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SMART CONTRACTS IN KAZAKH LEGISLATION: PROBLEMS OF CIVIL LAW QUALIFICATION AND EVIDENCE IN CRIMINAL PROCEEDINGS

Abstract

A smart contract is more than a technical phenomenon; it raises legal questions about intent, transaction form, and obligation performance in a digital environment. Kazakhstani law, including the Civil Code and the Law on Electronic Documents, provides a basis for digital tools in contracts, recognizing electronic forms and the principles of freedom of contract. AIFC law further validates automated systems. However, the lack of a conceptual definition in civil legislation creates challenges for public law. This article argues that smart contracts should not be viewed as standalone contract types but through a functional approach: as either a form of expressing intent or an automated performance mechanism. Special focus is placed on criminal proceedings. The authors demonstrate that the absence of a clear definition complicates distinguishing civil torts from cybercrimes and hinders the use of code as evidence or the seizure of digital assets. The core issue is the discrepancy between traditional civil law constructs, blockchain logic, and current procedural evidentiary standards in Kazakhstan.

Keywords: smart contract, civil contract, electronic transaction, automated performance, expression of will, digital environment, blockchain.

Introduction

The topic of the smart contract is today often discussed in a tone that is especially dangerous for a lawyer: as though the law need only “catch up” with technology, and everything will then become clear of itself. Yet precisely in contract law such an intonation is misleading. The smart contract creates

difficulty not because civil law has not yet managed to invent a separate word for it. The difficulty lies deeper. It intrudes into the very construction of the contract, redistributes its internal elements, and compels one to pose anew the question of where, in the digital environment, the obligation arises, how the will of the parties is expressed, what exactly should be deemed a contractual term, and at what point the legal text ends and the technological algorithm begins [1].

If one looks at the problem superficially, it may be reduced to a simple dilemma. The first position maintains that a smart contract is the same contract, only written not in ordinary legal language, but in the language of program code. The second, on the contrary, insists that a smart contract is not a contract at all, because code is not an expression of will, but merely a technical instruction launching a pre-set process. Both positions are outwardly persuasive. Both, at the same time, suffer from a lack of precision. The first too quickly equates the legal agreement with its software implementation and thereby ignores the problem of interpretation, defects of will, incompleteness of terms, and the mismatch between code and text. The second is equally hasty in pushing the smart contract outside the boundaries of civil law, although it is precisely civil-law consequences – the transfer of rights, the performance of obligations, the distribution of risks, liability, and the recognition of the transaction as invalid – that turn out to be at the centre of the disputes that arise [1].

For the law of the Republic of Kazakhstan, this question is especially sensitive. The Civil Code preserves the classical model of the contract as an agreement of two or more persons on the establishment, alteration, or termination of civil rights and duties [1]. At the same time, the Code allows the written form of a transaction both on paper and in electronic form [1]. The Law "On the Electronic Document and Electronic Digital Signature" recognizes the legal significance of the electronic document and links it to compliance with certain requirements, including identification of the person and use of an electronic digital signature [2]. This means that Kazakhstani law has long since ceased to be tied exclusively to the paper carrier. But one thing is an electronic contract in the ordinary sense, where the text has been transferred into the digital environment, signed, and can be reproduced. Quite another is the smart contract, where part, or even the whole, of the contractual mechanism may be implemented in code, and performance is launched automatically upon the occurrence of stipulated conditions [2].

The situation is further complicated by the fact that digital regulation in Kazakhstan is developing unevenly. On the one hand, basic civil law continues to think in terms of the traditional categories of transaction, contract, form, signature, will, and expression of will. On the other hand, the Digital Code adopted in 2026 already operates with the category of the smart contract and directly links to it the arising of rights and duties of participants in the digital environment, although the Code itself, at the time of preparation of the present article, has not yet entered into force, since it comes into effect upon the expiration of six months after the first official publication [3]. This point cannot be passed over in silence. It shows that legislative evolution has already begun, but the general civil-law apparatus has not yet been finally rebuilt. Consequently, the legal qualification of the smart contract in Kazakhstan must be constructed not on the assumption that the new term in itself has already resolved everything, but on a stricter analysis of which elements of the contractual construction in current law already permit digital transformation, and which continue to require doctrinal and normative clarification [1, 3].

Of particular significance in this context is the legal regime of the AIFC. The AIFC Contract Regulations directly provide that a contract may not be deprived of legal force merely because an electronic record or electronic communication was used in its formation; moreover, they recognize the validity of a contract concluded through the interaction of an automated system and a natural person, or through the interaction of automated systems, without mandatory human intervention in every separate action [4]. For the problematics of the smart contract, this is of fundamental significance. Even if the law of the AIFC does not resolve all questions of qualification, it demonstrates normative readiness to recognize as legally significant those contractual mechanisms which in classical civil law were long perceived as secondary in relation to the "real" agreement concluded in textual form [4].

Therefore, the principal question of the article should be posed not in the simplified form – "is the smart contract a contract or not?" – but otherwise. It is necessary to determine precisely what legal function it performs in the structure of the civil-law obligation. Can it be regarded as a form of contract? As a means of expressing agreed will? As an independent digital means of fixing essential terms? Or does it in most cases represent merely a software mechanism for performing an already

existing contract concluded in textual, electronic, or mixed form? This reformulation of the question is important because otherwise the dispute turns out from the very beginning to be false: either the technology is declared, without sufficient grounds, a "new type of contract," or the entire phenomenon is reduced to technical infrastructure and removed from the sphere of legal qualification [5].

The present article proceeds from a different premise. The smart contract should not be understood as a ready-made legal entity with a place in the system of civil law fixed once and for all. It represents a functionally heterogeneous construction. In some cases, a smart contract will indeed be close to a contract concluded in electronic form. In others it will act as a method of automated performance of an already existing obligation. In still others it will manifest a mixed nature, combining the fixation of part of the terms, the algorithmization of their performance, and the technical-evidentiary function of a digital record. It is precisely this heterogeneity that makes the problem of legal qualification so difficult. Civil law is accustomed to operating with comparatively stable legal forms. The smart contract forces recognition that, in the digital environment, one and the same construction may simultaneously be both a means of formalizing the contractual link and a mechanism of performance, and a source of evidentiary information about the legally significant conduct of the parties [5, 6].

Materials and methods

The research is constructed on a combination of formal-legal, systemic, comparative-legal, and doctrinal methods. Formal-legal analysis is necessary for a precise reading of the basic norms of Kazakhstani civil legislation, above all the provisions of the Civil Code of the Republic of Kazakhstan on the concept of the contract, freedom of contract, and the written form of transaction, as well as the norms of the Law of the Republic of Kazakhstan "On the Electronic Document and Electronic Digital Signature" [1, 2]. The systemic method is needed because the smart contract cannot be considered in isolation from the broader digital infrastructure of law. Its qualification depends not only on norms concerning the contract, but also on how the legal order understands electronic form, electronic communication, digital record, identification of the party, the significance of code, and also the limits of permissible automated performance [1, 4].

At the same time, the methodological framework is supplemented by a techno-legal perspective, since the analysis of smart contracts presupposes consideration of blockchain as a technological environment, including distributed ledger mechanisms, cryptographic validation, and algorithmic execution of transactions, which directly influence the legal nature and qualification of smart contracts.

The comparative-legal aspect in this theme is not optional. The law of the AIFC is of particular interest precisely because it already normatively consolidates provisions on electronic contracts and automated systems of contract conclusion. This environment makes it possible to see in what direction the general civil-law model of Kazakhstani law may develop [4]. In addition, for the evaluation of more general tendencies, international reference points are used – above all the functional-equivalence approach to electronic messages and electronic contracts formulated in UNCITRAL acts, as well as materials of Anglo-Saxon legal doctrine on smart legal contracts. These sources are important not as a model for mechanical borrowing, but as a means of seeing more precisely where exactly qualification failures arise in Kazakhstani law.

In addition, the comparative analysis is extended to interdisciplinary dimensions, including the evaluation of digital evidence frameworks in foreign legal systems, where blockchain-based records and smart contract outputs are treated as potential sources of evidentiary information in both civil and criminal proceedings.

The doctrinal basis of the article includes, above all, domestic and regionally proximate works devoted to the legal nature of the smart contract, its correlation with the contract, the written form of transaction, and the mechanism of automated performance [6]. This is important for two reasons. First, it is in Kazakhstani and regional literature that the thesis has been formulated most clearly that the smart contract cannot, without reservation, be regarded either as a pure contract or as a pure program. Second, domestic doctrine has already shown how closely the topic of the smart contract is linked with more general questions: the admissibility of electronic expression of will, the significance of the signature, the legal force of the digital record, the interpretation of code, and the problem of mismatch between legal text and software implementation [6, 7].

At the same time, the doctrinal analysis is considered in connection with criminal procedural aspects of digital evidence, particularly the admissibility, reliability, and evaluation of blockchain records and algorithmically generated data as potential evidentiary materials in criminal proceedings, which allows bridging civil-law qualification issues with procedural evidentiary standards.

Methodologically, the article proceeds from two principal limitations. The first is that the smart contract cannot be identified with any digital or electronic transaction whatsoever. The electronic form of transaction in itself does not yet create a self-executing algorithm. The second is that the smart contract cannot be regarded merely as neutral program code having no independent significance for law. If code launches the transfer of a digital asset, the change of the status of a record, the execution of a payment, the transfer of access, the accrual of a sanction, or another legally significant action without additional expression of will by the party at the stage of performance, the law can no longer relate to it as to an external technical factor. It is compelled to integrate it into the structure of the obligation – even if not as a new type of contract, then as its special digital form, function, or element [5].

Results and discussion

The Normative Framework in the Law of the Republic of Kazakhstan: What the Current Law Already Permits and What It Still Does Not Explain. The starting point remains the Civil Code of the Republic of Kazakhstan. It is precisely this that sets the basic language of qualification. By virtue of Article 378 of the Civil Code of the Republic of Kazakhstan, a contract is an agreement of two or more persons on the establishment, alteration, or termination of civil rights and duties [1]. This formula retains fundamental significance for the digital environment as well: so long as there is no agreement, there is no contract. No technological complexity, distributed ledger, automation of transactions, or intelligent code abolishes this basic proposition. But the Civil Code of the Republic of Kazakhstan contains a second important element as well: the written form of a transaction may be made on paper or in electronic form, and the exchange of electronic documents, electronic messages, or other data making it possible to determine the subject and the content of his or her expression of will is capable of performing the function of the written form [1]. It is precisely here that a legal possibility opens for the smart contract to enter the contractual regime. If, in a concrete case, a digital construction makes it possible to identify the parties, the content of their agreed terms, and legally significant actions, civil law can no longer exclude it in advance from the field of contractual qualification.

But the first problem arises even here. Electronic form in Kazakhstani civil law and the smart contract do not coincide automatically. The electronic contract is a broader category and, at the same time, a more comprehensible one. It may be textual, documentary, signed by electronic signature, exchanged through an information system, yet still remain reproducible in the familiar legal logic. The smart contract, by contrast, is often tied not to text, but to program code and to the algorithm of self-performance. In this sense, it is not merely electronic; it is also operational. It not only fixes the terms, but also performs them without additional confirmation on the part of the person. It is precisely here that the qualitative distinction begins [6, 8, 9].

The Law of the Republic of Kazakhstan "On the Electronic Document and Electronic Digital Signature" creates yet another important layer of regulation. It links the legal force of the electronic document with its existence in electronic-digital form, with the possibility of perception, storage, and reproduction, and with certification by means of an electronic digital signature, where an electronic document in the strict legal sense is concerned [2]. For the smart contract this has ambivalent significance. On the one hand, this law confirms that the law of Kazakhstan is not tied to paper and permits the digital form of a legally significant document. On the other hand, it demonstrates that not every digital record automatically becomes an electronic document in the legal sense. This is especially important where the smart contract functions within a blockchain environment, and the parties perform actions not through a document signed by EDS, but through transactions, keys, addresses, platform interfaces, and software calls. Then the question arises: should one at all strive forcibly to "fit" any smart contract into the law on the electronic document, or is a more flexible civil-law understanding of the electronic form of transaction needed here [2, 6, 7]?

An additional turn is introduced by the Digital Code of the Republic of Kazakhstan adopted on 9 January 2026. Although, as of the date of preparation of the article, it has not yet entered into force,

since, according to the official publication, it enters into force upon the expiration of six months after the first official publication, the very fact of its adoption can no longer be ignored [3]. The Code is important not only because it uses the term "smart contract." More important is something else: it shows that the legislator is already ready to link the rights and duties of participants in the digital environment with the terms of a smart contract and with digital records confirming participation and the performance of actions in the relevant environment [3]. This is a serious shift. While the classical Civil Code of the Republic of Kazakhstan continues to think in terms of agreement of the parties and written form, the Digital Code moves toward recognizing more complex digital constructions in which the contractual effect is distributed among agreement, code, and digital record. It is at this point that the real normative gap arises: the general civil-law apparatus has not yet been finally modernized, while digital legislation already offers another way of legally describing relations.

The legal regime of the AIFC is even more revealing in this respect. Part 4-1 of the AIFC Contract Regulations provides that a contract may not be deprived of legal force, validity, or enforceability solely because an electronic record was used in its formation; an offer and acceptance may be expressed by means of electronic communication; and a contract formed through the interaction of an automated system and a natural person, or the interaction of automated systems, must not be regarded as legally invalid merely because a human being did not intervene in every separate action of the system or in the formation of the final contract [4]. For the analysis of the smart contract, this is almost an ideal normative laboratory. Here the law no longer clings to the traditional image of the contract as a text read and signed by a human being at every point of formation. Instead, it recognizes that automation of individual stages of the contractual process does not, in itself, destroy the contractual nature of the relation [4].

Even this, however, does not finally resolve the question of the smart contract. The AIFC Contract Regulations legalize electronic communication and automated conclusion of contract, but do not remove the problem of the correlation between code and agreed will. If an automated system forms the contract, that is one thing. If program code performs the obligation after the contract has already been concluded, that is another. If, however, the code itself contains a significant part of the terms and at the same time acts as the mechanism of their performance, that is a third situation. It is precisely for this reason that the existing normative basis in Kazakhstan does not permit a simple one-line conclusion. It opens the smart contract's entry into the space of contract law, but does not provide a ready general formula of qualification. This is what constitutes the principal theoretical problem of the article.

Smart Contract as Contract, as Form, and as Method of Performance: Competing Models of Qualification. In legal literature on smart contracts, at least three basic models may be identified. The first regards the smart contract as a civil-law contract concluded in electronic form and performed by means of program code. The second qualifies it as a program not identical with the contract: the legal relation arises from the ordinary agreement of the parties, while the code only technically implements that agreement. The third model proposes an intermediate, functional approach, under which, depending on the concrete construction, the smart contract may act both as a form of fixing part of the contractual terms and as a mechanism of automated performance [6; 10].

The first model is outwardly the most attractive. It allows one to speak of the smart contract in simple legal language: if there are parties, there are terms, there is consideration or another contractual interest, and performance is carried out automatically, why should such a construction not be recognized as a contract? It is precisely in this logic that M.K. Suleimenov writes of the smart contract as a programmed contract, the terms of which are fixed in program code and which is automatically performed with the aid of blockchain technology [6]. Such an understanding has a strong side: it does not throw the smart contract out of civil law, but, on the contrary, seeks to build it into the already existing contractual model. Yet this approach also carries a serious risk. If code is too easily declared to be the contract, the distinction between the legal term and its software instruction may be lost. Meanwhile, one and the same term in text and in code is not always expressed identically, and sometimes is not reducible from one to the other at all. Legal language allows evaluative categories – reasonableness, good faith, materiality of breach, abuse of right. Code, as a rule, does not favour such categories. It requires formalizable parameters, binary conditions, rigid triggers, and pre-set scenarios of performance [6, 8].

The second model – "smart contract as program" – appears more cautious. It emphasizes that the contract remains the textual or otherwise expressed agreement of the parties, while the code performs only the role of a means of performance. In her article, A.D. Imangalieva specially notes the existence of several competing approaches and indicates that the smart contract may be understood not only as a contract, but also as a program or as a mechanism for securing the performance of obligations [7]. This approach is valuable because it does not mix the legal and the technical without sufficient grounds. It allows the traditional contractual construction to be preserved and code to be treated as an attachment to it. But this approach too has its weakness. In some digital relations the code is no longer merely an "attachment." It may determine the order of counter-performance, the conditions of access to the asset, the order of distribution of digital rights, the sequence of transactions, and even the sanctioning consequences of non-performance. In such situations, it is already difficult to assign code to a sphere wholly external to the contract. The law risks underestimating its own object of analysis [7, 9].

The third model – the functional one – appears to be the most productive. It does not seek to fix a universal answer in advance, but proceeds from the premise that qualification depends on the structure of the concrete legal relation. If code merely automates an obligation previously agreed in a textual contract, then the smart contract is rather a mechanism of performance. If code and accompanying text form a single complex containing the essential terms, parameters of performance, reciprocity of duties, and grounds for termination of the obligation, then the smart contract may perform a form-creating function as well. If, in a platform environment, the contract arises through the totality of digital actions, digital records, and coded terms, without a habitual separate textual document, the question becomes subtler still: here the smart contract may act as a mixed form of fixation and performance of contractual expression of will [6, 10].

It is precisely the functional model that best corresponds to the present state of the law of Kazakhstan. It allows one not to break the Civil Code by excessively broad recognition of a "new type of contract," but at the same time not to nullify the legal significance of code. In the law of the Republic of Kazakhstan, it is at present difficult to assign to the smart contract the status of an independent contractual type. But this does not mean that it remains entirely outside the contractual field. On the contrary, it may occupy different positions within it. And it is precisely this multifunctionality that makes the attempt at a single qualification methodologically weak.

Form of Transaction and Expression of Will: Can Code Replace Text. The most difficult question in the theme of the smart contract is connected not with the name of the construction, but with its form. Any civil-law contract exists not only as an abstract transaction, but also as a way of expressing agreed will. In the traditional model, this expression of will is fixed in text, signature, exchange of documents, messages, or conclusive actions. But when a significant part of the contractual construction is transferred into code, the law must answer: is program code merely a technical container of another's will, or is it itself capable of performing the function of a legally significant fixation of that will [1, 2, 6]?

Here it is tempting to answer sharply: code cannot be the form of contract, because ordinary participants in circulation do not read it as legal text. Such an answer, however, does not withstand criticism. First, civil law in other situations also allows complex constructions the content of which is not perceived in full directly by each party without special knowledge. Second, the form of transaction in modern law has long ceased to be tied only to the paper document. If the legislator recognizes electronic form and allows the exchange of electronic messages and other data identifying subjects and the content of expression of will, the very possibility of digital fixation of contractual content no longer gives rise to a principled objection [1, 2]. Consequently, the problem is not that code is electronic, but whether it is capable of truly conveying the legally significant content of the agreement.

M.K. Suleimenov, developing this line, notes that from a legal point of view the smart contract may be classified as the written form of a transaction made by means of electronic or other technical means making it possible to reproduce, on a material carrier, the content of the transaction in unaltered form [8]. This is a very strong argument, but it requires reservation. Such qualification is possible not always. It is justified where code truly corresponds to the will of the parties and can be interpreted as the carrier of the agreed terms. But in a number of cases code performs a more modest task: it does not fix contractual content fully, but only implements separate pre-determined parameters – deadlines, access conditions, payment procedure, redistribution of tokens, technical triggers of performance. In

such a configuration, it would be an exaggeration to regard the whole code as the form of the contract proper. Rather, one should speak of a mixed construction: the contract exists as a totality of textual and digital elements, while code assumes part of the functions of its operationalization [6, 8, 9].

No less important is the problem of the signature. The Law on the Electronic Document and Electronic Digital Signature attaches key significance to the electronic signature as a means of certifying the electronic document [2]. But the blockchain environment and smart-contract architecture do not always use precisely that form of electronic signature which is directly described in national legislation. As a result, legal tension arises. From the standpoint of strict formal technique, it may be asserted that the absence of EDS in its form habitual for Kazakhstani law complicates recognition of the smart contract as a full-fledged electronic document [2, 7]. On the other hand, complete ignoring of other digital methods of cryptographic identification would also look archaic. Addresses, keys, digital certificates, platform identifiers, and other mechanisms of authentication may perform a function comparable in substance to a signature, although they do not coincide with it normatively in the strict sense. It is precisely here that the problem of legal qualification reveals itself: current law in Kazakhstan has not yet given an exhaustive answer whether such means may be regarded as sufficient for compliance with the requirements concerning the form of transaction outside specially regulated regimes [2, 3, 4].

Therefore, the smart contract in the law of the Republic of Kazakhstan cannot yet be unconditionally equated with an electronic document in the strict legal sense. But it would be just as wrong to infer from this that it is wholly incapable of participating in the observance of the written form of transaction. More accurate appears to be the position according to which the smart contract may participate in the formation of the written electronic form of a transaction if the totality of digital data, messages, platform actions, and software record makes it possible to establish the parties, the content of their agreed will, and the legally significant parameters of the obligation. In other words, the question should be decided not at the level of the simple formula “code is not a document,” but at the level of functional analysis of the concrete construction [1, 2, 7, 8].

Essential Terms, Interpretation, and the Problem of Divergence Between Text and Code. One of the reasons why the qualification of the smart contract remains disputed lies in the difficulty of answering the question of the essential terms of the contract. For classical civil law, this is a matter of principle: a contract is deemed concluded if the parties have reached agreement on all its essential terms [1]. In the smart-contract environment this thesis ceases to be trivial. Code may perfectly implement the algorithm of performance, but it is not always evident whether it contains all the necessary legal material. Sometimes code reflects only part of the agreement, while the remaining terms are contained in a separate textual document, user agreement, platform rules, or external interface. Sometimes, on the contrary, the formal text is minimal, while the real mechanism of rights and duties is disclosed precisely in the code. Then the question of where the essential terms of the contract are located – in the text, in the code, or in their totality – turns from a technical one into a qualification issue.

This problem inevitably brings with it the question of interpretation. Legal text admits evaluative interpretation, recourse to the purpose of the contract, the conduct of the parties, customs of business turnover, reasonableness, good faith, and other contextual criteria. Code is structured differently. It either worked or did not work. As a rule, it does not contain the conceptual flexibility characteristic of legal language. If text speaks of a “reasonable period,” code must convert that expression into an exact parameter. If text permits adjustment depending on circumstances, code requires those circumstances to be algorithmized in advance. Hence a key risk arises: the smart contract may create the appearance of complete certainty where, from the legal point of view, the issue in fact required an evaluative decision [6, 8].

This feature is especially visible in cases of defects of performance or errors. If the program performed the algorithm literally, but literal performance did not coincide with the genuine common will of the parties, what should have priority – text, code, or reconstructed intention? The law of the Republic of Kazakhstan, in its general contractual model, proceeds from the priority of the agreement of the parties and allows interpretation of the contract according to its terms and meaning [1]. But in the smart-contract environment the code itself begins to claim the role of final expression of the terms. One of the most serious qualification risks is hidden precisely here. If code is recognized as the sole

and unconditional bearer of the content of the contract, the law will in effect hand over to the machine the question of what the parties "really" agreed. If, however, code is wholly subordinated to textual interpretation, a significant part of the practical meaning of the smart contract as a self-executing construction disappears [6, 7, 8].

An important consequence for Kazakhstani law follows from this. So long as a special normative approach to the relation between text and code has not been formed, it is safer to proceed from the premise that, in the event of divergence between textual contract and software implementation, priority should remain with the legally provable content of the agreement of the parties, while code should be treated as a means of implementation, not as an unconditionally self-sufficient source of the obligation. This does not destroy the smart-contract model, but protects civil law from technical formalism. Otherwise, any software defect, oracle error, incorrect logic of terms, or mismatch between the algorithm and the actual will of the parties could automatically turn into "proper" performance merely because the code worked that way [5, 7].

Smart Contract and Invalidity of Transaction: Defects of Will, Error in Code, and Allocation of Risk. Another knot of the problem is the question of how classical rules on invalidity of transaction are applicable to the smart contract. So long as the smart contract is perceived as an elegant technological shell, this question is often pushed aside. Yet it is precisely here that the limit of any simplified qualification becomes visible. If the smart contract is a form or part of the contract, then the general rules on defects of will, mistake, fraud, discrepancy between internal will and its outward expression, contradiction with law, and other grounds of invalidity must inevitably apply to it [1]. If, however, it is regarded merely as a program, a no less complex question arises: how should the legal order react to a situation where the program has performed an economically and legally significant action, but the very basis of that action was defective?

Here one cannot hide behind the formula "code does not make mistakes." What errs is not code as such, but the person who translates a legal term into machine logic, designs the algorithm, chooses the source of data, sets the oracle, determines the triggers of performance. Consequently, the risk of error in the smart-contract environment does not disappear; it merely shifts from the level of oral or textual misunderstanding to the level of software specification. For civil law this is not a reason to create a separate "technical" category of errors wholly detached from the general doctrine of transactions. On the contrary, what is necessary here is an adaptation of the traditional model: one must distinguish between error in the content of the agreed will, error in its technical translation into code, and error in the data on the basis of which the code launches performance [6, 7].

This problem manifests itself especially sharply where the smart contract interacts with external sources of information. Code may be written impeccably, but if it depends upon an oracle that transmitted incorrect data about price, term, fact of delivery, status of payment, or another external event, automated performance may nevertheless turn out to be legally erroneous. Here the civil-law question is no longer reduced to the quality of the program. It concerns the allocation of risk between the parties: who answers for the chosen source of data, who bears the consequences of incorrect automated triggering, may a party demand restoration of the original position if performance has already occurred automatically, and in what way is technical error to be proved in court. In current law in Kazakhstan there is no special universal answer, and therefore the corresponding disputes must be resolved through the general norms of contract and obligation law [1, 6, 7].

It is precisely for this reason that recognition of the smart contract as such does not release one from the application of classical civil-law filters. On the contrary, it makes them even more significant. Where the law begins unconditionally to idealize code, the risk increases that technical performance will mistakenly be perceived as legally indisputable. But law, if it remains law, cannot transfer the question of the validity of the transaction exclusively to the technological environment. A smart contract may automate performance; it cannot itself finally decide whether the expression of will was free, whether the parties were capable, whether fraud took place, whether consensus was reached on the essential terms, or whether the content of the obligation complied with the mandatory requirements of law [1, 2].

The Law of the AIFC and Its Significance for the General Civil-Law Model of Kazakhstan. The normative basis of the AIFC is of particular interest for the subject of the smart contract precisely because it demonstrates how a legal order may remove part of the fears before automation of contractual

processes. The AIFC Contract Regulations do not attempt specially to invent a new type of contract called "smart contract." They proceed differently: they recognize the legal force of electronic records and electronic communications in the formation of the contract, and directly provide that the absence of human participation in every separate action of an automated system does not render the contract invalid or unenforceable [4]. This is an important methodological step. It shows that, for recognition of the contractual force of an automated construction, it is not always necessary to create a special category; sometimes it is sufficient consistently to apply the general principles of contract law to the electronic and automated environment.

But the significance of the law of the AIFC should not be overstated. First, it is a special legal regime operating within a special jurisdictional environment. Second, even here the problems of interpretation, defects of code, mismatch between legal text and software implementation, allocation of technical risks, and proof of digital circumstances do not disappear [4]. Nevertheless, it is precisely the experience of the AIFC that is important for the general Kazakhstani law as a guideline. It shows that automation of communication and performance should not in itself be perceived as an anomaly incompatible with the contractual nature of the obligation. On the contrary, the legal system may recognize the electronic and automated environment without destroying the basic requirements concerning agreement, form, and binding force of the contract [4].

For the general civil law of Kazakhstan, a cautious yet important conclusion follows from this. The problem of the smart contract does not necessarily require the immediate creation of an exhaustive new chapter in the Civil Code of the Republic of Kazakhstan. At the first stage, a more productive course may be the development of an interpretative approach under which the general norms on the contract, written electronic form, and freedom of expression of will are consistently extended to smart-contract relations – provided that from the concrete digital construction it is possible to establish the parties, the content of their agreed will, and the legal consequences which they sought to achieve [11]. And only where the general norms are clearly insufficient – for example, for regulation of the relation between text and code, the allocation of the risk of oracle error, the procedure for modifying or stopping a self-executing mechanism – will more precise special intervention by the legislator be required [3, 4].

The Relationship Between the Civil Law Classification of Smart Contracts and the Criminal Procedural Aspects of Evidence in the Republic of Kazakhstan. An examination of the smart contract as a form of civil law contract within the legal framework of the Republic of Kazakhstan would be incomplete without an analysis of its relationship with the institutions of criminal procedure law. The transition of contractual relationships to the format of self-executing code inevitably alters the paradigm of evidence and the classification of offences in the digital environment. In the context of implementing the provisions of Article 42-1 of the Criminal Procedure Code of the Republic of Kazakhstan [12], which regulates the digitalisation of criminal proceedings, a fundamental problem arises regarding the legal status of smart contracts as a source of evidence. Since the parties' expression of intent is encapsulated in the program code, its recognition as an electronic document or physical evidence requires the development of new forensic standards. For the investigative authorities of Kazakhstan, a major challenge is the identification of the parties to a transaction in the context of the anonymity of blockchain networks, as well as the procedure for recording digital traces that could confirm the existence of a criminal offence. The issue of the civil law classification of smart contracts has a direct impact on the criminal law assessment of acts. In particular, when vulnerabilities in a software algorithm ('code errors') are exploited to misappropriate assets, it becomes difficult to distinguish between a civil tort and offences under Articles 190 (Fraud) or 205 (Unauthorised Access to Information) of the Criminal Code of the Republic of Kazakhstan [13]. The absence of a clear legislative definition of a smart contract in civil law allows the defence to interpret the unauthorised withdrawal of funds as the technical fulfilment of the terms of the contract, which makes it difficult to establish criminal intent and guilt. Furthermore, the autonomy of smart contracts conflicts with measures of procedural coercion. Under Article 161 of the Criminal Procedure Code of the Republic of Kazakhstan, the seizure of property is a key instrument for ensuring the enforcement of a sentence. However, the technological nature of blockchain, characterised by immutability and the absence of a central administrator, makes it impossible to freeze assets using traditional methods via banking institutions. This necessitates the adaptation of the provisions of Chapter 55 of the Criminal Procedure

Code of the Republic of Kazakhstan regarding international cooperation, given the cross-border nature of smart contracts and the decentralised format of distributed ledgers [12].

Investigative practice in Kazakhstan in recent years clearly demonstrates a rise in cybercrime, where smart contracts effectively serve as instruments of crime (for example, fraudulent schemes involving liquidity pools, and phishing smart contracts that automatically debit citizens' funds whilst masquerading as investment platforms). The Supreme Court of Kazakhstan has also highlighted this trend, drawing attention to the avalanche-like growth in disputes related to the trading of digital assets (including the Binance Kazakhstan exchange ecosystem). From a criminal procedural perspective, the hash code of a smart contract and transaction logs in explorers (such as Ethers can) must be verified as electronic data carriers [14]. Thus, the institutionalisation of smart contracts within the civil law of the Republic of Kazakhstan requires a comprehensive approach, including the establishment of procedural mechanisms for assessing software code as a legally relevant fact within the framework of criminal proceedings.

Problems of Legal Qualification in Kazakhstani Law: The Main Nodes. If what has been said is collected into a stricter system, five principal nodes of the legal qualification of the smart contract in the law of the Republic of Kazakhstan may be identified. The first node is the smart contract as contract or as technology. Here one cannot be satisfied with a binary answer. In Kazakhstani law, the smart contract is not an independent named contract. But it does not follow from this that it lies outside the contractual sphere. Its place is determined by the function which it performs within the obligation [1, 6, 7]. The second node is the form of transaction. Electronic form has already been recognized in the law of Kazakhstan. However, not every blockchain record or software transaction automatically meets the requirements for an electronic document in the strict sense of the law on EDS. This means that qualification of the smart contract requires distinction between the electronic document proper, the electronic form of transaction, and digital code as a method of fixing and performing terms [15]. The third node is the relation between text and code. The law still proceeds from the premise that the contract must be interpreted and applied as the result of the agreed will of the parties. But code may contain a more rigid and less flexible model than legal text. In the absence of special regulation, priority, as a general rule, should remain with the legally provable content of the agreement, and not with any machine implementation of that content [1, 6]. The fourth node is invalidity and error. The smart contract does not take relations outside the bounds of the general rules on defects of will, mistake, fraud, contradiction with law, or error in the content of the transaction. On the contrary, it creates a new form of manifestation of old civil-law problems: now error may be embedded not only in the text, but also in the algorithm [1, 7]. The fifth node is the evidentiary and institutional side. The identified nodes are not isolated analytical segments but elements of a single interrelated framework, where the civil-law qualification of smart contracts directly determines their procedural evaluation as potential digital evidence in criminal proceedings, particularly in cases involving blockchain-based transactions and automated asset transfers. The self-performance of code is attractive precisely because it creates the appearance of finality of performance. But in judicial proceedings this may generate special difficulties: how to prove the content of code, how to interpret a digital record, who will establish the technical error, how to evaluate the actions of an automated system, and how to correlate its operation with the actual agreement of the parties. These questions have not yet received independent integral elaboration for Kazakhstan; and therefore, without special doctrinal and possibly normative detailing, the smart contract will remain a zone of high qualification uncertainty [16]. This evidentiary dimension becomes especially significant in cases where smart contract execution data is used as digital trace evidence, requiring coordinated assessment under both civil-law standards of contractual validity and criminal procedural rules on admissibility, relevance, and reliability of evidence.

Conclusion

The problem of the smart contract in the law of the Republic of Kazakhstan should be resolved neither by excessive technological optimism, nor by the habitual legal distrust of everything that goes beyond the paper document and textual agreement. The smart contract does not destroy contract law as such. But it compels reconsideration of some of its customary supports. For classical civil law,

the contract is first and foremost the agreed will of the parties, expressed in a permissible form and entailing legal consequences. In the digital environment this construction does not disappear, yet the form of its expression, fixation, and performance becomes more complex. It is precisely from this that the qualification difficulty arises.

Under the current law of Kazakhstan, the smart contract cannot yet be regarded as an independent type of civil-law contract in a strict and universal sense. Such a conclusion would be premature. The normative basis does not yet provide a sufficiently definite general construction for this, and the current civil legislation continues to think in terms of the traditional categories of transaction, contract, form, and expression of will [1, 2]. At the same time, it is equally wrong to remove the smart contract from the sphere of civil-law qualification and regard it merely as program code. As soon as code begins to implement agreed terms, automatically perform the obligation, redistribute assets, or launch legally significant consequences, it inevitably becomes part of contractual matter [4, 6, 7].

For the law of the Republic of Kazakhstan, the most accurate appears to be the functional model. In accordance with it, the smart contract may act: as an electronic form of fixation of contractual expression of will; as a software method of automated performance of a contract; as a mixed legal-technical construction in which part of the terms is fixed in code, and part in accompanying text or platform documentation. It is precisely this approach that allows the avoidance of extremes and the preservation of the link between the civil-law nature of the obligation and the technological peculiarities of the digital environment [6, 10].

At the same time, the principal problem of Kazakhstani law lies not in a complete normative vacuum. On the contrary, the current legislation already contains important elements of digital adaptation: recognition of the electronic form of transaction, of the legal significance of the electronic document, and also of normative readiness to take account of automated contractual mechanisms, especially in the law of the AIFC [1, 2, 4]. The problem lies elsewhere: a sufficiently clear general model is still absent that would determine how, in disputed situations, text of contract and code are to be correlated, how the risk of software error is to be distributed, in what manner rules on invalidity of transaction are to be applied to self-executing constructions, and to what extent a digital record is capable of performing an evidentiary function comparable to the traditional document.

From a systemic perspective, smart contracts function as a hybrid legal-technological phenomenon that simultaneously generates contractual relations under civil law and digital evidentiary artefacts relevant for criminal proceedings. This dual nature requires a unified doctrinal approach that avoids fragmentation between private law qualification and procedural evaluation of blockchain-based data.

Comparative practice demonstrates that courts and regulatory bodies in several jurisdictions increasingly treat blockchain records as admissible evidentiary material under general rules of digital evidence, while smart contract code is interpreted as part of the factual matrix of contractual performance. In particular, disputes involving automated cryptocurrency transfers illustrate how code execution may simultaneously constitute contractual performance in civil law and an evidentiary object in criminal investigations concerning unauthorized access or fraud.

A practical conclusion follows from this. For the development of the institution of the smart contract in Kazakhstan, what is most important is not declarations about the “digital future,” nor attempts immediately to create a separate named contractual type, but more precise civil-law work. There is a need for clear rules on the qualification of the smart contract as a form or element of the contractual construction; criteria of priority of text or code where they diverge; special guidelines for the evaluation of software errors, defects of will, and distribution of risk; and also, procedural standards of proof of digital circumstances [3, 4, 15, 17]. Without this, the smart contract will continue to be perceived either as a fashionable technical term, or as a legal fiction, whereas its real significance for civil law is considerably more serious. Therefore, the absence of a clear legislative definition of smart contracts in Kazakhstan should not be perceived solely as a doctrinal gap in civil law, but also as a procedural challenge affecting the formation of digital evidence standards in criminal proceedings. It shows that the contract in the digital environment can no longer be thought of only as text, yet the law at the same time still cannot renounce its basic task – to distinguish a technically executed algorithm from a legally valid agreement of the parties.

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ҚАЗАҚСТАНДЫҚ ЗАҢНАМАДАҒЫ АҚЫЛДЫ КЕЛІСІМ-ШАРТТАР: АЗАМАТТЫҚ-ҚҰҚЫҚТЫҚ САРАЛАУ ЖӘНЕ ҚЫЛМЫСТЫҚ ІС ЖҮРГІЗУДЕГІ ДӘЛЕЛДЕУ МӘСЕЛЕЛЕРІ

Аңдатпа

Ақылды-келісім-шартты тек техникалық құбылыс ретінде қарастыруға болмайды. Ол цифрлық ортада тараптардың еркі, мәміле нысаны, шарттарды бекіту және міндеттемелерді орындаудың өзара байланысы мәселесін туындатады. Қазақстан құқығында цифрлық құралдарды келісім-шарттық айналымға қосуға

мүмкіндік беретін нормалар бар. Азаматтық кодекс электрондық жазбаша нысанды таниды, ал «Электрондық құжат және электрондық цифрлық қолтаңба туралы» Заң оларға заңды күш береді. АХҚО құқығы да автоматтандырылған жүйелер арқылы жасалған шарттардың қолданылуын мойындайды. Сонымен қатар, ақылды келісім-шарттың азаматтық заңнамадағы тұжырымдамалық белгісіздігі жария-құқықтық сала үшін де күрделі мәселелер туғызады. Мақалада ақылды келісім-шарт дербес келісімшарт түрі емес, ерік білдіру нысаны немесе міндеттемені автоматты түрде орындау механизмі ретінде негізделеді. Ерекше назар ақылды келісімшартты қылмыстық сот ісін жүргізу тұрғысынан құқықтық саралау мәселесіне аударылған. Авторлар нақты дефинацияның болмауы азаматтық құқық бұзушылық пен киберқылмысты ажыратуды қиындататынын, сондай-ақ бағдарламалық кодты дәлел ретінде тануға және цифрлық активтерге тыйым салуға кедергі келтіретінін дәлелдейді. Негізгі мәселе – азаматтық құқықтың келісім-шарттық конструкциясы мен блокчейннің технологиялық логикасы және Қазақстандағы дәлелдеудің іс жүргізу стандарттары арасындағы сәйкессіздікте.

Тірек сөздер: смарт-келісімшарт, азаматтық шарт, электрондық мәміле, автоматтандырылған орындау, ерік білдіру, цифрлық орта, блокчейн.

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СМАРТ-КОНТРАКТЫ В КАЗАХСТАНСКОМ ЗАКОНОДАТЕЛЬСТВЕ: ПРОБЛЕМЫ ГРАЖДАНСКО-ПРАВОВОЙ КВАЛИФИКАЦИИ И ДОКАЗЫВАНИЯ В УГОЛОВНОМ ПРОЦЕССЕ

Аннотация

Смарт-контракт не может рассматриваться как сугубо техническое явление. Он ставит вопрос о том, каким образом в цифровой среде соотносятся воля сторон, форма сделки, фиксация согласованных условий и исполнение обязательств. В казахстанском праве содержатся нормы, позволяющие включать цифровые инструменты в договорный оборот. Гражданский кодекс определяет договор как соглашение сторон, признает электронную письменную форму и основывается на принципах свободы договора, добросовестности и диспозитивности. Закон «Об электронном документе и электронной цифровой подписи» придает электронным документам юридическую силу, тогда как право МФЦА признает действительность договоров, заключенных посредством электронных коммуникаций и автоматизированных систем. Вместе с тем смарт-контракт остается концептуально неопределенным в гражданском законодательстве, что порождает серьезные вызовы и для публично-правовой сферы. Обосновывается вывод, что по казахстанскому праву смарт-контракт не

может квалифицироваться как самостоятельный вид гражданского договора. Более точным является функциональный подход: в одних случаях он служит формой фиксации волеизъявления, в других – механизмом автоматизированного исполнения обязательства. Особое внимание уделено проблеме юридической квалификации смарт-контракта в контексте уголовного судопроизводства. Авторы доказывают, что отсутствие четкой дефиниции затрудняет разграничение гражданских деликтов и киберпреступлений, а также создает препятствия для признания программного кода в качестве доказательства и наложения ареста на цифровые активы. Основная проблема заключается не в отсутствии правовой основы, а в несоответствии между договорной конструкцией гражданского права, технологической логикой блокчейна и текущими процессуальными стандартами доказывания в Казахстане.

Ключевые слова: смарт-контракт, гражданский договор, электронная сделка, автоматизированное исполнение, волеизъявление, цифровая среда, блокчейн.

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