the norm can be proved as it has already been proven that the financial legal relations are of complex nature. These legal relations cover the contents of both public and private relations. Thereat, the state, being an obligatory subject, shall always be present there together with other subjects[17].

Neither the existence of other objects nor the role of their private interests can be denied. Take, for example, credit regulation by state. One of the parties, in this case, is represented by the state while the other party can be represented by the second tier banks. The interests of the second tier banks will be private interests. Consequently, many of the financial relations are complex. Within the framework of the noncash settlement norms, complex institutions, ultimately, not only envisage the coverage of some part of public and private legal phenomena but they also characterize the very structure of the norm. The structure consists of several elements: hypothesis, disposition and sanction that include the element of complexity.

Realizing the legal status by the subjects of electronic payment is impossible by applying imperative approach. Status realization can lead to infringement on their legitimate interests and rights in the process of effecting electronic payments. Within the framework of the regulations implemented exclusively in dispositive manner, the imperative order of the relations is not taken into account, i.e., there are no defined rules for electronic settlements. Mutual complementation of the imperative and dispositive aspects can help establishing a complex approach. It is important that the interfaces of these methods creating a complex institution within this norm of law should be identified. The first interaction point is represented by the object of relations, i.e., a certain complex of mutual interests of the participants of electronic payments. For the subject of regulation, the interaction between the dispositive and imperative methods of regulation occurs at the interface within the noncash settlement norm where social relations shift from static to dynamics stage, i.e., when those social relations are realized. The beginning of realization and the transition of the noncash settlement norm to motion when the legal mechanisms are employed create the prerequisites for applying imperative methods. Those boundaries marking the transition of social relations from one state to another testify of the fact that a complex approach does exist.

Another interface point is represented by the mechanism of the banking contract and by the rules for effecting the payments. According to[18] monetary funds transfer is the reflection of the material form of the realized financial and legal rule of law.

Herewith, she highlights that the money transfer rules are exclusively determined by applying standard regulations and delegated legislation. However, according to[19] contemplates just the interim part of the process without seeing the moment when money moves from an electronic account. The period covering the moment of taking the money from the account and the time for its further movement towards beneficiary will make the interface between the imperative and the dispositive approach.

The third interface point between publicity and privacy is represented by the form of expressing the plastic card noncash settlement norm. The form of expression in its essence envisages applying the norm of law by means of standard regulations and by means of incorporating the provisions of the electronic account contract. The norm without its expression cannot be recognized as existing norm. Therefore, the expression in the form of application is of considerable significance, for as much as when the form of the realization mechanism is not here the norm of law will never have the possibility to be realized in practice. Complex realization implies applying the norm with respect to complex financial legal relations. Considering the disposition of the plastic card noncash settlement norm the effects of the norm should be established including complex legal relations. Complexity of the above mentioned norms provides general description and testifies of the fact that here we have a statutory instrument regulating a group of legal phenomena comprised of public and private interests. The proportion of public and private interests within the norm is not even, in as much as public provisions usually prevail. In the disposition, special attention is paid to the availability of some sort of particular relations within the relationships under consideration. Those relations consist of the interests of public and private subjects. It should be noted that developing combined approaches to studying the purposes of the structure and of the system of those norms is very important. Upon having investigated those purposes, it was found that their fulfillment is dedicated

to solving the issues and problems related to electronic payment circulation. Therefore, in the disposition, a complex approach is considered. This becomes evident from the legal analysis of the disposition of the plastic card noncash settlement norm. Thereat, it is very important to highlight that the disposition of the norm shows its place within the system of branches.

According to the general branch division principle, branches are differentiated as public, private and complex ones. The norms under consideration belong to the complex branch, to financial law. Considering the plastic card noncash settlement norms, it has to be established whether those norms have come to existence as a result of combination or are they represented exclusively by the norms of administrative law. As far as there are here not only managerial relations rules of law but also the regulations related to the rights of the subjects of the norms, this judgment cannot be deemed correct, because administration law regulates the activity of the executive branch of governmental power, whereas financial activity, including noncash settlements, is performed by representative authorities, as, for example, in the case of adopting amendments to the law on payments and money transfer. Administration law cannot comprehensively cover those norms. The plastic card noncash settlement norms should be investigated together with the relevant complex branch. As regards complexity, it has to be maintained that this is a recognized phenomenon, a prerequisite for understanding those norms. Their relation to the branch of financial law and their joint formation as complex institution has been confirmed by the ideas of[20] who believes that "financial law represents a separated part that springs from constitutional and administrative law".

In soviet juridical literature, this idea used to dominate for a long time. Similar conclusion has been made by French author[21] based on the data collected in his country. This is to confirm that, in general, the problems of developing national legal systems have similar predicted patterns for most of the countries.

Thus, the existing opinion based on the abovementioned point of view, according to which the complexity of the branch and the norm of law "owes its origin" not only to constitutional and administrative but also to civil law, is founded on tangible ground.

5. Acknowledgments

In the course of developing this study, great assistance was rendered by the scientists specialized in the issues of financial and banking law, in particular, by Anara Abaikhanovna Mukasheva, D.J.S., Professor at L.N. Gumilyov Eurasian National University, and by Zhumash Khazhimbayevich Kosanov, D.J.S., Professor at L.N. Gumilyov Eurasian National University.

6. References

1. Makarova GL. Corporate plastic cards. Moscow: Finstatinform; 1994.
2. Pashkus YuV. Money: The past and the present. Leningrad: LGU Press; 1990.
3. Rudakova OS. Banking electronic services. Banks and Stock Exchange. Moscow: UNITI Publishing House; 1997.
4. Smith V. The Origins of Central Banks. Moscow: BAKOM Publishing House; 1996.
5. Anderson S. Prospects of world of cards. Moscow: World of Cards. 1998; 9:22–34.
6. Yevtyushin A. Plastic cards in Russia: Problems of incentives. Moscow: Banking Technologies. 1996; 1:16–22.
7. Melyukhin I. Electronic money and banking operations in computerized networks. World Economy and International Relations. 1996; 2:118–25.
8. Penrose T. Believing in future. World of cards. 1997; 22:3–4.
9. Gelman M. Not to lose the country playing plastic cards. Moscow: Business world; 1996.
10. Kennedy M. Money with no interest or inflation: how to create a means of exchange for everyone. Moscow: IPK "Moskovskaya Pravda"; 1993.
11. Auriemma M. Industry of banking plastic cards. Moscow: Infra-M; 1997.
12. Bondarovich GG. Europay international structure and payment instruments. Computers plus programs. Banking Technologies. 1996; 3:42–3.
13. Karaseva MV. Financial law. Moscow: Yurist; 1999.
14. Khudyakov AI. Financial law (special part). Almaty: NORMA-K; 2002.
15. Brunova O. Your electronic wallet. Minsk: Financial and Economical Digest; 1994. p. 3.
16. Vinogradov L. State regulations on plastic cards circulation. World of Cards. 1997; 11:4–10.
17. Voltchkov A. Central Bank has put electronic documents in hot regulations. World of Cards. 1998; 6:1–4.
18. Vitvitskaya T. Electronic money in Russia: Dreams or reality. Economics and Life. 1994; 10:4–7.
19. Khimitcheva NI. Financial law. Moscow: Yurist; 1999.
20. Khalfina RO. General theory of legal relations. Moscow: Yuridicheskaya Literatura; 1974.
21. Paul-Marie G. Financial Law. Translation from French. Moscow: Progress; 1978.