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LEGAL CHALLENGES OF DIGITAL INHERITANCE IN KAZAKHSTAN: A COMPARATIVE ANALYSIS OF EUROPEAN AND U.S. APPROACHES

Abstract

The rapid digitalization of social and economic relations has led to the emergence of new forms of property and personal data that remain insufficiently regulated within inheritance law. The purpose of this study is to examine the legal challenges associated with digital inheritance in the Republic of Kazakhstan through a comparative analysis of European and U.S. approaches. The research is based on comparative legal, formal legal, doctrinal, and systematic methods and relies on the legislation of Kazakhstan, the European Union, and the United States, as well as contemporary scholarly literature. The originality of the study lies in the development of proposals aimed at improving the legal framework governing digital succession in Kazakhstan. The findings demonstrate that the current legislation lacks comprehensive regulation of digital assets and post-mortem access to digital accounts. The study substantiates the necessity of introducing legal mechanisms for digital inheritance and incorporating selected foreign practices into national legislation.

Keywords: digital inheritance; digital assets; inheritance law; digital succession; comparative legal analysis; personal data; Republic of Kazakhstan.

Introduction

With the rapid diffusion of new technologies, the way of managing property and private information in everyday life has been altered. Legal subjects now own an economic value in the form of social media profiles, data in digital storage, electronic mailboxes, domain names and crypto wallets. Their owners' subsequent death may consequently be an issue, since these assets are immaterial and service contracts, rather than classical conveyances, generally determine the access to them. The Kazakhstani approach to digital development and use has proved this, as legislation does not provide a clear set of legislation regulating inheritance of digital assets. [1, 2, 6-8].

While the lack of a specific framework is a typical feature of the European literature, which examines the post-mortem privacy issues and data protection, American scholars pay more attention to devolution instruments and granting access to fiduciaries. The United States even introduced the RUFADAA regulation in order to give answers to the latter [1-5]. In Kazakhstan the discussion concentrated on the general data law and digitalisation topics, not touching upon the inheritance ones in details [6-8]. The aim of this paper is therefore to compare international models and the Kazakhstani experience and then find solutions to fill the identified gaps in local law on digital inheritance. From my perspective, the current approach is too superficial and borrowing some ideas from European and American model seems to be a good way to balance heirs' rights and privacy interests [1-5, 11]. However, some issues which still require more elaboration in order not to over-borrow [1-5, 11].

Materials and Methods

To research this I have used a range of legal sources from Kazakhstan and globally that cover inheritance and digital issues and data protection. These include the civil code and various legislation on informatization and personal data in Kazakhstan, the GDPR from the EU and a US legislation on fiduciary access to digital assets. There is some relevant work from academics concerning digital inheritance and post mortem privacy to consider as well [1-8, 11]. The method involves drawing comparisons between different regulations to see commonalities or inconsistencies and analyzing the rules themselves to identify gaps in the local code. Literature from theorists aids the interpretation of ideas involved [1-4]. It can be concluded that digital inheritance presents issues that cut across multiple legal topics and solutions are based on understanding the laws and finding interpretations to improve them [14].

I believe the conclusion is that current Kazakhstani law is inadequate on digital inheritance and that borrowing certain precedents from elsewhere may develop a pioneering approach that considers privacy while offering effective rules [1, 5, 11]. However, it is still uncertain.

Results and Discussion

The Concept and Legal Nature of Digital Inheritance

The development of digital technologies has brought about the phenomenon of the new types of assets and digital identities that persist in digital form even after the owner's death. However, unlike traditional property, digital assets are unique due to their intangible nature, their reliance on digital platforms, and the coexistence of proprietary elements with non-property personal aspects. As a result, digital inheritance has become one of the most controversial issues within the contemporary civil law system.[1-2].

In legal literature, digital inheritance is generally defined as the transfer of rights and interests over digital assets, digital accounts, and digital information from a deceased person to his or her heirs or other recipients of inheritance in accordance with the law or will of the deceased person. Digital inheritance includes assets with economic value as well as digital objects representing personal identity and private life [1-2]. Digital assets are defined as digitally stored information, rights, and resources that are stored electronically and have personal, economic, or combined nature. Their legal nature significantly differs from classical forms of property, since access to such property is often governed not only by inheritance law but by contractual agreements by digital service providers and personal data protection law [1-11]. From the perspective of legal science, digital assets may be divided into three groups.

The first group embraces personal digital assets, which are intrinsically linked to personal identity and private life and usually not endowed with economic value. These include personal digital accounts, such as e-mail, social media, cloud storage accounts, digital photographs, electronic correspondence, and other forms of digital information. While these assets are constitutionally protected by privacy rights, they may potentially also have sentimental or evidentiary value for heirs [1-2].

The second group includes economic digital assets, which hold economic value and can constitute part of the estate of deceased persons. These embrace cryptocurrencies, non-fungible tokens ("NFTs"), domain names, monetized accounts, online businesses, digital intellectual property, and other digital resources of economic value. Unlike personal digital assets, such assets are capable of generating income and are classified as property capable of inheritance [3-4, 12-14].

The third and final group comprises hybrid digital assets, which integrate personal and economic features. This group includes YouTube accounts, blogs, influencer accounts, and AI-generated content. Hybrid assets embody both elements of personal identity and assets of economic value, so their legal classification can be extremely complicated, as the rights of such digital assets may implicate personal data protection law, intellectual property law, inheritance law, and contractual rights [1-3].

Based on the above analysis, we may conclude that digital inheritance is a legal institute, that addresses the transfer of personal, hybrid, and economic digital assets after death of individuals. Since digital assets are often difficult to classify due to their multifaceted nature, digital inheritance is an interdisciplinary legal phenomenon that belongs to the domain of inheritance law as well as information law, intellectual property law, and personal data law.

Consequently, the lack of legal regulation calls for codification of digital inheritance, thus unifying legal treatment of digital assets and providing for security and due protection of the interests of heirs in the digital environment [1-3].

European Approaches to Digital Inheritance Regulation

Overview of initiatives in this area The proliferation of digital technologies has led to the emergence of legal mechanisms by European jurisdictions that strive to make legal rules about the transfer of digital property and privacy after death. While the European Union has yet to adopt a common legal framework governing digital legacy, many member states have already developed their own national solutions that can serve as relevant point of references for dealing with questions surrounding digital heritage [1, 2].

Germany is one of the leading cases of judicial regulation of digital inheritance. The Federal Court of Justice (Bundesgerichtshof) delivered its landmark judgment on Facebook in 2018 and ruled that the deceased person's Facebook account was a component of the estate about which the heirs could inherit under universal succession. The Court stated that the digital communication should not have a different treatment from other forms of correspondence, and indicated that it considered to include the contractual relations with the providers in a formal way. Such a ruling created a crucial precedent affirming the inheritable status of certain digital assets and accounts [9].

France has taken a more sweeping and legislative approach with the Digital Republic Act, 2016 [10]. The earnest approach of the French law acknowledges individual's autonomy to bequeath their own personal data after death, while on the other hand provides users with a way of issuing orders that pertain to their digital assets storage, deletion or transfer. Where there are no such instructions, the law provides that rights shall be exercised by heirs solely within the limits set out by civil legislation. This strategy attempts to reconcile the right of succession with the desire for privacy and protection of personal information [10]. At the supra-national level, the General Data Protection Regulation (GDPR) is one of the most powerful regulatory tools pertaining to personal data protection [11].

It is often misunderstood that the GDPR does not regulate post-mortem data protection, rather it sets forth general principles on processing and security of personal information and also authorizes member states to enact national provisions on the personal data of deceased persons. Thus, the question of post-mortem privacy largely falls within the power of national legislatures [2, 11]. Besides regulation by laws, soon providers of digital services created contracts under which users gaved access to their accounts post mortem. Google launched an Inactive Account Manager that allows users to specify what they want done with their accounts and data after signifiant inactivity [16].

Likewise, Apple also launched the Digital Legacy program which lets people appoint trusted contacts who will be allowed to access certain types of data after the persons death. Such mechanisms show a trend towards increased private regulatory and contractual autonomy in the area of digital inheritance [16, 17]. The European path illustrates an effort to equate the rights of inheritance with privacy interests and relations with the digital service providers. Even without a common European-style framework, the choices made by nations like Germany and France and big tech companies offer useful models that could inform a legal regime for digital inheritance in the Republic of Kazakhstan [1, 2, 9-11].

U.S. Approaches to Digital Inheritance Regulation

The United States has the most advance digital inheritance laws on the books. While digital asset-related problems remain largely unaddressed in many jurisdictions, the U.S. has a familiar combination of legislation, fiduciary principles, and even practical tools for transferring and administering digital assets post-mortem [3-5]. One milestone for digital inheritance law occurred with the adoption of the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA). The Act, which has been enacted in many U.S. states, establishes guidelines for fiduciary access to the digital accounts and electronic communications of deceased individuals. RUFADAA attempts to balance the rights of heirs and fiduciaries against the privacy interests of deceased users and contractual obligations pursuant to private agreements with digital service providers. The Act separates electronic communications from other digital assets, offering varied access based on the specific type of information and instructions provided by the decedent [5].

One of the more crucial elements of how the U.S. went about this is establishing fiduciary access to digital assets. RUFADAA provides that executors, trustees, agents under powers of attorney, and guardians may access certain classes of digital assets as permitted by the decedent's wishes or applicable law. The fiduciary relationship creates duties of loyalty, confidentiality, and proper administration, which serve to protect the interests of heirs and maintain the privacy of decedents [5].

The development of digital estate planning is another characteristic that sets apart the American model as a significant alternative. Digital assets have emerged as a distinct category of property that is becoming more prevalent in contemporary estate planning. They should be making inventories of digital assets, naming trusted persons to handle those types of assets and giving guidance on how such data was to be preserved, transferred or erased. The objective of digital estate planning is to mitigate legal uncertainty and simplify the management of estates comprising digital property [3-4]. The more practical nature of the U.S. approach is also echoed in its growing reliance on online tools and digital wills. The biggest digital platforms enable us to decide what happens to our accounts after we die, through account management choices and legacy contacts. In addition, the differing scholarly views on recognition of digital wills and electronic testamentary instruments in order to reflect what a testator intends with respect to his or her digital assets have also been gaining prominence. These advances exemplify the drive towards blending conventional succession law with technological innovation [3, 4, 15].

In summary, the U.S. approach is a multifaceted model that integrates statutory regulation, fiduciary norms and digital estate planning devices [3-5]. This may offer valuable lessons on approaches for countries looking to design better laws around digital succession. Some components of the American model can be modified to the law and legislation of the Republic of Kazakhstan for providing legal certainty and proper protection of heirs rights in cyberspace [3-5].

Legal Challenges of Digital Inheritance in Kazakhstan

Despite the speedy digitalization of social and economic relations, in the Republic of Kazakhstan law regulation into digital inheritance leave that being searched still [6-8]. Legal relations related to information and the protection of personal data are somewhat regulated by existing legislation, however, there is no uniform regulatory framework governing the succession of digital assets and digital accounts [6-8]. This is a great challenge, because there is no legal concept of digital inheritance. However, neither the Civil Code of the Republic of Kazakhstan nor special legislation provides for concepts that define digital assets or their place in inheritance law. Therefore the legal status of many digital objects is ambiguous, which causes problems both for heirs and practitioners in law [6-8].

The second issue is uncertainty over who inherits a digital asset. Digital assets also have particular qualities that may not align easily with property rights as we know them for example, the intangible character or reliance on digital platforms to access them. The lack of clear legal provisions gives rise to the question as to whether properties such as cryptocurrencies, domain names, digital intellectual property (DLT)tokens and monetizd accounts online can be considered heritable by nature and under what circumstances inheritance right may be enforceable [3, 12, 13].

Another problem area is the access to social media accounts, emails and cloud storage services of a deceased person. However, in reality this can be hard to achieve for accounts held with foreign digital service providers. This access is commonly defined in contracts rather than by national succession law, creating legal uncertainty and potentially undermining the ability of heirs to exercise their rights [1, 5, 9]. Another challenge is the clash between inheritance rights and ensuring privacy. Heirs do have a valid concern in obtaining digital assets and information to administer the estate on one hand. Having previous access to unprotected texts and other digital records of the deceased can impact the confidentiality of both the de- ceased individual and third parties involved. Given the lack of specific regulations on post-mortem privacy in Kazakhstani legislation, it becomes especially difficult to balance these conflicting interests [1, 2, 11].

Another grey area is the inheritance of cryptocurrencies and other valuable digital assets. Cryptocurrency wallets are secured and decentralized by private keys, which, if lost due to loss of access credentials, will mean that their assets will become permanently inaccessible. Moreover, the existing legislation of Kazakhstan does not provide the corresponding unique rules for the transfer, estimation and administration of cryptocurrency assets in inheritance cases which results in legal uncertainty for heirs and notaries [12, 13].

Lastly, there are no mechanisms for digital testamentary dispositions under Kazakhstan law. While current law of inheritance accepts the traditional wills, it fails to create legal instruments for individuals that could allow them to dictate how their digital assets are assessed after their death or who is earmarked to take care of managing digital accounts. The lack of digital wills and other forms of digital estate planning collectively curtail testamentary freedom and also complicate the administration process for any estate containing digital assets [4, 15].

Thus, the modern legal reality of the Republic of Kazakhstan does not take into account such features of digital inheritance. The recognized deficiencies show a need for comprehensive legal regulation providing legal certainty and protection of the heirs rights as well as a fair compromise between succession rights and privacy interests in the digital environment [1, 5, 11].

Results

Prospects for Improving Kazakh Legislation

The revealed mechanisms of the effective regulation of digital inheritance through the existing legal system confirm a need to develop tools that will contribute to establishing a comprehensive system for regulating issues concerning digital inheritance in the Republic of Kazakhstan. The lessons learned by European countries and the United States shows that only through a combination of inheritance law, information law, personal data protection and contracts it is possible to ensure effective regulation of digital succession [5, 9-11]. Currently, the Act does not include a legal definition of digital assets or digital succession. Alternatively, the introduction of a distinct legal category would allow for increased clarity under this area of law and more consistent implementation of inheritance rules to digital assets [6-8].

Second, digital goods with economic value should be recognized specifically as inheritable property. Cryptocurrencies, domain names, accounts with monetization or any kind of digital intellectual property and other economically relevant digital objects form part of the estate which has to be transferred to heirs according to general succession principles. This recognition would dispel the legal grey area surrounding crypto assets and in addition serve to defend property rights [3, 12-14].

Third, laws need to be put in place that governs what heirs can access with digital accounts and information. The conditions, extent and limitations of such access should be prescribed by law while maintaining an appropriate equilibrium between the right to succeed to an estate and privacy. In this context, perhaps the experience as manifested in the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) or the German approach from which that provision would get its inspiration may also provide useful reference points [5, 9]. The legal framework should allow for individuals to control what happens to their digital assets when they die.

The insertion of digital testamentary instruments and avenues for planning a digital estate would support testamentary disposition and permit individuals to appoint authorized representatives who are able access, retain, reassign the control of digital accounts such as Facebook or online assets like Bitcoins. These mechanisms could supplement rather than replace conventional forms of wills [4, 15].

The third idea is to take into account those selected approaches from Europe and the United States during modernizing Kazakh legislation. But foreign experience should not be used mechanistically in the national legal system. Rather the European data protection law principles and American fiduciary access mechanisms should be tailor-made to the distinctive legal traditions and characteristics of the Republic of Kazakhstan [5, 10, 11]. An all-encompassing legal regime dictating digital inheritance would enhance legal certainty, bolster the safeguarding of heirs rights and biases a suitable balance between property interests and privacy in the virtual sphere [5, 10, 11]. Thus, the reform of rules governing inheritance must focus on the increasing importance of digital assets and the need to create tools for handling problems caused by digital transformation [3, 5 ,11].

Conclusions

This paper discusses the issue of legal and social difficulties in digital inheritance in the Republic of Kazakhstan based on a comparison with European and U.S. approaches to this problem. The results show that the modern national legal framework of Kazakhstan contains no universal regulation of digital inheritance, as well as it does not respond definitely to individual characteristics of digital assets and digital accounts. The study demonstrated that workflows governing succession rights, privacy interests, and contractual relations with digital service providers from European and U.S. approaches hold merit. More specifically, Germany´s judicial approach, the French legislative model and the framework created by the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) offer helpful precedents for national legislation reform efforts.

The study proves that digital inheritance must be recognized as an independent subject of the inheritance law containing physical, economic, and hybrid digital property rights. The absence of legal definitions and mechanisms governing access to digital assets creates an environment of legal ambiguity that complicates the protection of heirs' rights. As per the conducted analysis it is suggested to incorporate the notion of digital inheritance in civil code of Republic Kazakhstan, classify financially useful digital assets as inheritable property, and set out rules addressing heirs' access to digital accounts and develop mechanisms for testamentary dispositions related to measures implemented with regards of a deceased's estate.

The implementation of these measures will enhance legal certainty, protect heirs´ rights and establish an appropriate balance between the right to inherit in the digital sphere and privacy interests. Thus, the establishment of a single legal mechanism for digital succession is one of the priority directions of inheritance law improvement in the Republic of Kazakhstan.

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ҚАЗАҚСТАН РЕСПУБЛИКАСЫНДАҒЫ ЦИФРЛЫҚ МҰРАГЕРЛІКТІҢ ҚҰҚЫҚТЫҚ МӘСЕЛЕЛЕРІ: ЕУРОПАЛЫҚ ЖӘНЕ АМЕРИКАЛЫҚ ТӘСІЛДЕРДІҢ САЛЫСТЫРМАЛЫ ТАЛДАУЫ

Түйін
Қоғамдық және экономикалық қатынастарды цифрландырудың қарқынды дамуы мұрагерлік құқық аясында құқықтық реттелуі жеткіліксіз болып табылатын мүлік пен деректердің жаңа түрлерінің пайда болуына әкелді. Осы зерттеудің мақсаты Еуропалық одақ пен АҚШ-тың құқықтық тәсілдерін салыстырмалы-құқықтық талдау негізінде Қазақстан Республикасындағы цифрлық мұрагерліктің құқықтық мәселелерін зерттеу болып табылады. Зерттеудің әдіснамалық негізін салыстырмалы-құқықтық, формальды-заңдық, доктриналық және жүйелік әдістер құрайды. Зерттеудің ғылыми жаңалығы Қазақстандағы цифрлық мұрагерлікті құқықтық реттеуді жетілдіруге бағытталған ұсыныстарды әзірлеуде көрініс табады. Зерттеу нәтижелері қолданыстағы заңнамада цифрлық активтер мен қайтыс болған тұлғаның цифрлық аккаунттарына қол жеткізу тәртібін кешенді реттеу көзделмегенін көрсетті. Еуропалық және американдық тәжірибенің жекелеген элементтерін ескере отырып, цифрлық мұрагерліктің құқықтық тетіктерін қалыптастыру қажеттілігі негізделді.
Кілттік сөздер: цифрлық мұрагерлік, цифрлық активтер, мұрагерлік құқық, цифрлық құқық мирасқорлығы, салыстырмалы-құқықтық талдау, дербес деректер, Қазақстан Республикасы.

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ПРАВОВЫЕ ПРОБЛЕМЫ ЦИФРОВОГО НАСЛЕДОВАНИЯ В РЕСПУБЛИКЕ КАЗАХСТАН: СРАВНИТЕЛЬНЫЙ АНАЛИЗ ЕВРОПЕЙСКОГО И АМЕРИКАНСКОГО ПОДХОДОВ

Аннотация

Стремительная цифровизация общественных и экономических отношений привела к появлению новых видов имущества и данных, правовой режим которых в рамках наследственного права остается недостаточно урегулированным. Целью настоящего исследования является анализ правовых проблем цифрового наследования в Республике Казахстан на основе сравнительно-правового исследования европейского и американского подходов. Методологическую основу исследования составили сравнительно-правовой, формально-юридический, доктринальный и системный методы. Научная новизна работы заключается в разработке предложений, направленных на совершенствование правового регулирования цифрового наследования в Казахстане. В результате исследования установлено, что действующее законодательство не содержит комплексного регулирования цифровых активов и порядка доступа к цифровым аккаунтам после смерти их владельца. Обоснована необходимость формирования правовых механизмов цифрового наследования с учетом отдельных европейских и американских подходов.

Ключевые слова: цифровое наследование, цифровые активы, наследственное право, цифровое правопреемство, сравнительно-правовой анализ, персональные данные, Республика Казахстан.

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