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The Role of Cryptocurrencies in Private Law and the General Framework for their Regulation

The 21st century is known for its strong technological advancements, where blockchain technology and a cutting-edge product built on it like cryptocurrencies are evolving daily. According to recent research, bitcoin is particularly appealing to both experienced and novice investors. Numerous individuals and legal entities around the world accept cryptocurrencies as payment. Cryptocurrency can be used to purchase both products and services. As a result, the need for legal regulation of cryptocurrency is high on the priority list.

The purpose of this article is to evaluate the legal status of cryptocurrencies, namely what its legal character is and whether it is conceivable to treat cryptographic currency as an object of private law, as property, as electronic money, or as virtual cash. Is it better than traditional currencies, and if so, what are they? All of the foregoing will be reviewed in light of the suggestions of the United States of America, Australia, Argentina, Brazil, Germany, Zealand, Japan, South Korea, China, Georgia, and the European Central Bank.

***Keywords**: Blockchain, Electronic Money, Virtual Currency, Fraud Schemes, Cryptography, Cryptocurrency, Crypto Provider, Money Laundering, Fiat Money, Wealth.*

1. Introduction

Because of the rapid growth of technology, there is a need in doctrine to define the legal status of cryptographic currency. Is cryptocurrency a subject of private law, and if so, how should it be classified? What laws govern it and is it accepted as legal currency in developed nations? Is a license required for a cryptocurrency provider? What are the hazards of the cryptocurrency industry?

The right legal classification of the economic market and the execution of previously created laws in Georgian legislation are critical for the growth of the economic market. As a result, the work's task is to offer readers with the required cryptocurrency information, to define the status of bitcoin in private law based on proven techniques and international legal acts, and to share recommendations for mitigating associated dangers.

The study used doctrinal and non-doctrinal research approaches. Furthermore, descriptive, collection, comparative-legal, systematic analysis, and logical research methods were employed to fulfill the paper's goals and objectives.

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2. The Essence and Concept of Cryptocurrency

Since the 1990s, the number of Internet users has increased tremendously, and digital technologies have evolved in tandem. Based on the two factors outlined above, the digital currency is born, allowing for the exchange of goods and services in the virtual community. The European Union encourages these innovations and has been monitoring the "business of electronic money institutions" since 2000. However, the emergence and rise in popularity of a new type of cryptographic currency, such as Bitcoin, has presented new challenges to central banks. The decentralized structure of cryptographic currencies, as well as the characteristics of making and storing payments, have become the focus of intense research.[1] As a result, cryptocurrency has become a topic of interest in both the economic and legal communities.

Satoshi Nakamoto's main goal was to create a currency that would not be subject to inflation, would be completely independent of any central regulatory institution, would be fast and flexible, and would have very low commission fees.[2]

Due to the international economic crisis at the beginning of the twenty-first century, the idea of creating Bitcoin emerged. In early 2017, the Harvard Business Review stated, "Blockchain is a fundamental technology with the potential to create a fundamentally new economic and social system."[3]

2.1. The History of Cryptography

The first DLT research was published in the scientific journal "New Directions in Cryptography" in 1976, but its implementation was considered too difficult and risky for a long time.[4]

Stuart Haber and Scott Stornetta published the first paper on a chain of blocks produced by cryptographically protected calculations at the end of the twentieth century, in 1991.[5] Haber and Stornetta 's main goal was to develop a system that would combine several documents into a single block.[6] Documents were hashed in the system (the conversion of input data into cryptographic data using mathematical algorithms) to generate a single unique code.[7]

Cryptography is a science that protects information and so it is an information encryption mechanism. Cryptography has piqued the interest of centuries of researchers and is now one of the most developing, interesting, and innovative fields.

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1 *Chkoidze N., Tomaradze G.,* Virtual/Cryptographic currency and its features Regulation of Virtual Currencies, Tbilisi, 2014, 4 (in Georgian).

2 *Nakamoto S.,* Bitcoin: A Peer-to-Peer Electronic Cash System, 2008, 3, <https://bitcoin.org/bitcoin.pdf> [23.02.2023].

3 Please see *Hu Q., Abdulhakeem S.A.,* Powered by Blockchain Technology, DeFi (Decentralized Finance) Strives to Increase Financial Inclusion of the Unbanked by Reshaping the World Financial System, Modern Economy, Vol.12 No.1, China, 2021, 5.

4 *Diffie W., Hellman M.*, New Directions in Cryptography, IEEE Transactions on Information Theory, 1976, NY, 644- 654, <https://ieeexplore.ieee.org/iel5/18/22693/01055638.pdf> [24.02.2023].

5 *Bayer D., Haber S., Stornetta S.,* How to Time-stamp a Digital Document, Journal of Cryptology, NY, 1991, 99–111.

6 Ibid, 329–334.

7 Ibid.

In 2008, a social network article was published, which was later included in the number of scientific articles. The author of this article[8] was identified as Satoshi Nakamoto.[9] The article published under the pseudonym Satoshi Nakamoto raises awareness of blockchain and blockchain-based cryptographic currency – Bitcoin (and later other cryptocurrencies). Satoshi Nakamoto periodically published information about blockchain and bitcoin via a mailing list for several years, which helped popularize the system, but Satoshi Nakamoto vanished in 2010.

One of the most frequently asked questions these days is who Satoshi Nakamoto is. This pseudonym may not belong to a single person, but maybe it represents dozens of people who laid the groundwork for a new era – the cryptographic world.

2.2. The Role of Blockchain in Establishing Bitcoin as the Most Popular Cryptocurrency

Distributed ledger technology (DLT) is an alternative to legal regulation. The distributed ledger technology was developed to eliminate the negative aspects of the banking system. Blockchain, as well as cryptocurrency, are based on this technology.[10]

Since 2008, Bitcoin has grown enormously in popularity, and it appears that the technology that underpins its creation has been pushed to the sidelines. Blockchain is essentially a publicly accessible encrypted database. Any transaction is open to the public, but privacy is protected. As a result, the system is both anonymous and public at the same time.[11]

Today, Bitcoin is widely regarded as the most popular and in-demand cryptocurrency. Bitcoin is the currency most closely associated with blockchain technology, and it conducts several million transactions per year anonymously and without government oversight. Some regulations have already been developed, as I will discuss in the following chapters.

It is worth noting that the value and importance of Bitcoin are increasing year after year. It is not an inflationary instrument in the same way that conventional fiat money is. Because of blockchain technology, it is extremely stable and systematic.

The essence of blockchain is founded on three distinct facts: 1. record verification; 2. record protection; 3. record storage of existing and previously implemented records – these three conditions or elements ensure the stability of Bitcoin.[12] As a result, without blockchain technology, crypto-currency would not exist, and if it did exist, it would not be the guarantor of stability that it is now.

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8 *Nakamoto S.,* Bitcoin: A Peer-to-Peer Electronic Cash System, 2008,1-8, <https://bitcoin.org/bitcoin.pdf> [23.02.2023].

9 This is most likely a made-up name. According to one widely held belief, Satoshi Nakamoto may be a group of programmers whose names are an abbreviation for Japanese concerns: Samsung, Motorola, Toshiba, Nakamichi.

10 *Chilachava M.,* Specific Private-Legal Aspects of the Blockchain System Functioning, Law Journal, No. 2, Tbilisi, 2021, 163 (in Georgian).

11 *Crosby M., Pattanayak P., Verma S., Kalyanaraman V.,* Blockchain Technology: Beyond Bitcoin, NY, 2016, 71.

12 *Lansiti M., Lakhani K. R.,* The Truth About Blockchain, Harvard Business Review, 2017, <https://hbr.org/2017/01/the-truth-about-blockchain> [24.02.2023].

2.3. Bitcoin's Advantages over State-Managed Currencies

Bitcoin is a cryptocurrency based on cryptographic algorithms that is growing in popularity. Bitcoin is the "future money" that can be used to buy goods and services today.

Bitcoin has numerous advantages over state-controlled currencies.

a) Decentralization and ease of participation in the system

The first advantage is the fact that it is decentralized.[13] Decentralization is the fundamental principle of blockchain technology in general, and thus of all cryptocurrencies that have been and will be created on its basis. Because this system is decentralized, it lacks a superior regulatory body and is completely autonomous. In particular, aside from the buyer and seller, no one else participates in this process – neither the central bank, nor the regional bank, nor the state; it turns out that decentralization precludes the participation of a third party.[14]

The second advantage is the ease of inclusion in the system, which also eliminates the involvement of third parties. For example, whereas opening a simple account in a bank is associated with bureaucracy, as is making even a simple transaction, creating a Bitcoin address (account) only takes a few seconds and incurs no additional costs in the form of commissions.[15]

b) anonymity and transparency

The next advantage is anonymity. Although the user creates his address (account) by providing identification data, his name and surname are anonymized for privacy reasons, which means that no identification data is recorded during the transaction. As a result, all of his transactions are private and anonymous.[16]

Despite the anonymity mentioned above, the system is transparent, as evidenced by the public availability of transaction data.[17]

c) exceptionally low fees, speed, and irreversibility

As I previously stated, the main goal of the blockchain-Bitcoin system is to create money that is immune to inflation and has an unprecedentedly low transaction fee when compared to banks. For example, whereas banks charge significant fees for international transactions, Bitcoin transaction fees are set by the user or are non-existent. According to unwritten law, the higher the fee, the higher the priority of the transaction for the "miner" and the sooner it can be executed. As a result, the cost of a million dollar transaction can be one dollar, ten dollars, or one hundred dollars and it will never be exorbitantly priced.

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13 *Frankenfield J.,* Cryptocurrency Explained With Pros and Cons for Investment, 2022, <https://www.investopedia.com/terms/c/cryptocurrency.asp#citation-6> [25.02.2023].

14 Ibid.

15 Ibid.

16 Ibid.

17 *Crosby M., Pattanayak P., Verma S., Kalyanaraman V.,* Blockchain Technology: Beyond Bitcoin, NY, 2016, 71.

Aside from the unprecedented low fees, the main thing that distinguishes blockchain-based transactions is their speed and efficiency.[18] For example, if there is a concept of working and non-working days in the banking system, and the recipient of a transaction made on Friday can be charged on Monday, this is not permitted in the system in question. A blockchain-based transaction can last between 10 minutes and half an hour.

In addition to unprecedentedly low fees and operational efficiency, blockchain-Bitcoin technology, unlike the banking system, is distinguished by the irreversibility of previously completed transactions.[19] As previously stated, bitcoins that have already been sent cannot be returned unless the recipient returns them.

d) inflation protection

The main advantage of cryptocurrency, specifically Bitcoin, is that it is resistant to inflation. The reason for this is due to its decentralized nature. Furthermore, there is no supervisory or superior body in charge of the system.

Cryptocurrency is not fiat money, the value of which in the market is directly dependent on gold or silver; it is completely independent of stock markets and fiat money. The demand for a cryptocurrency and its mathematical algorithms are the factors that determine its value and strength.[20]

Cryptocurrency appears to have a number of advantages over fiat money. As a result, it is immune to inflation and will never become a victim of an international economic crisis.

3. The Legal Status of Cryptocurrencies

Determining the legal nature of cryptocurrency is a difficult issue because there is no clear classification.

It is worth noting that the emergence of cryptographic currency and its growing popularity necessitated the development of legal classification and regulation. As a result, the states' main task is to work on the following issues and develop a regulatory model:

1. whether a cryptocurrency based on blockchain technology (such as Bitcoin) should be considered a statutory currency;
2. if a cryptocurrency is not considered a currency, it must be classified as a commodity or thing, such as property or computer software;
3. how should crypto currency be regulated and taxed;
4. whether cryptographic money transfers should be regarded as authentic;
5. because of the system's autonomy and decentralized nature, as well as the increased risk of money laundering, the latter should be strictly controlled or not.

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18 *Hamacher A.,* What Are Flash Loans? The DeFi Lending Phenomenon Explained, 2021, <https://decrypt.co/resources/what-are-flash-loans-the-defi-lending-phenomenon-explained > [25.02.2023].

19 *Frankenfield J.,* Cryptocurrency Explained With Pros and Cons for Investment, 2022, <https://www.investopedia.com/terms/c/cryptocurrency.asp#citation-6> [25.02.2023].

20 *Cunliffe J.,* Is "Crypto" a Financial Stability Risk?, 2021, <https://www.bankofengland.co.uk/speech/2021/october/jon-cunliffe-swifts-sibos-2021> [25.02.2023].

Thus, let's consider how the first generation of blockchain technology – cryptographic currency, Bitcoin, is organized and classified today.

3.1. Bitcoin as a Property Good

The traditional definition of property no longer exists in today's reality. Nowadays, property is dematerialized and digitized. However, according to modern Georgian legal literature, the right of ownership should be extended to intangibles such as software, Internet site content, and even personal data.[21]

It is quite logical that a group of researchers believe that DLT may have something to do with property, though it is not yet fully established to what extent a cryptographic currency can provide a legal position on property.[22] There are, however, states that recognize Bitcoin as property.

The **Japanese** approach to this issue is interesting, as cryptocurrency is defined as a property that may be used as a unit of payment for both products and services by an unidentified person to an identifiable person, or property that may be exchanged for an unidentifiable person by individuals among themselves under Japan's Tax Services Act.[23] By the same act, it is determined that only those business operators who are registered in local tax bureaus in accordance with the relevant procedural rules can carry out financial operations related to the exchange of cryptocurrency. The mentioned company must be a joint-stock company or a foreign cryptocurrency exchange enterprise with a resident representative and an office in Japan. However, ICO are not prohibited in Japan; rather, they are not regulated at all and have no legal framework.[24]

Initial Coin Offering (ICO) is an initial coin offering that, in essence, is very similar to the well-known corporate law institution – IPO (Initial Public Offering). Despite their similarities, they have two major differences: 1. During the IPO, the investor becomes the owner of the company's shares, whereas during the ICO, he does not; 2. In the case of the ICO, the object must be based on blockchain technology.[25]

The first difference mentioned above is an important advantage of ICO over IPO, because in the former, the company's owner retains a controlling stake while receiving money, whereas the investor receives valuable cryptocurrency in the future. Furthermore, investors from any part of the world can be attracted in the shortest amount of time.

Importantly, it is a legal requirement in Japan for cryptocurrency exchangers to have an individual contract with a dispute resolution center, aka arbitration, with expertise in cryptocurrency.

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21 *Zarandia T.,* Property Law, Second Completed Edition, "Meridian" Publishing House, Tbilisi, 2019, 224-225 (in Georgian).

22 *Cutts T.*, Bitcoin Ownership and its Impact on Fungibility, Coindesk, 2015, <https://www.coindesk.com/bitcoin -ownership-impact-fungibility> [25.02.2023]; also see *Kelvin F., Low K., Teo E.,* Legal Risks of Owning Cryptocurrencies, NY, 2018, 47.

23 Please see *Umeda S.,* Regulation of Cryptocurrency in Selected Jurisdictions, The Law Library of Congress, 2018, 53-62.

24 Ibid.

25 *Gabisonia Z.,* The Essence and Problems of Legal Regulation of Blockchain Technologies, Journal of Comparative Law, Tbilisi, 3/2019, 6 (in Georgian).

If such arbitration does not exist, the cryptocurrency exchange must create one. This system will be responsible for handling customer complaints.[26]

Bitcoin is considered as a consumer good in **South Korea.** This is demonstrated by the Supreme Court of Korea's decision, which determined that cryptocurrency can be confiscated as property during criminal proceedings.[27] Based on this, it is clear that the mentioned decision qualifies cryptocurrency as property in the monetary sense. It is worth noting that, since 2017, Korea has been preparing a legislative package on cryptocurrency regulation, which will address three major issues: the incorporation of cryptocurrency into existing financial transaction legislation, the active fight against money laundering, and the modification of taxation.[28]

Bitcoin has been recognized as a "unit of account" and "private money" by the **German Federal Ministry of Finance**. Because virtual currency is neither electronic money nor legal tender in Germany, transferring Bitcoin should be regarded as a transfer of goods, potentially subject to VAT and income tax.[29]

BaFin confirmed the Ministry of Finance's position in December 2013 that Bitcoin is a "unit of account" and thus a financial instrument under the German Banking Act (Kreditwesengesetz). According to BaFin, Bitcoin is neither legal tender nor electronic money under European or German law. At the same time, it clarifies that Bitcoin payments and mining are not regulated and do not require a license. If you buy and sell bitcoins for a living, you must obtain a license under the German Banking Act. As Bitcoin is classified as a "unit of accounting," it makes sense that Bitcoin-related businesses require a license from BaFin based on their business model.[30]

The **New Zealand** Supreme Court ruled in the case "Rusco v. Cryptopia" that cryptocurrency is intangible personal property.[31] When discussing the issue of considering cryptocurrency as property, the court relied on Lord Wilberford's opinion that "before a right or interest can be admitted into the category of property or rights affecting property, it must be definite, identifiable by third parties, capable of being accepted/recognized by third parties in its nature, and possessing some degree of permanence or stability."[32]

3.2. Bitcoin as an Electronic Currency

The traditional definition of electronic money is the nominal value of funds expressed electronically. Its main task is to develop such a universal payment system that can be used to pay for

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26 *Umeda S.,* Regulation of Cryptocurrency in Selected Jurisdictions, The Law Library of Congress, 2018, 57.

27 *Lee J., Kim J., Yim S.,* Virtual Currency Regulation Review, Great Britain, 2018, 184-187.

28 Ibid.

29 Please see *Berberich M., Wohlfarth T.,* Virtual Currency Regulation Review, Great Britain, 2018, 118-131.

30 Ibid.

31 *Norrridge R., Moir A., Morgan C.,* Growing Body of Common Law Decision That Criptocurrencies Can Amount to Property: Ruscoe v. Cryptopia Limited (in Liquidation) CIV-2019-409-000544, 2020, 728, <https://hsfnotes.com/pwtd/2020/05/18/growing-body-of-common-law-decisions-that-cryptocurrencies-can-amount-to-property-ruscoe-v-cryptopia-limited-in-liquidation-civ> [26.02.2023].

32 Ibid.

goods or services remotely via a computer, to complete a transaction, to carry out industrial and commercial activities, and so on.[33]

Bitcoin is considered an electronic currency in **Australia**, but it is not a financial product. Any activity involving cryptographic currency is not a licensable activity (except when the activity is directly related to fiat money). The Australian Digital Currency and Commerce Association contributed to the development of the Australian Electronic Currency Industry Code, which establishes and defines the standards deemed necessary for the management of crypto-currency businesses, though compliance and adherence to these standards is mandatory for association members only.[34]

Brazil is taking a similar approach. Although Bitcoin is not a financial asset, it has been recognized as an electronic currency (Niobium Coin (NBC)) by the Brazilian Securities Exchange Commission (Comissao de Valores Mobiliarios (CVM)). According to their definition, digital currencies are only securities when they serve a specific purpose, such as paying dividends to investors or when they are required for the management of the votes needed for running the company, etc.[35]

Argentina is one of the countries that recognize Bitcoin as an electronic currency. However, according to Argentina's approach and the supreme law – the constitution – virtual currency lacks a legal basis, and the only authority that can issue it as electronic money is the country's central bank.[36] This approach existed until 2014-2015, however, after this period, legal changes made by the Argentine government to the national currency led to a doubling of the use of Bitcoin.[37] Against the backdrop of the economic crisis, Argentina's existing legal regulations were put to the test, which would undoubtedly affect the cryptographic currency.[38] It became popular in Argentina, even for everyday items.[39]

Initially, Bitcoin was considered a virtual currency in **China** as well, and China's central bank was more tolerant of Bitcoin than of its predecessor QQ coin. Profits from virtual currency trading were subject to income tax in 2009, according to data released by the State Administration of Taxation in China. Even so, in December 2013, the Central Bank of China and five other government agencies

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33 *Sichinava D., Maghradze M.,* Principles and problems of transition to electronic money, in the collection: Globalization and Business, Tbilisi, 2018, 177 (in Georgian).

34 *Margossian A., Bagnall M., Mitra R., Halforty I.,* Virtual Currency Regulation Review, Great Britain, 2018, 6-17.

35 Please see *Gomes F. M. D. N., Rocha T. M. V., Martins A. C. R.,* Virtual Currency Regulation Review, Great Britain, 2020, 60-72; also see *Soares E.,* Regulation of Cryptocurrency in Selected Jurisdictions, 2018, 21-25.

36 *Olivera D., Russo C.,* Argentina's Biggests Futures Market plans to join Bitcoin Party, Bloomberg, 2018 <https://www.bloomberg.com/news/articles/2017-11-02/argentina-s-biggest-futures-market-plans-to-join-bitcoin-party?leadSource=uverify%20wall> [26.02.2023].

37 Please see *Moreno J.*, Virtual Currency Regulation Review, Great Britain, 2018, 1-6; also see *Rodriguez-Ferrand G.,* Regulation of Cryptocurrency in Selected Jurisdictions, 2018, 2-5.

38 *Eguino H., Schachtele S.,* A Playground for Tax Compliance? Testing Fiscal Exchange in an RCT in Argentina, 2020, 1-3 <https://publications.iadb.org/publications/english/document/A-Playground-for-Tax-Compliance-Testing-Fiscal-Exchange-in-an-RCT-in-Argentina.pdf> [26.02.2023].

39 Ibid.

issued a joint directive declaring Bitcoin to be illegal tender. According to this source, Bitcoin is not a currency in and of itself; Bitcoin is a virtual commodity that cannot be used in circulation as a currency. According to the above guidance, Bitcoin users can only buy and sell Bitcoin at their own risk, and financial and payment institutions are forbidden from dealing with Bitcoin. Similarly, bitcoin exchange websites must register with the Bureau of Telecommunications and follow anti-money laundering regulations.[40]

With the increasing popularity of cryptocurrency, China is attempting to create a regulatory complex for it that, on the one hand, would bring cryptocurrency within the scope of legal regulation while, on the other hand, would not stifle technological innovation. According to the relevant circulars, ICOs have been banned across the country since 2017, with violations resulting in both civil and criminal liability.[41]

The People's Bank of China defines the legal policy of cryptocurrency in China, with the involvement of which the China Banking and Insurance Regulatory Commission issued working recommendations in 2018, according to which local cryptocurrency will be considered legitimate electronic money only if it is issued by the People's Bank of China and has the same characteristics as real fiat money.[42]

3.3. Bitcoin as a Virtual Currency and its Regulatory Framework

The **United States** has one of the world's largest markets. In 2013, the United States Supreme Court issued the first rulings on virtual currency.[43]

Bitcoin is recognized as a virtual currency in the United States of America. Bitcoin can be used as electronic money," suggests Texas state judge Amos Mazzant. It allows you to buy goods or services. It can also be exchanged for common currency, such as US dollars. Therefore, Bitcoin is a currency or a type of money, and investors who wish to invest in BTCST do so.[44]

It should also be noted that it is illegal in Russia to issue any type of cryptocurrency as a means of payment. Despite this, the exchange of cryptocurrency for real money is not prohibited and is only possible by authorized persons who must ensure the identification of the person exchanging personal data.[45]

According to FinCEN's[46] March 2013 guidance, "Application of FinCEN's Regulations to Persons Administering, Exchanging, or Using Virtual Currencies," the Bank Secrecy Act[47] applies to

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40 Please see *Fu A.,* Virtual Currency Regulation Review, Great Britain, 2018, 96-108; also see *Zhang L.,* Regulation of Cryptocurrency in Selected Jurisdictions, 2018, 30-34.

41 *Gong L., Yu L.*, Blockchain & Cryptocurrency Regulation, China, 2019, 262-263.

42 Ibid.

43 *Lynch S.,* U.S. judge says SEC can pursue Bitcoin-related lawsuit, Washington, 2010 <https://www.reuters.com/article/us-court-sec-bitcoin-idUSBRE97517G20130806> [26.02.2023].

44 Ibid.

45 *Sidley Austin LLP*, Virtual Currency Regulation Review, 2018, 333-335.

46 The Financial Crimes Enforcement Network is a bureau of the United States Department of the Treasury that collects and analyzes information about financial transactions in order to combat domestic and international money laundering, terrorist financing, and other financial crimes.

persons who create, store, distribute, distribute, exchange, receive, or count virtual currency. Thus, three main segments were distinguished: "users", "administrators" and "exchangers".

"Users" who acquire virtual currency and use it to purchase real or virtual goods are not regulated entities. An "administrator" or "exchanger" who (1) receives and settles convertible virtual currency or (2) buys or sells virtual currency for any purpose is a "money transmitter" and is subject to FinCEN regulation.[48]

The New York State Department of Financial Services (DFS) published a draft regulation of virtual currency in July 2014. This is the first document that will establish a comprehensive regulatory framework for Bitcoin. The framework includes consumer protection, anti-money laundering, and security rules for virtual currency businesses. Persons who conduct activities such as receiving and sending virtual currency on behalf of clients; holding or controlling virtual currency on behalf of customers; exchanging virtual currency for both real currency and other virtual currency; issuing virtual currency, and others will be required to obtain new types of licenses (dubbed "BitLicenses"). Virtual currency miners and merchants who sell goods and services for virtual currency do not need to be licensed by this project. BitLicense holders must identify all users, keep a reserve of the corresponding virtual currency, and own it. Finally, DFS will conduct security audits of BitLicense holders to prevent further incidents like the MtGox[49] hack.[50]

Georgia has been actively working on the classification of cryptocurrency and the incorporation of related regulations since the beginning of 2020. The article "virtual asset" was added to the Organic Law of Georgia on the National Bank of Georgia, which includes cryptocurrency but it is not considered as a legal method of payment, according to the most recent amendments.[51] The registration of a virtual asset service provider has been determined in the amount of 5,000 GEL, according to Law of Georgia "On Registration Fees," which went into effect on January 1 of this year.[52] Furthermore, according to confirmed information from the National Bank of Georgia, the National Bank will develop rules for the registration of virtual asset service providers by July 1, 2023. The rules define, among other things, the registration requirements, including the list of documents to be presented. Therefore, no cryptocurrency-related activity will be permitted until the necessary license is obtained.

The **European Central Bank** classifies virtual currency based on two main criteria: a) the ability to purchase virtual currency with a regulated currency. b) the ability to buy real goods and services with virtual currency;[53] and there are three major schemes:[54] 1. The virtual currency has nothing to do with the real economy, according to the closed virtual currency scheme. Such virtual

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47 A person engaged in the business of money services must register with FinCEN and comply with established anti-money laundering requirements, according to the aforementioned act.

48 FinCEN, FinCen Cryptocurrency Regulation, 2013.

49 Mt. Gox was a bitcoin exchange based in Shibuya, Tokyo, Japan.

50 *Sidley Austin LLP*, Virtual Currency Regulation Review, 2018, 345-350.

51 Please see "On the National Bank of Georgia" regarding amendments to the Organic Law of Georgia <https://matsne.gov.ge/ka/document/view/5562437?publication=0> [26.02.2023].

52 Please see Law of Georgia "On Registration Fees" <https://matsne.gov.ge/ka/document/view/5561976?publication=0> [26.02.2023].

53 *European Central Bank Eurosystem,* Virtual Currency Schemes, 2012, 9.

54 Ibid.

currency has no real-world value and cannot be cashed out.[55] 2. In a one-way virtual currency scheme, it is possible to purchase virtual currency in exchange for real currency; however, reverse exchange is not permitted, and all conditions regarding this currency are written by the creator of said virtual currency.[56] 3. In the two-way virtual currency scheme, it is possible to buy and sell virtual currency for real money, allowing for two-way exchange.

3.4. The Risks of Using Bitcoin in Fraudulent Schemes and Money Laundering

Bitcoin, which is based on the blockchain platform, is a completely decentralized mechanism with no supervisory authority to control transactions. Because of the aforementioned definition, there is a significant risk that Bitcoin will be used for fraudulent schemes, legalization of illegal income, money laundering, and so on. This situation is exacerbated by the fact that countries do not take a consistent approach to Bitcoin and there is no centralized institution of order and classification.

South Korea takes this issue very seriously at the legislative level. On March 5, 2020, the Korean National Assembly amended the Act on the Provision of Information Derived from Certain Financial Transactions, increasing the obligations of virtual "good" providers from one to two, though the government's announcements will not impede the development of the said cryptocurrency and technology.[57]

The aforementioned issue was handled very carefully in **Georgia**. In particular, amendments to the Law of Georgia "On Promotion of Preventing Money Laundering and Financing of Terrorism," which includes crypto-currency, went into effect on January 1, 2023. Article 17 Prima: "Transfer of a convertible virtual asset" was added to the aforementioned law, which prescribed and specified the virtual asset service provider's obligations and established the inevitability of the supervisory authority's role.[58]

3.5. Legal Regulation of Cryptocurrency – European Central Bank Approaches

Closed virtual currency schemes that operate within a specific virtual community and do not deviate from this scope are less relevant to central bank performance. The situation is different for the other two schemes, which are related to the real economy. Virtual currencies that can be exchanged bilaterally for real currency, in particular, create the possibility of forming a speculative environment; and in cases where real goods and services can be purchased with virtual currency, the issue of competition with traditional currencies arises.[59]

The European Central Bank document discusses the potential impact of virtual currency schemes on the Central Bank's performance of the following functions: a) price stability; b) financial

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55 Ibid.

56 *Chkoidze N., Tomaradze G.,* Virtual/cryptographic currency and its peculiarities, regulation of virtual currency (on the example of BITCOIN), Tbilisi, 2014, 49 (in Georgian).

57 *Lee J., Kim J., Yim S.*, Virtual Currency Regulation Review, 2020, 251.

58 Please see Law of Georgia "On Promotion of Preventing Money Laundering and Financing of Terrorism" <https://matsne.gov.ge/ka/document/view/5562294?publication=0> [27.02.2023].

59 *ECB*, 2012, 33.

stability; c) payment system stability. This document also addressed the potential reputational risk to the central bank posed by incidents involving the security of virtual currency schemes.[60]

Based on preliminary analysis, the European Central Bank report concludes that, given the current situation, virtual currency schemes: do not pose a threat to price stability as long as currency creation remains low; are usually unstable but do not threaten financial stability due to their limited connection with the real economy, low sales volume, and small number of customers; it is currently unregulated and unsupervised by any state structure. Customers, however, are exposed to credit, liquidity, operational, and legal risks by participating in this scheme. Because of the lack of specific legal norms, it can pose a challenge for state structures, as the aforementioned schemes can be used for illegal activities by criminals, fraudsters, and money launderers. It may have a negative impact on central banks' reputation. Given that the use of these schemes is increasing significantly and incidents related to these schemes are widely publicized, the public may perceive the central bank's improper performance of its job or function as the cause of the incident; because they are similar to payment systems, they fall under the responsibility of central banks, creating the need to at least study the development process of these schemes and prepare a preliminary report. Although these schemes can have a positive impact on financial innovation and provide consumers with an alternative means of payment, it is clear that they also pose risks that, for the time being (due to the small volume of virtual currency), can only affect consumers.[61]

The ECB also lists a number of variables that are causing the volume of virtual currencies to increase. These include: a) the availability and growing use of the Internet, which increases the number of people who participate in the virtual community; b) the development of e-commerce and digital goods, which creates an ideal setting for virtual currency schemes; c) the higher level of anonymity compared to other electronic payment instruments, which is attained when using virtual currency; d) the lower costs (fees), compared to traditional payment systems; e) more direct and faster transactions. The European Central Bank believes it is important to periodically monitor the growth of the schemes in order to appraise the risks because virtual currency schemes will continue to expand.[62]

However, in terms of investor protection and market integrity, the European Central Bank's 2022 Financial Stability Review mentions crypto-assets as a risk buffer.[63] The factors that make cryptocurrency a threat were highlighted in the aforementioned work. These include: misleading information; a lack of rights and protections, such as grievance procedures or grievance mechanisms; product complexity, sometimes with built-in levers; fraud and malicious activity, money laundering, cybercrime, hacking, and computer viruses; market manipulation (lack of price transparency and low liquidity).[64]

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60 Ibid.

61 *ECB*, 2012, 47.

62 *ECB*, 2012, 52.

63 *EBA*, *Eiopa E.*, EU Financial Regulators Warn Consumers on the Risks of Crypto-Assets, 2022 <https://www.esma.europa.eu/sites/default/files/library/esa_2022_15_joint_esas_warning_on_crypto-assets.pdf> [27.02.2023].

64 Ibid.

Furthermore, transparency and accountability to regulatory bodies are critical, as the latter is the only way to reduce the risks listed. As a result, strict transparency requirements should be implemented, as well as conduct standards.

4. Conclusion

The meaning of cryptographic currency was established within the scope of the conducted research; cryptocurrency certainly has an important place in private law and its existence is inconceivable apart from private law also was determined; cryptocurrency can be classified as an intangible asset because it has the basic elements to be classified as such. However, in order to spread property regulation norms and define a regulatory lever on cryptocurrency as a property – must be shared globally, not just by a few countries.

Many problematic issues emerged while researching the nature of cryptocurrency, necessitating the immediate implementation of appropriate regulation at both the national and international levels. These issues include crypto-investor vulnerability, the implementation of fraudulent schemes, the risk of money laundering, and so on. As a result, cryptocurrency confusion may cause irreparable harm to the country's economy, reputation, and individuals who appear as crypto market players.

Various countries around the world, including Georgia, are actively working on legislative changes related to AML policy, which is encouraging. When working on changes, it is critical to set an important limit that will not unreasonably complicate economic market development by introducing inappropriate licensing or other procedures. To do so, the legislator must have a thorough understanding of the uniqueness of cryptocurrency, its legal status, its advantages over fiat money, and all of the elements that make it innovative.

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