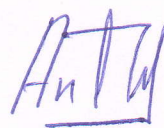


FEDERAL STATE BUDGETARY EDUCATIONAL INSTITUTION OF HIGHER
EDUCATION
“PSKOV STATE UNIVERSITY”



Manuscript copyright

Trofimov Anton Alexandrovich

**WAYS TO INDIVIDUALIZE ENTITIES OF PRIVATE LAW
IN THE DIGITAL ENVIRONMENT**

Specialty: 5.1.3. Private law (civil law) sciences

ABSTRACT OF THE DISSERTATION
for the degree of candidate of legal sciences

Scientific supervisor:

Doctor of Law,

Professor

Serova Olga Alexandrovna

Pskov – 2023

The relevance of the research topic is revealed through socio-economic, law-making, doctrinal, and law enforcement aspects.

Socio-economic aspect. Currently, there is a transition to a new technological structure based on the digitalization of social relations. A digital economy is being formed, associated with the use of information (digital) technologies. National development goals of the Russian Federation are defined for the period until 2030, one of which is digital transformation¹.

A significant acceleration of digitalization processes is associated with the consequences of the COVID-19 virus epidemic. The introduction of restrictive measures on traditional methods of interaction between participants in civil transactions required the development of remote communication systems, recording the will of subjects of legal relations by digital means, and the introduction of electronic document management. In 2020, during the spread of coronavirus infection, labor legislation was supplemented with rules on the conclusion of employment contracts and additional agreements to them with employees performing a labor function remotely, on remote interaction of the parties to the employment contract². The number of transactions and legally significant actions, decisions of meetings made using digital services has increased, which required making decisions on the identification of subjects, determining the legitimacy of decisions made, including by collegial governing bodies. Significant problems in practice have arisen when assessing the reliability of actions on digital resources, identifying the performance of these actions by specific subjects of legal relations, assessing compliance with requirements regarding the conscientious behavior of all participants in digital interactions and recognizing the anonymity of voting results carried out, for example, using video conferencing systems (VKS-communications).

The development of digital technologies, including taking into account government support for the IT sector when introducing sanctions against domestic companies, the

¹ See: Decree of the President of the Russian Federation dated July 21, 2020 No. 474 "On the national development goals of the Russian Federation for the period until 2030" // Collection of legislation of the Russian Federation. 2020. No. 30. Art. 4884.

² Federal Law of December 8, 2020 No. 407-FZ "On amendments to the Labor Code of the Russian Federation regarding the regulation of remote (remote) work and the temporary transfer of an employee to remote (remote) work at the initiative of the employer in exceptional cases" // Rossiyskaya Gazeta. 2020. December 11.

need to replace equipment and technologies from manufacturers from unfriendly states, also contributed to the speedy resolution of legal conflicts and issues arising during the implementation of neural networks, technologies related to large data and artificial intelligence. The introduction of digital technologies requires the adaptation of existing traditional legal structures of legal certification of the will of subjects of private law and their individualization. The increase in the number of offenses for the illegal use of a person's image in digital technologies (Deepfake) also requires not only the development of criminal law measures to prevent and combat such illegal actions, but also the introduction of technical solutions for the automatic detection of fakes and manipulative actions to protect participants in private law relations. These circumstances determine the interest of the scientific community in studying the problems of individualization of subjects of law in digital reality and developing new methods of identification.

Civil circulation in the context of digital transformation is associated with the use by subjects of civil law of digital infrastructure (digital platforms, portals, marketplaces, websites, social networks, instant messengers, etc.). This leads to "leaks" of users' personal data, the need, on the one hand, to tighten liability measures³, and on the other hand, requires the introduction of new methods and forms of authentication, verification of the authenticity of the user of a particular digital resource. The stability of civil turnover is impossible without establishing reliable data about subjects of civil law participating in civil law relations through the use of the digital environment (identification), and confirming the facts of their commission of legally significant actions based on digital infrastructure (authentication).

Lawmaking aspect. In the context of digitalization, the current legislation of the Russian Federation is being transformed. The Civil Code of the Russian Federation⁴ (as amended on July 24, 2023) introduced norms regulating the use of electronic means when making transactions, remote participation in a meeting of members of the civil law

³ Bill No. 502104-8 "On amendments to the Code of the Russian Federation on Administrative Offenses (in terms of increasing liability for violation of the procedure for processing personal data) // URL: <https://sozd.duma.gov.ru/bill/502104-8>; Bill No. 502113-8 "On amendments to the Criminal Code of the Russian Federation (in terms of establishing liability for the illegal use and transfer, collection and storage of computer information containing personal data). URL: <https://sozd.duma.gov.ru/bill/502113-8>. Date of access: 03/13/2024.

⁴ Collection of legislation of the Russian Federation. 1994. No. 32. Art. 3301.

community, etc. Transport codes have been supplemented with provisions establishing the procedure for concluding civil contracts related to the transportation of passengers through biometric authentication of individuals. Legal regulation of civil circulation carried out using the digital environment raises the issue of further improving the rules of private law aimed at identifying and authenticating subjects of private law in the digital environment. Theoretical provisions developed by the science of civil law concerning the identification and authentication of persons participating in civil legal relations using the digital environment can be used in the legislative process.

Doctrinal aspect. The development of the digital environment has made it possible to use digital tools in civil circulation. Through digital means, participants in civil transactions make transactions and exchange legally significant messages. Remote interaction of subjects of civil law in the digital environment objectively complicates the process of identifying persons participating in civil law relations and confirming the authenticity of their actions, which can disrupt the stability of civil turnover. In the context of digitalization of civil law relations, it is necessary to develop new doctrinal concepts in civil science concerning the identification and authentication of subjects of private law relations in the digital environment.

Law enforcement aspect. The diversity of private law relations carried out using the digital environment has necessitated their doctrinal understanding and the development of scientifically based recommendations aimed at improving law enforcement activities. Doctrinal provisions concerning the identification and authentication of subjects of private law in the digital environment can be taken into account by courts in the administration of justice and other authorities in law enforcement activities.

The degree of development of a scientific problem. The problems of individualization of legal entities through new methods of identification and authentication are the subject of research in various legal sciences. A comprehensive dissertation study of the problems of identifying subjects and objects of legal relations was carried out in the field of information law by V.B. Naumov ("Institute of Identification in Information Law", 2020). Issues of forensic identification of subjects

and objects are discussed in the works of forensic scientists. Problematic aspects of identification and authentication of persons participating in the consideration of civil and other cases using videoconferencing and web conferencing systems are studied in procedural branches of law. Identification of subjects and objects of legal relations is studied in administrative, banking, tax, business, customs law and other legal sciences.

In the science of civil law, the problems of individualization of subjects of law were considered in relation to traditional methods of assessing the authenticity of the actions of the subject and his personality. We can highlight the dissertation research of M.A. Selyukova ("Individualization of legal entities", 2006). At the dissertation level, the problems of individualization of individuals were studied in the work of S.V. Lukashevich ("System of means of individualization of individuals as subjects of civil law", 2014). Issues of identification of legal entities using information and communication networks are considered in the dissertation work of M.V. Tarasova ("Subjects and objects of civil legal relations in information and communication networks: problems of theory and practice", 2015). Problems associated with identification information that makes up the digital image of a citizen are considered in the dissertation research of D.V. Sannikova ("Civil protection of private life in the context of digitalization of society", 2023). Certain aspects of identification and authentication of subjects when making transactions using the digital environment were studied in the scientific works of L.G. Efimova, L.A. Novoselova, A.V. Lisachenko. At the same time, the development of digital technologies, the emergence of new technical means of verifying the authenticity of user actions on network resources, and the increase in the number of "virtual" legally significant actions that have no analogues in the traditional format require a systematic consideration of the problem of individualization of participants in private law relations.

Purpose and objectives of the study. The purpose of the study is to develop new doctrinal ideas in civil law on the identification and authentication of subjects of private law in the digital environment.

The purpose of the dissertation research determined the need to solve the following tasks:

- study of changes in doctrinal ideas about subjects of civil law under the influence of a change in technological structure and the transition to a digital economy;
- justification for the formation of a new institution of private law – identification of subjects in the digital environment;
- disclosure of the influence of digital transformation processes on the legal status of subjects;
- development of the concept and identification of the meaning of identification in civil law and related branches of law;
- study of identification and authentication as elements of the legal status of subjects of private law;
- substantiation of the dependence and secondary nature of the authentication process in the digital environment on the identification of subjects of law as a process of individualization in the information and communication environment;
- identifying ways of interaction between civil society participants in the digital environment;
- research of forms of identification and types of identifiers of subjects of private law;
- identification of means and methods of identification in private law;
- disclosure of the features of authentication as an element of determining the authenticity of actions of subjects of private law in the digital environment.

Object and subject of research. The object of the study is private law relations arising between participants in civil transactions related to the identification and authentication of subjects of private law in the digital environment. The subject of the study is the totality of legal norms of the Russian Federation, provisions of international legal acts regulating private law relations of participants in civil transactions in the field of identification and authentication of subjects of private law in the digital environment.

Theoretical and methodological basis of the study. The theoretical basis of the study is the scientific works of domestic scientists in the field of law:

- works of pre-revolutionary scientists: K.N. Anenkov, E.V. Vaskovsky, Yu.S. Gambarov, A.Kh. Golmsten, A.I. Gulyaev, P.N. Gussakovsky, N.L. Duvernois, A.A.

Evetsky, V.D. Katkov, D.I. Meyer, S.A. Muromtsev, K.P. Pobedonostsev, I.A. Pokrovsky, V.I. Sinaisky, V.M. Zwingman, P.P. Tsitovich, G.F. Shershenevich and others.

– works of scientists of the Soviet period: M.M. Agarkov, S.S. Alekseev, M.I. Braginsky, S.N. Bratus, A.B. Vengerov, A.V. Venidiktov, D.M. Genkin, O.S. Ioffe, I.B. Novitsky, V.A. Ryasentsev, E.A. Fleishitz, M.D. Shargorodsky and others.

– works of modern scientists: E.V. Vavilin, V.A. Vaipan, L.Yu. Vasilevskaya, V.V. Vitryansky, A.V. Gabov, B.M. Gongalo, L.G. Efimova, N.V. Zaitseva, V.A. Kanashevsky, A.A. Kartskhia, V.A. Laptev, A.V. Lisachenko, S.V. Lukashevich, M.N. Maleina, A.V. Minbaleev, I.A. Mikhailova, P.M. Morhat, V.B. Naumov, L.A. Novoselova, I.V. Ponkin, M.A. Rozhkova, A.P. Sergeev, O.A. Serova, E.A. Sukhanov, Yu.K. Tolstoy and others.

The methodological basis of the research consists of the general scientific methods used in the research process: synthesis, analysis, induction, deduction and special scientific methods: historical-legal, comparative-legal, formal-logical. The historical and legal method is used to study the theoretical and legal foundations of doctrinal and legislative changes in the legal status of subjects of private law during the transition to the digital economy, in particular the genesis of the formation of the institution of identification in private law under the influence of a change in the technological structure. The comparative legal method was used to study the issue of identification and authentication of subjects of private law as elements of their legal status, in particular, to identify similarities and differences in the legal nature of the concept and meaning of identification in civil law and related branches of law. The formal-logical method is used to identify forms, means, and methods of identification in private law relations.

The information base of the study consists of the provisions of the Constitution of the Russian Federation⁵, the Civil Code of the Russian Federation, federal laws, decrees of the President of the Russian Federation, decrees of the Government of the Russian Federation, regulations of public authorities, international legal acts relating to

⁵ Official Internet portal of legal information [portal]. URL: <http://pravo.gov.ru>. Date: 10/06/2022. Number: 0001202210060013.

the identification and authentication of subjects of private law in the digital environment.

Validity and reliability of the research results. The reliability of the research results is determined by the use of general scientific and specific scientific methods in the process of scientific knowledge that meet the goals and objectives of the dissertation work. The conducted research is based on the study and analysis of regulatory legal acts of the Russian Federation, international legal acts, national programs, federal projects, materials of judicial practice, in particular, acts of the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation, acts of the Eurasian Economic Commission, acts of the United Nations on International Trade Law (UNCITRAL). The conclusions set out in the dissertation research are based on the study and analysis of doctrinal sources of domestic authors: monographs, textbooks, teaching aids, scientific articles, doctoral and candidate dissertations.

Provisions submitted for defense and having scientific novelty:

1. Under the influence of the transition to a new technological order, the methods of individualization of participants in private law relations, used outside the digital environment, are supplemented by the process of identification of subjects of private law, carried out in the digital environment – the institution of identification of subjects of private law in the digital environment. Identification of subjects of private law in the digital environment is a communication process regulated by the norms of private law, aimed at establishing information about persons participating in civil circulation using information (digital) technologies. The significance of identification in civil law and related branches of law is to establish information about subjects of private law participating in private law relations in the digital environment and determine their legal status (*the provision submitted for defense corresponds to paragraph 6 of the scientific specialty passport 5.1.3. – “Private law (civil) sciences”*).

2. Under the influence of the transition to a new technological order, the institution of authentication of subjects of private law in the digital environment was formed. Methods of confirming the authenticity of the actions of participants in private law relations, used outside the digital environment, are supplemented by the process of authentication of subjects of private law carried out in the digital environment.

Authentication of subjects of private law in the digital environment is a communication process regulated by the norms of private law, aimed at determining the authenticity of the actions of participants in private law relations carried out using information (digital) technologies aimed at the emergence, change and termination of civil rights and obligations. The significance of authentication is to ensure the stability of civil transactions carried out using the digital environment by confirming the authenticity of legally significant actions by authorized persons (*the provision submitted for defense corresponds to paragraph 7 of the scientific specialty passport 5.1.3. – “Private law (civil) sciences”*).

3. In private law relations carried out using information (digital) technologies, means of individualization of participants in civil transactions, used outside the digital environment, are supplemented by identifiers of subjects of private law used in the digital environment. The process of identifying persons participating in private law relations is carried out using identification characteristics of subjects of private law – identifiers. Identifiers of subjects of private law in the digital environment are unique designations assigned to participants in private law relations in accordance with current legislation or chosen by their will, allowing one to establish information about persons participating in relations regulated by private law and determine their civil legal status (*the provision submitted for defense corresponds to paragraph 6 of the scientific specialty passport 5.1.3. – “Private law (civil) sciences”*).

4. In the process of research, a form of identification and authentication of subjects of private law in the digital environment was identified – dispositive identification and authentication, based on dispositive norms of private law and applied in private law relations. Dispositive identification and authentication of subjects of private law is carried out using information (digital) technologies when making transactions and making decisions by participants in the civil law community. Dispositive identification and authentication of subjects of private law in the digital environment is carried out in the manner established by agreement of the parties to the transaction, a decision of participants in the civil law community, or the charter of a legal entity (*the provision submitted for defense corresponds to paragraph 30 of the scientific specialty passport*

5.1.3. – “Private law (civil) sciences”).

5. Digital transformation has had an impact on the legal status of private law entities. The influence of digital transformation was reflected in the general, special, individual legal status of subjects of private law and was expressed in the empowerment of persons participating in civil transactions with the powers to exercise civil rights and fulfill civil obligations through the use of the digital environment. In the conditions of the new digital reality, the legal status of subjects of civil law has been supplemented by the powers to own, use and dispose of new digital (virtual) objects of civil circulation, as well as the powers to interact, including the execution of civil transactions with new virtual subjects of private law, implemented through use of information (digital) technologies. The implementation of such powers is associated with the identification and authentication of subjects of private law in the digital environment (*the provision submitted for defense corresponds to paragraph 6 of the scientific specialty passport* 5.1.3. – “Private law (civil) sciences”).

The scientific novelty of the dissertation lies in the conduct of a comprehensive dissertation study of the emergence of new ways of individualizing subjects of private law in the digital (information and communication) environment (identification and authentication).

As part of the dissertation research, conclusions were drawn about the transformation of private law norms and doctrinal ideas about the subjects of civil legal relations in the context of digitalization. The stages of formation of the institution of identification in private law under the influence of a change in the technological structure have been identified. The conclusions about the impact of digital transformation on the general, special and individual legal status of subjects of civil law are substantiated. In the process of research, the concept was defined and the meaning of identification in civil law and related areas of private law was revealed. The ways of interaction of subjects of private law in the digital environment have been studied. The forms and types of identification and authentication of subjects of private law are identified. The issue of forms of identification and types of identifiers of subjects of private law has been studied. The means and methods of identification in private law are identified. The concept is

defined and the meaning of authentication is identified as an element of determining the authenticity of the actions of subjects of private law in the digital environment.

The difference between the new scientific results obtained during the dissertation research and the results of scientific research carried out earlier by other authors is due to the complex nature of the study of the problems of both identification and authentication of subjects of private law in the digital environment, which influences the legal status of subjects and its individualization in new digital reality.

Theoretical and practical significance of the research. The theoretical significance of the study lies in the development of new theoretical provisions in civil law concerning the identification and authentication of private law entities participating in civil circulation through the use of the digital environment. The practical significance of the study lies in the possibility of using the theoretical conclusions contained in the dissertation work in further research addressing the issues of identification and authentication of subjects of private law relations in the digital environment.

The conclusions formulated during the dissertation research can be used to develop proposals for further improvement of the current legislation regulating private law relations in the digital environment, and also taken into account in law enforcement practice.

The practical significance of the dissertation research is confirmed by proposals aimed at improving legislation. We propose to introduce into the current civil legislation norms regarding the use of mobile residence by citizens. Article 20 of the Civil Code of the Russian Federation must be supplemented with paragraph three as follows: "3. A citizen has the right to use for permanent or temporary residence a mobile place of residence that does not have a strong connection with the land. A citizen is obliged to notify the subjects of civil law specified in paragraph 1 of Article 124 of this Code about his use of a mobile place of residence and about the method of sending him legally significant messages. A citizen is obliged to provide creditors with information about his use of his mobile place of residence and the method of sending him legally significant messages. A citizen who fails to fulfill the obligations established by this paragraph bears the risk of the consequences caused by this."

The theoretical provisions contained in the study can be used in teaching activities within the framework of classes in the disciplines "Civil Law", "Arbitration Process", "Information Law", "Theory of State and Law", "Labor Law", "Tax Law", as well as in procurement activities, in the preparation of textbooks, educational and methodological aids.

Approbation of research results. The results of the research presented in the dissertation work were the subject of discussion at a meeting of the Department of Civil Law and Process of the Federal State Budgetary Educational Institution of Higher Education "Pskov State University". The results of the dissertation research were tested by the dissertation author as part of teaching the educational course "Arbitration Process" to students of the Institute of Law, Economics and Management of the Federal State Budgetary Educational Institution of Higher Education "Pskov State University", studying in the direction of preparation "Jurisprudence" in the undergraduate program.

The conclusions contained in the dissertation research were tested during presentations at international and all-Russian scientific and practical conferences: XI International Scientific and Practical Conference "Problems of Modern Legislation in Russia and Foreign Countries" (Irkutsk, September 5, 2022), International scientific and practical forum "Transport of the future: challenges for law" (Ulyanovsk, September 16, 2022), International conference in memory of V.F. Yakovleva "Intersectoral approach in legal science: Economics. Right. Court" (Moscow, December 2, 2022), International scientific and practical conference of students and young scientists within the framework of the annual Basin readings "Current problems of private law", dedicated to the 100th anniversary of Yu.G. Basina (Almaty, March 29, 2023), Scientific and practical conference "Law and business in a changing world" (Pskov, June 2, 2023), International scientific forum "Transport of the future: challenges for law" (Ulyanovsk, September 8, 2023), XII International Scientific and Practical Conference "Problems of Modern Legislation in Russia and Foreign Countries", dedicated to the 280th anniversary of the birth of G.R. Derzhavina (Irkutsk, September 29, 2023), III International Conference in Memory of V.F. Yakovleva "Intersectoral approach in legal science: Economics. Right. Court" dedicated to the 30th anniversary of the Constitution of the Russian Federation

(Moscow, December 15, 2023).

The theoretical provisions of the dissertation research were published in scientific peer-reviewed publications recommended by the Higher Attestation Commission under the Ministry of Science and Higher Education of the Russian Federation.

**Articles published in scientific journals recommended Higher Attestation
Commission under the Ministry of Education and Science of Russia**

1. Trofimov A.A. Individualization of subjects of private law when performing legally significant actions in the digital environment // Legal World. 2024. No. 1. P. 41 – 45 (0,7 printed sheet).

2. Trofimov A.A. Scientific views of Russian civil scientists of the late 19th – early 20th centuries on the conclusion of contracts using telephone and telegraph // News of the South-Western State University. Series: History and Law. 2023. T. 13, No. 2. P. 65 – 82 (2,2 printed sheet).

3. Trofimov A.A. Biometric authentication of vehicle drivers // Law and State: Theory and Practice. 2023. No. 11 (227). P. 330 – 332 (0,5 printed sheet).

4. Trofimov A.A. Using state information systems to identify subjects when concluding civil contracts // Civil Law. 2022. No. 5. P. 43 – 45 (0,5 printed sheet).

5. Trofimov A.A. Identification of representatives in civil law in the digital environment // The Power of Law. 2022. No. 3 (51). P. 229 – 236 (0,5 printed sheet).

**Reports published in collections published as a result of scientific and practical
conferences**

1. Trofimov A.A. Some problems of authentication of subjects of civil law in the digital environment // Problems of modern legislation of Russia and foreign countries: material. XI Int. scientific – practical conf. (Irkutsk, September 5, 2022) / rep. ed. A.M. Bychkova. – Irkutsk: Irkutsk Institute (branch) of VGUYU (RPA of the Ministry of Justice of Russia), 2022. P. 96 – 101 (0,3 printed sheet).

2. Trofimov A.A. Authentication as a necessary element of determining the authenticity of actions of subjects of civil law in the digital environment // Interbranch approach in legal science: Economics. Right. Court: collection of materials of the II International Scientific and Practical Postgraduate Conference in memory of V. F. Yakovlev (Moscow, December 2, 2022) / under scientific. ed. O.V. Zaitseva, A.I. Surdina; RANEPa, State Institute of National Economy and Public Administration. service and management, Higher School of Law. – M.: Statute, 2023. P. 317 – 319 (0,2 printed sheet).