Warszawa, 24 maja 2022 r.

Rozprawa doktorska pt. „Kryptowaluty i prywatne środki płatnicze jako nowy rodzaj świadczeń w systematyce Kodeksu cywilnego" - streszczenie

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Polish civil law is based on the dichotomy between monetary and nonmonetary performance. Naturally, parties' rights differ based on the type of performance. For example, Art. 454 § 1 of the Polish Civil Code („**CC**") regulates place of performance differently in case of monetary performance (creditor's seat) and nonmonetary performance (debtor's seat). In principle, monetary performance is subject to provisions on statutory interest for late payment (Art. 481 CC), but not on contractual penalties (Art. 483 and 484 CC). Monetary performance can also be valorized in case of substantial change in value of money (Art. 358^1 CC), which is not possible in case of nonmonetary performance.

However, the term „money" has not been defined in civil law. Nor did the legislator specify conditions allowing one to distinguish money from other goods. Jurisprudence has traditionally associated money with an asset issued by the state. In exceptional cases, foreign currency, bank money and electronic money have also been considered "money" in the understanding of civil law. *A contrario* this could lead to a conclusion that provisions regulating monetary performance do not apply to private monies (including cryptocurrencies, like Bitcoin), which should be governed by provisions on nonmonetary performance.

Even *prima facie* it is evident that such a position would be contrary to the purpose underlying respective norms of the Civil Code. It can be argued that when regulating rules on nonmonetary performance, the legislator did not foresee the emergence of a whole group of goods economically similar to money, although of different legal status. The rules governing nonmonetary performance are not suitable to regulate trade in private monies, and their application could lead to unjust differentiation in rights and obligations of the parties in economically similar situations, based only on the type of money used. This could also allow for circumvention of some mandatory provisions of the Civil Code, such as on maximum interest.

Thus, a question must be answered what is "money" in the understanding of Polish civil law. The essence of money is even more difficult to grasp because of the variety of legal norms affecting monetary performance, which – based on the content and purpose of legislation – apply to different "forms" and types of money: cash, bank money, electronic money, state money. The blurring of boundaries between state money (in the past restricted to coins minted by central banks), regulated surrogates of state money (like bank money) and private payment tokens. It is not merely a problem of „digitization" of money and a distinction between what is material and digital. Even among the digital payment assets there are fundamental differences implying completely different legal qualification, evident for example when comparing bank money, electronic money, virtual currencies in the understanding of Directive 2019/770 and asset-referenced tokens in the meaning of draft Regulation on markets in cryptoassets.

The above analysis and its consequence on rules governing so called "private money" are subject of this paper. I prove 2 thesis: (i) private payment tokens are a distinct legal category, regulated by some provisions governing monetary performance, applicable by analogy; (ii) there are grounds to distinguish cryptocurrencies from virtual currencies (in the understanding of Directive 2019/770) and crypto-assets (in the meaning of draft Regulation

on markets in cryptoassets) as a separate legal category with definite features and to conclude that such cryptocurrencies are private money.