SOCIAL ENTREPRENEURSHIP – ECONOMIC AND LEGAL ANALYSIS OF THE DEFINITION AND CHARACTERISTICS


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Abstract. Social entrepreneurship is an international phenomenon that has confirmed its ability to find solutions to the acute social issues over the past few decades. Further development of social entrepreneurship requires the development of the basis for its legal regulation. However, a confusion of different approaches, methods, goals, organizational forms within the framework of social entrepreneurship makes it difficult to analyze the phenomenon under study. The authors examined the economic nature of social entrepreneurship and identified two of its main features: concentration on the chosen social mission and availability of an entrepreneurial component in the operational processes. The presence of a social mission is considered the most difficult from the point of view of its linking with the signs of ordinary entrepreneurial activity, so the authors have asked the question whether a social mission can be reflected in the legal definition of social entrepreneurship. To this end, we specified the signs of a social mission - the direct impact of social mission on enterprise activity, the duality in performance evaluation, the limited distribution of profits, the investment nature of the activity, the uniqueness of the goods and services produced, as well as conducted their legal analysis. The article includes a conclusion that it is necessary to develop a concept of legal regulation of the subjects of social entrepreneurship, taking into account the main features of the phenomenon under study.

Key words: social entrepreneurship, legal status, legal regulation, social mission, social efficiency, investment character, innovation

1. INTRODUCTION

The term "social entrepreneurship" in legal science can be defined through the definition of entrepreneurial activity given in Art. 2 of the Civil Code of the Russian Federation. The entrepreneurial activity has the following signs: independence, risky nature, and focus on systematic profit. Consequently, the operating activities of a social entrepreneur should meet those criteria.

A distinctive feature of social entrepreneurship is its social character. This makes the social entrepreneurship different from the technological, innovative and other types of entrepreneurship.

The term "social entrepreneurship" appeared in the 90s of the 20th century in the economic science. The modern scientific researches in the field of social entrepreneurship are focused on the question of what is behind this phenomenon.

1) The founder of the Institute of Social Entrepreneurs (Illinois, USA) J. Boschi and the partner of the Social Enterprise Alliance (USA) J. McClurgh study social entrepreneurship in the light of the self-financing development of non-profit enterprises and consider that the main criterion for distinguishing social enterprises is the activities profitability (Boschee & McClurc, 2003).

2) The Professor Alex Nichols considers modern social enterprises as commercial organizations. A. Nichols singles out the mixed nature of social entrepreneurship, the deletion of intersectoral boundaries, the superiority of social mission over economic one, the presence of "mixed values" in the activities (Nicholls, 2010). The Professor Roger Martin and Sally Osberg, the president of the international non-profit foundation investing in the social entrepreneurship projects - the Skoll Foundation, also believe that the entrepreneurship plays a key role in social entrepreneurship, and social transformation is a motivation for the social entrepreneur (Martin & Osberg, 2007).

3) The founder and Director of the Center for the Social Entrepreneurship Development (CASE) of the Duke Gregory Dees University points out that the ideas of entrepreneurship are attractive because they can be easily applied not only in the business sector, but in the social sphere; the social entrepreneurship "combines passion for social mission inherent in business discipline, innovation and determination" (Dees & Emerson, 2001). The Professors J. Mair and I. Marty share the views of G. Dees and regard social entrepreneurship as a broad process, which includes a combination of resources for creating the opportunities for social changes and meeting the social needs (2006).

Let us note that the researchers distinguish two fundamental characteristics of social entrepreneurship:

- social entrepreneurship concentrates on the chosen social mission;
- there is an entrepreneurial component in the operational processes of activity.

Based on the above, social entrepreneurship is a behavior that has a direct effect on the implementation of a social mission and is based on the entrepreneurial operational processes. Concentration on the chosen social mission is the defining feature for social entrepreneurship.

The mission of commercial organizations is usually associated with an increase in the company's value. In contrast, a social mission is always humanitarian, connected with a person. It is reflected either in the nature of the organizational process (for example, the enterprise employs socially unprotected categories of the population), or in the result obtained (in a certain socially significant sphere, protects public interests, solves social problems).

2. METHODS

The social mission has a number of features that are not inherent in the traditional mission of a commercial organization.

1) Social mission has a direct impact on the organization activities.

Any kind of entrepreneurship has an indirect social impact - creation of jobs, production of goods or services necessary for the society, making deductions to the budget. The increasing number of commercial organizations begins to practice corporate social responsibility, which goes beyond the immediate interests of the organization owners and takes care of the social and natural environment. However, as a rule, corporate social responsibility, along with the interests of the society, also meets the company's interests as it develops a positive
reputation and provides a customer support (Grant, 2012).

For social entrepreneurs, the social mission is clearly defined and is central; the principles and values of the organization correspond to it. The social entrepreneurs directly respond to the social problem chosen in accordance with their mission. The social mission is reflected either in the results, or in the activities organization, affects the adoption of decisions by the social entrepreneurs (Austin & Stevenson, 2006).

2) Duality in the performance evaluation.

Performance is a mixture of financial and social returns for the social entrepreneurship. The financial performance or profit-making remains the goal, but not the only and not the main one. The social performance comes to the fore, that is, the degree to which a social enterprise achieves its social mission. The social performance is achieved by solving a specific social problem or eliminating the market "failure".

3) Limited distribution of profits.

The profit of a social enterprise is distributed among the owners in a limited amount; most of the profits are reinvested in the social mission implementation. Thus, social entrepreneurs confirm the adherence to the chosen social mission.

4) Investment activity nature.

The social entrepreneurs, investing in their activities all available types of resources (funds, other property, technologies, intelligence, etc.), do not expect to receive a profit commensurate with their investments or a market profitability rate. They expect to achieve a positive social effect in the future, as a result of which the activities of social entrepreneurs should be attributed to the investment activities.

6) Uniqueness of the goods and services produced.

Social entrepreneurship arises in the areas that are ignored by the traditional commercial organizations, as it is difficult to get the expected rate of return in these markets. As a rule, the solution of problems in these areas carries a great social burden and traditionally belongs to the state functions - in the sphere of health care, education, culture, support of socially unprotected layers of the population, environmental stability, etc.

The entrepreneurial component, according to Joseph Schumpeter, is characterized by such concepts as "initiative, authority, gift of foresight", and the entrepreneur's function is "to combine the production factors" (Schumpeter, 1982).

The economics distinguishes the following traditional features of entrepreneurship:

- independent activity;
- risky character;
- innovation;
- presence of motivation for profit-making;
- process nature aimed at systematic profit-making;
- activities are aimed at implementing one's abilities and meeting the needs of others.

The innovation is the most essential for social entrepreneurship from the considered features. In our opinion, the statement of Peter Drucker on entrepreneurs is applicable to the social entrepreneurs: "The entrepreneurs consider changes as the norm and as a sign of prosperity. The entrepreneur is in a constant search for the sources of change, reacts to them and considers them as new opportunities" (Drucker, 2009).

3. RESULTS

Legal analysis of all these features is necessary for the development of the concept of legal regulation of social entrepreneurship.

The social mission, that is, the pursuit of a socially significant goal, seems to be the most difficult in terms of its linking with the signs of ordinary entrepreneurship activities. For example, according to Art. 50 of the Civil Code of the Russian Federation, the legal entities may be the organizations pursuing profit-making as the main objective of their activities (commercial organizations), or having no profit-making as such purpose and distributing the profits received between the participants (non-profit organizations). Accordingly, the organizations seeking to profit-making and not striving for this purpose are antipodes in the civil law.

Therefore, some researchers have an elusive temptation to attribute social entrepreneurship exclusively to the sphere of activity of non-profit
organizations (hereinafter - NPOs). Especially since paragraph 2.1. of Art. 2 of the Federal Law dated January 12, 1996 No. 7 “On Non-Profit Organizations” (hereinafter referred to as the Law on NPOs) contains an indication of a separate type of NPOs, that is, the socially oriented NPOs.

The formal problem is expressed in paragraph 4 of Art. 50 of the Civil Code of the Russian Federation and consists in the fact that an NPO can carry out not an entrepreneurial, but income-generating activities and only if the conditions stipulated in paragraphs 4 and 5 of Art. 50 of the Civil Code of the Russian Federation are complied with. The Law on NPOs allows the relevant organizations carrying out the entrepreneurial and other income-generating activities if the certain conditions are complied with (paragraph 2 of Article 24 of the Law on NPOs).

The dogmatic analysis of these provisions enables us to conclude that the entrepreneurial activities that meet the requirements established by law are considered as one of the types of income-generating activities carried out by the NPOs. Consequently, the activities of any NPOs can be classified as social entrepreneurship.

To solve the issue of the possibility of implementing social entrepreneurship by the commercial organizations and individual entrepreneurs equal to them (Article 23 of the Civil Code), it is necessary to answer a number of questions:

1) Is the profit target for commercial organizations cancelable?

2) Can the goal of profit-making be supplemented by other goals?

3) Can the goal of profit-making be associated with a socially useful goal?

4. DISCUSSION

1. Despite the fact that paragraph 1 of Art. 50 of the Civil Code of the Russian Federation refers to commercial entities only those organizations that pursue profit-making as their main goal, it seems that this goal is presumed for commercial companies by the legislator.

In fact, a commercial organization cannot focus on profit-making and maximization at all, it can work at a loss, and it can give away the property belonging to it. As a result, its resources will be exhausted once and the economic entity will leave the market.

Such an extremely deviant behavior on the market corresponds to the principle of exercising the civil rights by the citizens and legal entities at their own discretion (paragraph 1 of Article 9 of the Civil Code of the Russian Federation) and is therefore not prohibited.

2. The answer to the second question is the rule of paragraph 4 of Art. 52 of the Civil Code, according to which the object and purpose of the activity of the legal entities should be determined in the charters of unitary enterprises, as well as other commercial organizations in the cases stipulated by law. If this is not mandatory by law, the object and purpose of the commercial organization can be stipulated by the charter as a constituent document.

In this case, the legislator does not have the purpose of making profit, it is a priori, follows from the law and there is no need to designate it in the constituent documents of a commercial organization. Accordingly, we are talking about other, including socially significant purposes, which can be arbitrarily set by the founders of a commercial company.

3. The contradiction between the goal of profit-making and social mission seems insurmountable. At the same time, it has been noted above that any type of entrepreneurial activity fulfills a social mission and more than one indirectly. But in this case, the legal definition of social entrepreneurship will lose its meaning, since it will be applied to all business entities. Potential legal regulation of social entrepreneurship requires its clear identification, which will enable the social entrepreneurs to provide the necessary tools for support and development.

5. SUMMARY

So there is a question: can the signs of a social mission be reflected in the legal definition of social entrepreneurship?

A. A direct action for the social mission implementation means the immediacy of solving a specific social task by the social entrepreneur. In law, this feature can be expressed in the form of a prohibition to recognize by a social entrepreneur of a person who participates in capital or otherwise determines the decisions made by the direct executor of the socially useful actions.

B. Duality in performance evaluation involves evaluating the performance of a social entrepreneur
from the point of view of his compliance with the operational processes of entrepreneurial activity and in terms of compliance with his social mission. At the same time, the law does not exercise control over the entrepreneurial activity based on the results; the preservation of operational component of entrepreneurship is assumed until the entity continues to exist in the status of a commercial organization or an individual entrepreneur.

Control over the compliance with a social mission by the entrepreneur can be carried out according to the results, in which, for example, support for certain types of socially useful activities would be distributed taking into account the results for the previous year. The spheres of social entrepreneurship can be defined in accordance with the provisions of Art. 31.1. of the Law on NPOs.

It should be noted that Art. 2 of the Civil Code of the Russian Federation specifies the profit-making as the main goal of entrepreneurial activity, but not the desire to maximize it. Accordingly, it is allowed a deliberate reduction of the rate of profit by the entrepreneur, combined with the desire to achieve a socially useful goal.

C. The investment nature of the activities of a social entrepreneur is already reflected in the Russian legislation. The Law of the RSFSR "On Investment Activities in the RSFSR" dated 1991 and the Federal Law "On Investment Activities in the Russian Federation in the Form of Capital Investments" dated 1999 indicate that the purpose of investment activities can be not only the profit-making, but (and) achieving a different beneficial effect and a positive social effect.

D. The concept of limited profit distribution in Russian corporate law is not implemented. The commercial organizations can limit the distribution of profits among their participants at the discretion of the authorized bodies of the legal entity (general meeting of shareholders, meeting of directors, etc.). The non-profit organizations cannot distribute the income received among their participants.

At the same time, foreign experience shows that when creating special organizational and legal forms of legal entities that carry out socially significant activities, it becomes common practice to limit the amount of profits that can be distributed among the organization participants and is aimed at achieving the main goal (for example, the British CIC is a public interest company) (Kitsay, 2016).

E. The social criterion of decision-making by an entrepreneur cannot serve as an objective legal criterion for determining the status of a social entrepreneur, since the autonomy of their will is given to legal persons and individual entrepreneurs in civil circulation in the form of acquiring and exercising their civil rights through their will and in their interest (Article 1 of the Civil Code of the Russian Federation).

F. The uniqueness of the goods and services produced cannot be included in the number of mandatory signs of social entrepreneurship, as it presupposes a meaningful and not formal control over the parameters of social entrepreneurship and will require a detailed analysis of the goods, works or services of each of the potential social entrepreneurs.

6. CONCLUSIONS

Based on the above, it is proposed to develop a concept for the legal regulation of the subjects of social entrepreneurship, which should be based on the definition of entrepreneurial activity, but it is necessary to take into account its socially useful nature, the immediacy of social mission implementation, the ambiguity in assessing business performance, the investment nature of activities, the limited profit distribution between the participants de jure.

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REFERENCES


