Mirković Predrag[*]
http://orcid.org/0000-0003-2323-040X

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DIGITAL ASSETS – A LEGAL APPROACH TO THE REGULATION OF THE NEW PROPERTY LAW INSTITUTE

ABSTRACT: Development of a digital technology has transformed the way in which an individual, a social group or community, i.e. a state, interacts in their domains of interest. The application of a digital technology, especially ICT, has caused the need to review whether the existing legislative solutions correspond to such news, or whether it is necessary to change or supplement the legal system of the state with new regulations. One of such issues refers to the creation of new types of assets identified as digital assets or the assets based on the creation of a digital technology. The subject of the research paper is the analysis of the institute of digital property with a special reference to the legislative domain of the way of issuing digital property. In his work, the author affirmed the issue of the importance of the legislative challenge in the standardization of relevant social phenomena and relations in the age of the intensive development and application of a digital technology. The aim of the work was achieved in the domain of the conducted normative analysis of the relevant provisions of the Digital Property Act in the part referring to the legislative approach to standardizing the concept of the digital property institute, as well as the particular issues from the domain of issuing digital property.

Keywords*: digital society, digital economy, digital assets, digital token, digital assets issuance.*

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[*] LLD, Associate Professor, Faculty of Law for Commerce and Judiciary in Novi Sad, Republic of Serbia,e-mail: mirkovic@pravni-fakultet.info

1. Introduction

Digital transformation of modern society caused by the development of new technologies presents the State with the challenge of regulating its status and usage. Although it is unquestionable that digital society acquires significant range of benefits from the daily usage of new technologies, especially those that belong to information and communication technologies (ICT), the State is at the same time interested in regulating the new social reality by innovating existing legal solutions, i.e. by adopting new laws. The development of digital society during the last twenty years has functionally changed and influenced all aspects of a society, as well as the individual within it. The application of digital technology, especially ICT, has caused the need to review whether the existing legislative solutions correspond to such novelties, or whether it is necessary that the legal system of the State be changed and supplemented with new regulations. One such issue is the creation of a new type of property that is identified as digital property or property created as a result of the usage of digital technology. The Republic of Serbia is one of the first countries that systematically regulates this new reality – the existence of digital property as a new legal institution of property law. With the adoption of the Digital Property Act, a regulation was incorporated into the legal system of the Republic of Serbia, which represents the most innovative legal act that normatively addresses what already exists in practice and real life, namely a new form of property created as a result of the use of digital technology.

The subject of the research paper is the analysis of the institute of digital property with special reference to the legislative regime of issuing digital property. The goal of the paper is to determine, based on the analysis of the relevant provisions of the Digital Property Act, how the concept of digital property is defined. As a result, deductive conclusions in the domain of general and special characteristics of digital property as legal creation are derived from normative analysis. The specificaim of the research is to determine the legislative correlation in the domain of the legislative approach to the regulation of the issuance of digital assets and financial instruments. The realization of the research objectives will determine the legislative approach to the regulation of the institute of digital property, as a new institute of property law. The justification of the research subject is based on the absence of scientifically relevant research in the field of analysis of the Digital Property Act, and the author's intention is to contribute to higher level of scientific and professional awareness with this paper.

Analysis of the content of the Digital Property Act is the primary methodological approach to the research of the subject of the paper, with limited usage of relevant literature sources. The normative research method is the primary research method, since there are significant limitations in terms of scientific and professional literary sources in the domain of the research subject.

2. The emergence and development of digital society as a prerequisite for the creation of digital property

The development of digital technology has transformed the way an individual, social group. other community or the state interact in their domains of interest. Modern society is defined as a digital society if the process of acceptance and inclusion of digital technology is included at every level. Digital society is characterized by a specific social structure – a network, which functions on the basis of network logic and is strengthened by digital technologies. The theoretical foundations serve as a background for the analysis of the impact of spatial transformation in the network society, as the change of place and space of digitally networked learning (Castells, 2000, p. 43). A digital society is a society that uses new technologies for the realisation of its professional and personal needs, and information and communication technologies are at the center of that process. Such societies need adequate legal security in the digital space, which is one of the most important global issues today. The concept of digital property is a conceptual phenomenological question, since few legal systems in the world define its concept. In the broader concept of understanding, the concept of digital property is functionally connected with the usage of a certain digital technology in creating a certain digital record of a different character that has a certain value in the digital space, its named owner and which as such can be the subject of purchase, exchange or sale.The best example of what is referred to as a digital property today is the emergence of bitcoin as one of the first forms of what in a broader context of importance can be referred to as a digital property. Society, in which ICT plays a key role, is often called the information society. It is a society characterized by a very high intensity of information circulation in the everyday life of most people, including economic subjects. It can be stated that a given society is characterized by the usage of general or compatible technologies for easy and efficient realization of a wide range of personal, social, educational and business activities (Stojšić Dabetić & Mirković, 2021, pp. 135-147). The influence of digital technologies on social changes

is undeniably dominant and significant, but within one society, changes do not occur linearly in all spheres of society, but particularly from area to area. The area of the economy of a society, i.e. the state, in a given process was, and still is, under the significant influence of these factors, so today's modern society is a society that has created a new economy on a global level, a digital economy (Stojšić Dabetić, Mirković, 2022).However, during last two decades, states and international economic organizations have been faced with the issues of finding an adequate approach in the legal regulation of general and particular issues that arise within the concept of what we call the digital economy, within which the issue of legal regulation of digital property is also beginning relevant. These issues are equally challenging, both from the point of view of the national legal systems of the states, and from the point of view of international regulation (Dukić Mijatović & Mirković, 2022, pp. 54-55). The role of the state is to create a legislative framework that will serve to protect the interests of economic entities, in order to achieve business security as a general concept. The issue of regulation from the aspect of legislation is an interesting issue for the state in every segment of social interaction. (Stojšić Dabetić & Mirković, 2022). Accordingly, the digital economy is the economy of the present and not of the future, based on the application of various technical and technological solutions within what is defined as the economy, while within it the issue of legislative regulation of new economic values arises, of which the emergence or creation of digital property is particularly demanding one, as a new legal institute that must be legislatively defined and determined. As such, it was created as a direct consequence of the development and application of digital technology, and as such it was not recognized within the traditional understanding of property as an economic and legal value until now. Consequently, the necessity of adopting or revising existing legal regulations is an interesting question from the perspective of the state as a legislator. This issue goes beyond national legal frameworks, so there are significant legislative activities of international organizations at the regional or global level.

3. Digital property as legal institute in the national law

Digital property, as a special type of asset, is considered one of the biggest challenges of modern property law (Jovanović, 2021). It is precisely the almost unlimited potential of applying digital assets in the future, as well as economy and efficiency are the main reasons for the increased interest of legislators around the world and numerous international financial

organizations for this type of asset. Economy and efficiency are achieved primarily by eliminating intermediaries in carrying out transactions (banks, companies that provide payment card services, etc.), which undoubtedly significantly reduces total transaction costs and enables faster realization of monetary transactions (Mihajlović, 2021). Based on that, a new property law institute, digital property, is being created. The question of its standardization is raised as a question of the necessity for legislative regulation, both at the national and international level.

Digital Property Act is the first regulation of a systemic character that defines the institute of digital property. Digital property, i.e. virtual property, means a digital record of value that can be digitally bought, sold, exchanged or transferred and that can be used as a medium of exchange or for investment purposes, whereby digital property does not include digital records of currencies that are legal currency and other financial assets that are regulated by other laws, except when otherwise regulated by this law (Digital Property Act, 2020). The domestic legislator had extremely demanding tasks, not only in the conception of this regulation, but in defining a number of new concepts within the wording of the law. The fact that the legislator defines over 40 terms used speaks in favor of the legislative innovation of the regulation itself. Adequate definitions of various terms in the text of the law were particularly demanding due to the absence of comparative legal solutions in the given domain. True, its adoption is relevant in connection with the publication of the Proposal for an EU Regulation on cryptoasset markets, although the national law deviates to a large extent from the solutions contained in the Proposal for Regulation 7, trying to find its own (original) path of development in this innovative area (Mihajlović, 2021).

The main features of the concept of digital property according to the legal definition are the following. First, the legislator equates the concept of digital property with virtual property. The reason for this is the extension of the application of the given legal solution to the broader context of the reality of different ways of creating digital property. Such solutions are adequate, having in mind the technological diversity of digital property creation. In addition, the legislator specifically highlights that this type of "new property law institute" arises within the digital space through different mechanisms of creation, which also represents the classification of digital property. A digital or virtual property is an asset based on a digital record. The method of creation of this type of property is necessarily defined in the term and the legislator does so adequately. In this way, an additional distinction is made between the concept of digital property and other forms of property. Since the legislator

uses the term "digital record", there is a need to define the concept of this type of property more closely. Namely, a digital record is any record of a digital character that can be software, hardware or a combination of both. For this reason, it is quite clear that not every digital record can be treated as a digital property. The legislator defined that it is a digital record of value, making it clearly normatively distinct from other digital records. Although there is still no universally accepted terminology and definitions of basic terms related to this technology, there is agreement on its basic features: 1) decentralization – which implies the absence of a central database in which records are made; 2) distributedness – which gives the opportunity to all members of the digital network to participate in the process of confirming specific transactions carried out between functioning, especially in terms of providing security to market participants, it is necessary to use different cryptography techniques (computer-based encryption techniques in order to confirm transactions and store data about property, its owners, participants in transactions, etc.; the most commonly used encryption techniques are public and private cryptographic keys.

A digital record of value represents a narrower concept of digital or virtual property. Since it represents property, the issue of its legal treatment in legal transactions is absolutely necessary. Digital property can be bought, sold, exchanged or transferred digitally. It is important to understand the legislator who, within the framework of defining the concept of digital property, makes a series of language formulations necessarily specific to this form of property. We recognize the fact that this form of property can be traded digitally, which on the one hand represents a limitation in the domain of the way in which it is traded, while on the other hand it represents a clear distinction in relation to the circulation of other forms of property. The legislator also foresees a wider range of rights that belong to the holder of digital property, although we believe that it was not necessary to define it explicitly. Digital property can be used as a means of exchange or for investment purposes, which intentionally indicates that this form of property is suitable for investment of an economic nature. An interesting specificity of the way of defining the concept of digital property is the legislator's intention to separate two concepts that are often identified as identical in the social context, the concept of digital property and the concept of virtual currency.The reason for this legal solution is based on the still unsettled understanding of the difference between digital property on one hand, and virtual currencies on the other. The legislator additionally explaines the legislative difference in the context of clear definition of the concept of virtual currency in item 2, article 2 of the Act. However, the

legislator treats the existence of two forms of virtual currencies. Within Article 2 point 1 of the Act, it is defined that digital property does not include digital records of currencies that are legal means of payment regulated by another law. In terms of this Act, digital currency is a type of digital property, which means that the concept of digital property is a higher-order concept. Virtual currency is a type of digital property that has not been issued and its value is not guaranteed by the central bank or other public authority, which is not necessarily connected to legal means of payment and does not have the legal status of money or currency, but is accepted by natural and legal persons as a means of exchange and can be bought, sold, exchanged, transferred and stored electronically (Digital Property Act, 2020). It clearly follows from the above that the concept of digital property is a concept of the highest order that includes different forms or types of digital property that are identified within the framework of this Act.Since digital currency records may be legal currency, they are not and are not considered as digital property as such, but are subject to other regulations. Different individual forms of digital property are usually classified into one of four basic types of these assets: 1) payment tokens (cryptocurrencies) – which represent a means of payment such as cash or electronic money, although in practice they are often used for investment purposes as well (in tokens for payment also includes certain types of stable digital assets); 2) investment tokens – which grant rights similar to the rights associated with the business operations of companies (eg the right to dividends, the right to vote, etc.); 3) user tokens – which give the right to use goods or provide services within a predetermined closed system; 4) hybrid tokens – which have features of two or more of the aforementioned tokens, serve different purposes, and the purposes often change during their existence (European Commission – Commission staff working document, 2018).

The development of digital technology had a dominant influence on the emergence and need for legislative regulation of new institutes in law. The Digital Property Act determines not only the general concept of digital property, but also an indirect classification of digital property in terms of what can be subsumed under the concept of digital property. This is necessary, since innovative solutions in the domain of this field far exceed the possibility of legislative solutions, which will incorporate different possible forms of its appearance in practice within the very concept of digital property. The legislator decided to define two forms of digital property separately, digital token and virtual currency. A digital token is a type of digital property and is defined as any intangible property right that represents one or more other property rights in digital form, which may include the right of the user of the

digital token to be provided with certain services (Digital Property Act, 2020). In terms of the Act, two forms of property are specifically defined under the term digital property, virtual currency and digital token. It is important to point out that this classification of digital property is not limited in scope, and that digital property can also be outside the given classification in accordance with the general definition of the concept of digital property. These two forms of digital property have in practice proven to be particularly important forms of a new type of property whose manifestation in reality is such that their special definition is necessary. What they have in common is that both virtual currency and digital token represent a type of digital property.

The scope of rights arising from the legislative definition of digital property appeares to be complete. The holder of digital property rights can be a natural or legal person. Since the legislator does not expressly limit state subjects as possible holders of rights, an adequate interpretation in the given context is that state entities can be holders of rights arising from digital property, including virtual currencies, or digital tokens. However, the Act stipulates that certain financial institutions, regardless of their legal subjectivity from the aspect of ownership, have limitations in the domain of the right to be holders of digital property. Namely, financial institutions under the supervision of the National Bank of Serbia cannot have digital assets in their assets, nor instruments related to digital property, nor can investments in the capital of those institutions be in digital property (Digital Property Act, 2020).

When it comes to the scope of application of the digital property as legal institute, its limitationsare related to financial instruments. Namely, the way in which digital property is treated legislatively shows a number of legislative similarities in relation to financial instruments. Financial instruments are contracts or any document that acts as a financial asset such as debentures and bonds, receivables, cash deposits, bank balances, swaps, futures, shares, bills, futures, FRA or forward agreement etc. (Vunjak & Kovačević, 2000). Since the method of issuing digital property has a number of legislative similarities with the issuance of financial instruments, the scope of application of the law in the given context addresses this issue in such a way that the issuance of digital propertyhas all the characteristics of a financial instrument, as well as secondary trading and provision of services related to such digital property, the law regulating the capital market applies. The scope of application in the context of the ability to pay is unquestionable. Since digital assets are disposed of like any other form of assets, all payments, collections and transfers in domestic currency in connection with transactions with digital assets are

carried out in accordance with the regulations governing payment services, i.e. foreign exchange operations. In this way, in fact, the legal disposal of all types of transactions in domestic and foreign currency is made possible in accordance with the provisions of the Law on Payment Transactions, that is, the Law on Foreign Exchange Operations.

4. Initial offer of digital property issuance – legal regime of digital property issuance

Digital Property is legislatively innovative institute in national law, which as such has not yet been established in the legal systems of European countries. There are several reasons for this, but certainly one of the most significant is the complexity of the matter itself that is being regulated, dynamic changes in the digital environment that affect the appearance of new forms of digital records that have a property character, as well as the intention of the state to leave matters in this domain with the already existing regulations. The Digital Property Act is conceived as a regulation that, on the one hand, clearly defines the primary institutes in the field of legislative regulation, but also significantly relies on some already existing solutions of the national legal system. A significant part of this regulation addresses the issue of issuing digital property. The very term "issuance of digital property" is largely associated with the act of issuing securities or financial instruments. In the absence of more adequate terms, the legislator uses the term "issuance of digital property", as soon as the institute of digital property is unambiguously connected with financial instruments, i.e. securities. The procedure for issuing digital property is a procedure that basically addresses how a technologically created digital record of a property character appears in legal transactions. Since the legislator clearly defines the term and types of digital property, it is adequate to also regulate how and in what manner digital property appears in the legal context as an object of purchase, sale, exchange or transfer. The scope of application of the Act is within the legal system of the Republic of Serbia, which means that only those digital assets that were created/created within the legal space of the State can be the subject of the offer. The initial offer of digital property issued in the Republic of Serbia is exclusively regulated by the provisions of this Act, including the advertising of digital property. The procedure for issuing digital property is a legally regulated procedure that can be carried out in two ways, advertising the initial offer of digital property for which no white paper has been approved, or advertising digital property for which a white paper has been approved. There are many similarities between

the procedure for issuing financial instruments and the procedure for issuing digital property. The digital property market has certain similarities with the capital market, and certain forms of digital property have features of financial instruments in terms of capital market regulations, i.e. electronic money in terms of payment services regulations (Mihajlović, 2021).

Digital property can be purchased on the primary and secondary markets. The legal regime of the issuance of digital property refers to the appearance of digital property as an object of trading on the primary market. We are talking about relatively similar legal solutions that govern the procedure for issuing financial instruments in accordance with the provisions of the Capital Market Act. Basically, it can be stated that the entire process of issuing digital property represents a relatively identical legislative solution of the aforementioned regulation, the Capital Market Act. The distinctions that appear are a consequence of subject-specific features of digital property. Since digital property represents a new property law institute, the legal regime of the creation of property is of a legal-hybrid character, which is legally identified with the issuance of financial instruments. As a form of property of a digital record, the way digital property appears in legal transactions is related to the way it was created. Taking into account that digital property is created as a consequence of a process based on the application of ICT, which creates a digital record, the legislator decided that the legal moment of the creation of digital property as a legal institute should be regulated through the process of its issuance in a very similar way as prescribed in of the Capital Market Act. Indirectly, the legislator in this way points to the high degree of similarity that exists between digital property on the one hand, and financial instruments on the other.

The very terminology used by the legislator, "issuance" of digital property, is perhaps linguistically questionable. Certainly, the creation of digital property itself is to a large extent "legally innovative", which certainly makes it difficult to standardize this institute. The use of the term "issuance" is not the most precise term, considering the fact that digital propetyis created. Regarding the legal subjectivity of the issuer of digital property, a very liberal solution of the legislator is identified. A domestic or foreign natural person, legal entity and entrepreneur can act as the issuer of digital property (Digital Property Act, 2020). Realizing that digital property arises as a specific property law institute, in the role of issuer of digital property, the legislator determines persons or entities in the most liberal way. Natural and legal entities can be issuers of digital property, but the entrepreneur also appears. The given solution is legislatively interesting and calls into question

why the legislator mentioned entrepreneurs so explicitly, since these persons are primarily natural persons, and only subsequently individual business entities. Their legal status as entrepreneurs is in accordance with the Business Companies Act, but according to that regulation, all entities that register as entrepreneurs are natural persons.

A digital propertyissuer may choose to advertise a digital property. It must be done in accordance with the law, where it is specified that such a procedure can be initiated depending on the fact whether the advertising of the initial offer of digital property is with an approved white paper or without a given document. The legislator primarily focuses on the legislative elaboration of the offer of digital property for which the white paper was approved.

The common denominator is essentially the document that appears during issuance. In the case of financial instruments, it is a prospectus[1], while in the case of issuing digital property, it is a white paper. A white paper is a document published during the issuance of digital property in accordance with this law, which contains information about the issuer of digital property, digital property itself and risks associated with digital property, and which enables investors to make an informed investment decision (Digital Assets Act, 2020). The white paper is the most important document on the basis of which the consumer makes an investment decision regarding a specific form of digital property. Its content should eliminate the risks that consumers face when making that decision, but also familiarize them with the basic features of digital property and its issuer (Mihajlović, 2021). If we analyze what the prospectus or white paper contains, the conclusion that emerges is that the legislator has largely incorporated legislative solutions in terms of the content and method of issuing digital propertythrough a white paper in the same way as it was done with the prospectus, which is an institute of the Capital Market Act and relates to on financial instruments and the obligations of the issuer thereof in connection with the provision of relevant information during the process of issuing securities, i.e. financial instruments that appear on the financial market.If the issuer of digital property decides to offer a digital property for which a white paper has been approved, the advertising of the initial offer refers to advertisements in connection with a specific initial offer of digital property, the aim of which is to promote the purchase of digital

[1] The basic prospectus is a prospectus that contains all significant information from the provisions of Art. 15, 16, 17 and 18 of this law, as well as Article 33 on the issuer and the securities for which a public offer will be made or which will be included in trading, and, if the issuer so decides, may also contain final conditions of the offer. See more: Article 2, point 14. Capital Market Law ("Official Gazette of RS, No. 129/2021)

property, i.e. investment in that asset (Digital Property Act, 2020). It is important to emphasize that the law additionally affirms the legal circulation of digital property, since it clearly determines that it can be bought, that is, that it can be invested in, which represents an identical legal construction that is legislatively recorded within the Capital Market Act. The issuer is obliged to ensure that the white paper contains all information about the issuer and the initial offer that allows buyers/investors to make an informed decision related to the purchase/investment in digital property and understand the risks related to the initial offer and the digital property being offered (Digital Property Act, 2020). The text of the advertisement should clearly indicate that it is in fact an advertisement. The information contained in the advertisement must not be incorrect or misleading, and must be consistent with the information in the white paper, if the white paper has already been published, or with the information to be provided in the white paper, if the white paper will be published. When advertising, the issuer is obliged to state that the white paper has been published or will be published along with information on where and how investors can obtain it. The supervisory authority supervises the issuer's activities related to advertising, and all types of advertisements must be published on the issuer's internet presentation no later than on the same day that the advertisement is published.

5. Conclusion

Until the adoption of the regulation on digital property in the Republic of Serbia, this form of property existed in the intermediate space of regulations that regulated property and financial legal relations. The standardization of digital property continues the process of legal regulation of the digital society in the Republic of Serbia, which benefits both the state itself, society and the economy, as well as business entities and investors. Digital property mainly appeares in the domain of the capital market, which is confirmed by the way of regulation in the Digital Assets Act, as well as the terminology used, which is similar to financial terminology. Today we can talk about the market of virtual or digital property. Seen from the perspective of property law relations, two basic forms of digital property – virtual currency, although used as a means of payment, does not have the status of money or currency, while digital token represents an intangible property right as an emanation of property rights in digital form. In practice, a virtual currency cannot be included as such as a stake in a company, while a token can. In this sense, digital property shows the outlines of a legal institute *sui generis*, with a very strong potential to

influence and redefine property and financial legal rules. Further application of the legally stipulated, but also new forms of digital property in the context of tax system inevitably conditions the issues of its tax treatment, which further creates the need to adapt tax regulations and procedures to the new reality and challenges. It is very certain that the courts will play a significant role in creating the prerequisites for the effective implementation of regulations that regulate both digital property and the usage of digital technology in general. Every new regulation needs to pass the test of time and application, which in this case, as with all regulations that try to standardize the use of digital technology, is a big challenge, because the legislator and the development of digital technology, as well as the modalities of its application, do not move at the same speed , and very often not in the same direction.

Mirković Predrag
Pravni fakultet za privredu i pravosuđe u Novom Sadu, Univerzitet Privredna akademija u Novom Sadu, Srbija

DIGITALNA IMOVINA – LEGISLATIVNI PRISTUP REGULISANJU NOVOG IMOVINSKOPRAVNOG INSTITUTA

REZIME: Razvoj digitalne tehnologije transformisao je način na koji pojedinac, društvena grupa ili zajednica odnosno država obavljaju interakcije u svojim interesnim domenima. Primena digitalne tehnologije, naročito IKT jeste uslovila potrebu za preispitivanjem da li postojeća legislativna rešenja odgovoraju takvim novinama, ili je nužno pravni sistem države menjati ili dopunjavati novim propisima. Jedno od takvih pitanja jeste kreiranja nove vrste imovine koja se identifikuje kao digitalna imovina ili imovina zasnovana kao kreacija digitalne tehnologije. Predmet istraživanja rada jeste pitanje analiza instituta digitalne imovine sa posebnim osvrtom na legislativni domen načina izdavanja digitalne imovine. Autor je radom afirmisao pitanje značaja legislativnog izazova u normiranju relevantnih društvenih pojava i odnosa u doba intenzivnog razvoja i primene digitalne tehnologije. Cilj rada jeste ostvaren u domenu sprovedene normativne analize relevantnih odredbi Zakona o digitalnoj

imovini u delu koji se odnosi na legislativan pristup normiranju pojma instituta digitalne imovine, kao i partikularnih pitanja iz domena izdavanja digitalne imovine.

Ključne reči: *digitalno društvo, digitalna ekonomija, digitalna imovina, digitalni token, izdavanje digitalne imovine.*

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