

II. CIVIL AND BUSINESS LAW

Information for citation:

Barkov A. V., Serova O. A. Gosudarstvenno-chastnoe partnerstvo na rynke sotsial'nykh uslug v svete razvitiya sotsial'nogo predprinimatel'stva: problem garmonizatsii pravovogo regulirovaniya [Public-Private Partnership in the Market of Social Services in Terms of Social Entrepreneurship Development: Problems of the Legal Regulation Harmonization]. *Vestnik Permskogo universiteta. Juridicheskie nauki* – Perm University Herald. Juridical Sciences. 2016. Issue 33. Pp. 268–280. (In Russ.). DOI: 10.17072/1995-4190-2016-33-268-280.

UDC 346.1

DOI: 10.17072/1995-4190-2016-33-268-280

PUBLIC-PRIVATE PARTNERSHIP IN THE MARKET OF SOCIAL SERVICES IN TERMS OF SOCIAL ENTREPRENEURSHIP DEVELOPMENT: PROBLEMS OF THE LEGAL REGULATION HARMONIZATION

A. V. Barkov

Moscow Academy of Economics and Law
23, Varshavskoe shosse, Moscow, 117105, Russia
Financial University under the Government of the Russia Federation
49, Leningradsky prospekt, Moscow, 125993, Russia
ORCID: 0000-0002-5236-1954
ResearcherID: H-1263-2016
e-mail: barkov_a_v@mail.ru

O. A. Serova

Immanuel Kant Baltic Federal University
14, A. Nevskogo st., Kaliningrad, 236016, Russia
ORCID: 0000-0002-3550-8838
ResearcherID: I-7706-2016
e-mail: olgserova@kantiana.ru

Introduction: *problems of improving legal regulation of public-private partnership in the market of social services are researched in the article in terms of the development of social entrepreneurship. Purpose:* to assess the efficiency of the application of the Russian legislation regulations on public-private partnership aimed at ensuring competition in the market of social services and also their compliance with universal tendencies of the economy and law socialization. **Methods:** *empirical methods of comparison, description and interpretation; theoretical methods of formal and dialectical logic; specific scientific methods: legal dogmatic method and method of legal norm interpretation. Results:* it is revealed that the public-private partnership model legalized at the federal level in Russia does not entirely take into account foreign law-enforcement experience of solving social problems and does not help to reveal mighty potential of this tool in the social sphere, first of all, in the market of social services. Privatization of the market of state services by means of the mechanism of public-private partnership must be assisted by the implementation of principles of social justice, by ensuring the competition in the market of social services and by fixing the priority of a social effect over economic. **Conclusions:** taking into account the best foreign law-enforcement practices, the development and enhancement of the legislation on public-private partnership should be directed to values of social entrepreneurship, which is not profit-oriented, but provides the priority of a social effect over economic. The real possibility to solve or smooth specific social problems shall become a

criterion of social efficiency of the draft agreement on public-private partnership. At the same time the assistance to people who are in a difficult life situation should be regarded as a priority criterion of social efficiency of the draft agreement.

Keywords: market of social services; public-private partnership; social entrepreneurship

Information in Russian

ГОСУДАРСТВЕННО-ЧАСТНОЕ ПАРТНЕРСТВО НА РЫНКЕ СОЦИАЛЬНЫХ УСЛУГ В СВЕТЕ РАЗВИТИЯ СОЦИАЛЬНОГО ПРЕДПРИНИМАТЕЛЬСТВА: ПРОБЛЕМЫ ГАРМОНИЗАЦИИ ПРАВОВОГО РЕГУЛИРОВАНИЯ

Статья подготовлена по результатам исследований, выполненных за счет бюджетных средств по Государственному заданию Финансового университета на 2016 г.

А. В. Барков

Доктор юридических наук, профессор,
профессор кафедры гражданско-правовых дисциплин
Московская академия экономики и права
117105, Россия, г. Москва, Варшавское шоссе, 23
профессор кафедры предпринимательского и корпоративного права
Финансовый университет при Правительстве Российской Федерации
125993, г. Москва, Ленинградский просп., 49
ORCID: 0000-0002-5236-1954
ResearcherID: H-1263-2016
e-mail: barkov_a_v@mail.ru

О. А. Серова

Доктор юридических наук, профессор,
зав. кафедрой гражданского права и процесса
Балтийский федеральный университет имени И. Канта
236016, Россия, г. Калининград, ул. А. Невского, 14
ORCID: 0000-0002-3550-8838
ResearcherID: I-7706-2016
e-mail: olgserova@kantiana.ru

Введение: в статье исследуются проблемы совершенствования правового регулирования государственно-частного партнерства на рынке социальных услуг в свете развития социального предпринимательства. **Цель:** оценить эффективность применения норм российского законодательства о государственно-частном партнерстве в целях обеспечения конкуренции на рынке социальных услуг и их соответствие общемировым тенденциям социализации экономики и права. **Методы:** эмпирические методы сравнения, описания, интерпретации; теоретические методы формальной и диалектической логики; частнонаучные методы: юридико-догматический и метод толкования правовых норм. **Результаты:** выявлено, что легализованная на федеральном уровне в России модель государственно-частного партнерства не в полной мере учитывает зарубежный правоприменительный опыт решения социальных проблем и не способствует раскрытию мощнейшего потенциала данного инструмента в социальной сфере, и в первую очередь на рынке социальных услуг. Разгосударствлению рынка государственных услуг с помощью механизма государственно-частного партнерства должны способствовать реализация принципов социальной справедливости, обеспечение конкуренции на рынке социальных услуг, закрепление приоритета социального эффекта над экономическим. **Выводы:** вектором развития и совершенствования законодательства о государственно-частном партнерстве с учетом передового зарубежного правоприменительного опыта видятся ценностные ориентиры социального предпринимательства, нацеленного не на получение прибыли, а на обеспечение приоритета социального

эффекта над экономическим. Критерием социальной эффективности проекта соглашения о государственно-частном партнерстве должны стать реальная возможность его решения или сглаживания конкретных социальных проблем общества. При этом в качестве приоритетного критерия социальной эффективности проекта соглашения о государственно-частном партнерстве следует рассматривать его нацеленность на помощь лицам, находящимся в трудной жизненной ситуации.

Ключевые слова: рынок социальных услуг; государственно-частное партнерство; социальное предпринимательство

Introduction

The adoption of the Law about the Public–Private Partnership¹ in 2015 (hereinafter referred to as the PPP Law) is deemed to be one of the most important elements of forming the legislation system aimed at the development of the basic infrastructure for the social and economic reforms in the country. This law is meant to provide for an effective usage of the private funds, as well as for an opportunity to gain the private property rights for the created objects of the public infrastructure, and for active forming–up of the investment policy in the regions by the authorized bodies; all these should have a positive impact on solving the complicated issues of reconstructing or erecting the new social objects. With that, we believe that the normative legal model legitimized in Russia, does not fully consider the foreign law enforcement experience of solving the social issues, and does not contribute to unlocking the powerful potential of the public–private partnership in the social sphere, primarily at the social services market.

At present, the countries with the developed public order, acknowledge the public–private partnership as a part of a wider social phenomenon – the social entrepreneurship, which is more often viewed as the alternative to the modern social policy which practically provides for solving different social problems in the conditions of the global crisis. It is a pity, Russia does not legislatively have the concept of the social entrepreneurship [2, p.67–69], of the forms and the means of supporting it, and this negatively influences the development of the public–private partnership in the social sphere. With this, the improvement of the mechanism of the legal regulation of the public–private partnership at the market of the social services, should be directed to values of the social entrepreneurship, and the problems of harmonizing the legislation

that regulates these institutions should be viewed in their unity and cooperation, this providing for thematic justification of the research.

Main Contents

Like in the rest of the world, the Russian institution of the public–private partnership is associated with the realization of the large–scale projects. As reported by the Unified Information System of the public–private partnership, today at the territory of Russia such projects are being executed as the construction of buildings for locating the medical and preventive organizations (9 polyclinics) in Novosibirsky region (investment amount of 8 800 000 thousand roubles), the automobile road “Western High–Speed Diameter” (investment amount 212 720 000 thousand roubles), performing the reconstruction works at the solid waste landfill and the industrial waste landfill for increasing their lifetime in Krasnodar Territory (investment amount 23 300 thousand roubles) and others. The mentioned agreements are being implemented in communal and transport spheres. As for the social task projects, the following should be mentioned – project “Land Improvement, Reconstruction and Maintaining of the Lenin Public Garden in the Republic of Bashkortostan” (investment amount 15 000 thousand roubles), the concessionary agreement on construction of the pathological–anatomical house (the mortuary) with a basement level in the city of Boksitogorsk (investment amount 5 000 thousand roubles), the Regional Swimming Centre at Khabarovsk Territory (investment amount 550 000 thousand roubles), the modernization of the nephrological service at Kostroma Territory with opening of the new modern centres of nephrology and hemodialysis working for the compulsory health insurance program and on the principles of the public–private partnership (investment amount 452 180 thousand roubles) and others. Even the short description of separate projects allows to come to the conclusion that their principal purpose is the creation or the reconstruction of specialized buildings, engineering structures and suchlike.

In accordance with the regulations of the PPP Law, a significant part of the possible objects

¹ *About the Public–Private Partnership, Municipal–Private Partnership in the Russian Federation and Introducing Changes into Separate Legislative Acts of the Russian Federation: Federal Law dd June 13, 2015, №224–FZ (revised on December 29, 2015, №29, Part 1, Article 4350).*

of agreement is associated with the public infrastructure elements (transport, auto-roads, ports and hydraulic structures, sea and river vessels and etc.). There are 16 positions contained in the legitimized list of objects (Article 17 of the PPP Law). And only the eleventh line covers objects that could refer to the market of the social services – public health objects including those meant for the sanatorium-resort care, education, culture, sports, objects used for organizing the citizens' rest and tourism, and other objects of social service. Is it by chance that the priority is set by the law like this, or does the way the list is developed reflect the deliberate and justified position of the legislator?

Investing the objects of the public infrastructure has a prolonged importance for the further social and economic development of this or that territory. It is considered that the institution of the public-private partnership is an “effective form of raising investments allowing the state and the business to jointly complete the nation-wide tasks in the sphere of producing the public good such as education, medicine, infrastructure, housing and communal services; to use modern technologies in managing the social institutions and for increasing the quality of the rendered social services” [1, p. 147–152]. In general one can agree with this statement. But there are some aspects raising doubts which should be taken note of.

The special feature of the model which is today fixed in the PPP Law, is its being focused on solving the regional and municipal tasks. The legislator gives the regions the opportunity to to define the higher-priority spheres for making agreements on the PPP and formulating the conditions of it, with a certain independence. And the fact that the majority of the projects are not focused on the nation-scale problems, is an important condition for the development of both the whole country and the separate territories inside of it. The previous experience of the legal regulation of the relations in the public-private partnership sphere, when there was no Federal law and the Russian Federation territories actively participated in the creating of their own normative acts about the public-private partnership, demonstrated the importance of delegating the authority to the regions. In the new PPP law, this aspect is revealed right away in Article 1, where the law purpose is set – to create new legal conditions for attracting investments into the Russian Federation economy and into improving

the quality of the goods, works and services which are to be organized for the consumers by the bodies of the state power, the bodies of the local self-government.

It is noteworthy that the activity of the regions in creating the normative basis and the realization of the public-private projects differed within the last years. The specialists point out the importance of the way of defining the targets by the authorities of the specific country's region, with the subsequent reaching of the targets through the mechanisms of the public-private partnership. In some cases, such targets are stated declaratively, in the other cases, on the contrary, they include the list of the top-priority spheres for the public-private partnership project realization, and the lists of recommended objects; the practice is being introduced of the budget planning for evaluating the expenses for such projects with due consideration of the maximum admissible level and etc¹.

The differences in the used approaches can be discovered even at present time, after the regional legislation has changed following the acceptance of the Federal PPP Law. For example, in the Perm region, the changes were introduced into law “About the Fundamentals of the Public-Private Partnership in the Perm Region”² that had been adopted earlier. In the Arkhangelsk region, on March 25, 2016, Law №394–24–OZ was introduced “About Introducing Changes into Regional Law “About State Policy of the Arkhangelsk Region in the the Investment Activities Sphere” and Repealing of Regional Law “About the Participation of the Akhangelsk Region in the Public-Private Partnership Projects” and Article 6 of regional Law “About Introducing Changes into Separate Regional Laws for Putting them in Compliance with Federal law “About the Fundamentals of the Social Servicing the Citizens of the Russian Federation” ”³. So, the legal mechanisms of the PPP are “built in” into the already existing at the RF region territory relations covering the prioritizing of the investment activities; there is a tendency for formulating

¹ *Methodological Recommendations on Developing the Institutional Environment in the Sphere of the Public-Private Partnership in the RF Territories “Regional PPP Standard”*. M.: Centre for the Public-Private Partnership Development, 2014. P. 13.

² *About the Fundamentals of the Public-Private Partnership Development in the Perm Region: Perm Region Law dd April 1, 2015, №457–PK* [Web Source]. Access from Reference Information System “Garant”.

the principal regulations of the regional policy in this sphere. As a rule, the detalization of the conditions for performing the investment activities at the legislative level of the specific RF territory has practical consequences in the form of the involved investment volume growth, and improvement of the region's attractiveness for the investments.

In connection with that, the experience of Samara Region is very notable. In the February of 2016, Samara's Region Law "About Samara Region Participation in the Public-Private Partnerships" and some of the regulations of the Samara's Region legislative acts were declared as no longer valid¹. However, within only one month since that time, the Regulation of the Government of Samara Region was adopted, which regulates the order of the investment projects realization, the basic requirements for the use of different legal mechanisms of the investment activities (since the PPP Law has "narrowed" the understanding of the public-private partnership term that was used also for defining the other forms of involving private investments). The Regulation of the Samara Region Government settles the requirements for arranging the monitoring of all the investment projects' realization at the territory of the region². Samara's legislators used the term of "the public and private cooperation", which is wider than "partnership" in its sense, and allows to systematically organize the investment policy in the region and to solve the specific tasks of management on the basis of the already existing projects. In accordance with Item 1.4 of the mentioned Regulation, the public-private partnership is understood as a mutually beneficial cooperation between the executive power bodies of Samara region, and (or) the state (municipal) agencies of Samara region, and (or) state (municipal) companies of Samara region with individual proprietors, Russian or foreign legal persons in forms defined by the Regulation, for the purpose of effective execution of the tasks of the public-legal entities, for involving private investments into the Samara region economy, and also for

providing the availability of the goods and services, and increasing their quality. Besides the projects of the public-private partnership and concession agreements, the forms of the public-private cooperation include agreements on the social and economical cooperation, investment memorandums, life cycle contracts, contracts for the state property rent, contracts for finance lease and other forms of the contract social economic cooperation regulation.

Many questions controlled by the RF territories and municipal entities, are associated with solving the issues of the social support of the population, delivery of healthcare, services for citizens in a difficult life situation, providing for competition at the social services market. The traditional model of regulating such relations which originates from the Soviet administrative-command economic system, can not be effectively used in the modern market conditions. One of the critical problems is the lack of financing, as well as the necessity to increase the activity of social services receivers and "moving away" from the paternal system of the social support. The given reasons help to understand the necessity to provide for the "cooperation of three sectors of economy: the state holding a course for building the social model, the socially responsible business and socially-oriented non-commercial organizations" [6, p.63-69]. These circumstances result in selecting the directions for searching the innovative approaches to solve the social problems, that rest on the best foreign experience and are applicable on both the regional and the federal levels. In the world's practice, this tendency is at present connected with the development of relations in the sphere of the social entrepreneurship as the most efficient anti-crisis tool.

The social entrepreneurship as a legal and economic phenomenon, has been known for rather a long period of time [18]. The corresponding legislative norms and the scientific justification of this phenomenon were originally introduced in the Western Europe and in America [17]. The social

entrepreneurship has also been successfully spread in the Asian countries¹.

In opinion of one of the “social entrepreneurship” pioneers, Gregory Dees, the interest for the idea is caused by the fact that it “combines in itself the passion for the social business and the discipline, innovation and decisiveness typical for the business” and it fits our times as it “moves deeply” [20, p.14]. The disenchantment with the traditional methods of struggling with the negative social events has led the researcher to the conclusion that “our time has germinated to solving the social issues through the “entrepreneurial” methods” [20, p.4].

The study of the entrepreneurship is performed by the leading centres and progressive scientists of many countries of the world [17; 19; 20; 21; 22; 23; 24; 25; 26; 27, 28; 29; 30], and this proves the popularity and the feasibility of the ideology which was successfully implemented in many countries during the last ten years. In 2006, the Department for the Social Entrepreneurship and Finance was introduced into the Third Sector Office in the Cabinet Office of the Great Britain. In 2010, the South Korea introduced the Social Entrepreneurship Support Agency at the Labour Department, and in 2011 the united States reported developing the “Forth Sector of Economy” to serve as the basis for solving the social problems through the social entrepreneurship mechanism. In the conditions of the socialization of the economy and the law [3, 104–110], there is an interest for the law-making in the sphere of the state support of the social entrepreneurship all over the world. The most prominent initiatives are the adopting of the laws on social economy and social entrepreneurship in Spain (2011), Ecuador (2011), Greece (2011), Mexico (2012), Slovenia (2012), Portugal (2013). In 2011, within the framework of strategic anti-crisis program “Europe-2020”, the European Committee launched initiative “Social Business” the purpose of which is to also support the social entrepreneurship as an efficient tool of struggling with the social problems².

¹ *Social Enterprise Promotion act*. Act № 8217, Jan. 3, 2007. URL: <http://qps.ru/BSIGE> (data of access: June 5, 2016).

² *Communication* from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Entrepreneurship 2020. Action Plan. URL: <http://qps.ru/Q3p9x> (date of access June 6, 2016).

Today, the social entrepreneurship is experiencing a new phase of development. In many countries, it is a subject of great public expectations in terms of the perspectives of developing the non-commercial sector of economy, business and social policy of the state. In the estimation of specialists, at present the social entrepreneurship has already moved “beyond the limits of the traditional interpreting it as the economic activities of the socially-oriented organization aimed not so much at earning a profit as at getting the social effect, and gains a new phase of recognizing it as the inter-branch cooperation of the state, the business and the civil society in solving different social problems using innovative technologies which are legally covered by a harmonious application of the private and the public legal tools” [7, p.4].

In the world’s practice, the public-private partnership – the PPP – is recognized as the most effective form of cooperation between the state and the private business. It is successfully used in Austria, Australia, Belgium, Great Britain, Germany, Greece, Denmark, Italy, Israel, Ireland, Spain, Canada, Portugal, the USA, Finland, France, the South Korea, Japan and other countries [4, p. 189]. In the social sphere, it is mostly spread in Great Britain, the USA, Spain, France, Japan [9, p. 23], i.e. in the countries where the state guarantees high living standards and the high level of social protection. At the same time, the experience of the developing countries is also notable, in particular the experience of Chile, where the public-private partnership was efficiently used for reforming the pension system [11, p. 8–10]. A number of successful projects is known when the public-private mechanism was used in the education sphere in the South Africa and Columbia [4, p. 157]. In all the given examples of partnerships, in accordance with the social entrepreneurship ideology, the social effect prevailed over the economic one.

The key difference of the social entrepreneurship from the usual idea of the entrepreneurial activities is associated with such a feature as the orientation to a “focused solution of one or several tasks of the social problems shared in the society” [14, p. 10]. This target contradicts the generally acknowledged rule of the systematic profit-taking as the principal purpose of the business subjects’ activities. This contradiction has resulted in the unstable ground for the realization of the social entrepreneurship ideas in Russia. This phenomenon is associated both with the charity and

the concept of the socially responsible business [8, p. 476]. But the idea of the independence of the legal nature of this social–economic and legal phenomenon is extremely difficult in fixating in the theory of the civil law and the entrepreneurial law.

We earlier mentioned the idea that the social entrepreneurs (the founders and the investors) are not limited in their rights for getting the profit, apart from the business with the social mission where the investors are able to gradually return the invested money but do not have the right to get the profit resulting from the company’s activities [13, p. 353]. This conclusion is made on the basis of the Regulation on the Coordination Council for the Social Business and Entrepreneurship Development in the Russian Federation Chamber of Commerce and Industry¹. In reality, the notion of the “social business” used by this Regulation in the meaning of a lossless company performing entrepreneurial activities with no charging and paying of the dividends and created for solving the social tasks, – does not comply with the legislation in force at the moment. A socially–oriented commercial organization fits this definition, but for describing the non–commercial organizations, the Russian Federation Civil Code uses term “activities producing a profit” but not “entrepreneurial activities of the of the non–commercial organizations”. One can undoubtedly share the position of the authors who strive for the developing of the new organizational and juridical form of the legal person – the social entrepreneur [10, p. 107–108]. The current legislative situation in Russia creates collisions in understanding who can stand for the status and if the status exists in reality. The attempts to assign exceptionally the small and medium–sized business, and socially–oriented non–commercial organizations to such organizations seem to be unreasonable and not complying with the legal nature of this phenomenon. The adopted law on the public–private partnership has increased the possibilities for the social entrepreneurs to participate in the investment activities. However, there are no norms in terms of legislation that would account for the special aspects of this type of the entrepreneurial activities. In accordance

with the law, a private partner in the PPP can be a Russian legal person except the public and the municipal unitary enterprises and establishments, public legal companies, economic partnerships and companies, economic partnerships controlled by the Russian Federation, a Territory of the Russian Federation or a municipal entity, and the non–commercial organisations created by them in the form of funds. With this, one needs to understand that the social investing differs from other types of the investment activities. In opinion of the Russian Federation Chamber of Commerce and Industry, the purpose of the social investment is exceptionally reaching one or several social tasks through the business processes of the company with no personal financial interest of the investors². The experts distinguish three groups of the social investment purposes [5, p. 1–11]:

- getting the economic result (income);
- getting a social result (improving the life quality);
- integrative variant combining the first two groups of the purposes when the investment expectations covers both getting the income and achieving the social result.

However, the essential drawback of the accepted Law about the public–private partnership is that it actually legitimises the first variant. The integrative way of defining the purpose can be expected, can derive from the the very agreement on the PPP, but it is a pity the norms which could clearly define reaching particularly the “social” effect and evaluate it, are missing. The construction of a swimming–pool, of a hospital, of the plant producing goods for people with disabilities and etc., is with no doubt the creation of the social services infrastructure. However, if in the future the service receivers will have no preferences in using these objects, or the objects will be accessible only for a fee, can the social effect be considered reached? There is a probability that when the accessibility of this or that social goods increases, the transport expenses, for example, are reduced. However, taking into account the state’s participation in the PPP projects, and the opportunity for the private partner to receive the right of private ownership

¹ Attachment №1 to Order of the Russian Federation Chamber of Commerce and Industry dd May 28, 2012 №44 [Web Source]. Access from reference Legal System “Konsultant Plus”.

² Item 1.1.1 of the Regulation on the Coordination Council for the Social Business and Entrepreneurship Development in the Russian Federation Chamber of Commerce and Industry.

for the erected objects of the public infrastructure, there should be a more detailed understanding of the social obligations to be undertaken by a party when concluding an investment agreement in the social sphere.

The projects being supported now in Russia, that with a different degree of compliance (due to the legal uncertainty) can be called the projects of the social entrepreneurship, are extremely various in specific types of activities and in the opportunities of their further duplication. For example, a franchise is proposed for opening of the city informative and entertainment internet portal of the regional cite network *Future City*¹. And there are absolutely unique proposals, for example the project by architect Artur Sarnits on reconstructing the Royal Castle in Kaliningrad. This project is the winner of all–Russia competition of projects “Social Entrepreneur” [16]. It is also obvious that the useful effect in these cases will be quite different.

In the literature, it was proposed to legitimize the authorized body regulation function which should include the control for the social component of the project, the stimulation of the innovations, efficiency improving [15, p. 37]. But can such decisions be expected today from the Russian Federation territories which do not have the necessary knowledge in this sphere, first of all because of the absence of the legal regulations and the presence of numerous contradictions in the scientific literature and among the experts? In our opinion, the answer should be – no. This activity sphere is not the one for which each region is to develop its own rules of the game to the extent of the region capacity. For the social sphere, it was also proposed to create “a special agency, the tasks of which would consist of the research works in the social sphere economy, including estimating the needs and social economic effect...” [15, p. 36]. Moreover, the experience of developing the social entrepreneurship in the form of creating the regional Centres for the Social Sphere Innovations [12, p.176–177] was noted as the best practices several years ago. However, this practice was also never institutionalized.

¹ URL: <http://www.nb-forum.ru/business/social-franchise/future-city-1-1.html> (date of access May 17, 2016).

In the Samara region Government’s Regulation² mentioned earlier, the social economic effect and the efficiency are listed as one of the public–private cooperation principles (Item 1.3). There is no such principle in Article 4 of the Federal law about the public–private partnership, and this once again proves the conclusion about the practicability of the national approach in defining the specific features of the investment activities with the cooperation of the state and the private partners. With this, it is deemed that this principle should be legitimized not only at the regional but also at the Federal level what would result in the correction of the majority of the PPP Law provisions. That is why, the principles of the public–private partnership should include not only the achievement of the social economic effect (like the regional normative legal acts run) but the priority of the social effect over the economic effect, what will be more compliant with the social entrepreneurship ideology and the world’s practices.

Item 3.2 of the *Order of Defining the Form of the Realization of the Projects Using the Mechanisms of the Public–Private Partnership, Concession Agreements and other Forms of the Public–Private Cooperation Planned at the Territory of the Samara Region, and the Monitoring of their Realisation*, settles a mandatory requirement to complete the proposal of the initiator of the public–private cooperation project with a justification of the social importance of the task under question and the characteristic of the problem which is addressed by the project. It should be mentioned that the PPP law does not contain clear rules about mandatory proving by the private partner of the social importance of the proposed project. The Federal normative documents are mostly aimed at solving the issues of the technical–legal and finance character³.

² On Approval of the Order of Defining the Form of the Realization of the Projects Using the Mechanisms of the Public–Private Partnership, Concession Agreements and other Forms of the Public–Private Cooperation Planned at the Territory of the Samara Region, and the Monitoring of their Realisation: Regulation of the Samara Region Government dd April 24, 2016 №131. URL: <http://www.samregion.ru> (date of access June 5, 2016).

³ On Approval of the Order of Holding the Preliminary Negotiations Associated with the Development of the Proposal of the Public–Private Partnership Project, Between the Public Partner and the Project Initiator: Decree by the Ministry of Economic Development and Trade,

In connection with that we consider it reasonable to include the social economic effect (Item 2 of Article 6 of the PPP Law) into the mandatory elements of the of the public–private (municipal–private) partnership agreement. For the development of the proposals on the public–private (municipal–private) partnership, it is also necessary to amend Item 3 of Article 8 of the PPP Law with the requirement to mention not only the project efficiency data and its comparative advantages, but also the data about the social and economic efficiency of the project. We think that this criterion should also be legitimized as a top–priority one for taking the decisions on the realization of the public–private (municipal–private) partnership (Article 10 of the PPP Law) projects. Besides, Chapter 3 of the Law named “Agreement on the Public–Private Partnership, Agreements on the Municipal–Private Partnership” should be corrected in accordance with the principle of the social effect priority over the economic one.

Among the declared principles of the public–private partnership, a special place in Article 4 of the PPP Law is given to the principles of provision of the competition and the freedom of contract. We think that the freedom of contract can be limited only by the necessity to provide for the priority of the social effect over the economic one, and this serves the interests of the whole Russian society. It is a pity this strategy is not legislatively prescribed in the adopted PPP Law, however this ideology is represented in some other normative legal acts.

Realizing the concept of the public–private partnership, Federal law dd December 28, 2013 №442–FZ “About the Fundamentals of the Social Servicing of the Citizens in the Russian Federation”¹ has widened the list of the social services providers. Today, the social services are rendered to the population by the state agencies and the non–state providers – commercial and non–commercial organizations and individual entrepreneurs. With a concern for the social sphere destatization, the RF President, in his regular address to the Federal Assembly in December of 2015, proposed to establish

dd November 20, 2015. №864 [Web Source] Access form the reference Legal System “KonsultantPlus”.

¹ *About the Fundamentals of the Social Servicing of the Citizens in the Russian Federation*: Federal Law dd December 28, 2013 №442–FZ // Collection of Laws of the Russian Federation. 2013. №52, Part 1, Article 7007.

a status of the socially useful service providers for the non–commercial organisations which gained the reputation as the faultless partners of the state, and are to receive up to 10% of the financing of the regional and municipal programs, for participating in rendering social services financed through the budget means². All these proposals, in compliance with the social entrepreneurship ideology, are aimed at supporting the competition at the social services market, where the social effect always prevails over economic one.

The concept of the long–term social economic development of the Russian Federation for the period till 2020³, views the public–private partnership as an element of the mechanism of cooperation between the the state, the the private business and the society as the objects of the innovative development (Section 1.5). In this program document, the necessity is specified to transfer from the export–raw model to the innovation model of the economic growth resting on the balance of the entrepreneurial freedom, national competition and social justice. So, the concept not only does not exclude but directly suggests the principle of priority of the social effect over the economic one in the public–private partnership, resulting in the realization of the constitutional principle of the social justice. It is a pity, these principles are not included into the adopted PPP Law.

The biggest problem is the evaluation of the social efficiency of the public–private partnership project. The economic effect and the efficiency can be measured in absolute and relative quantitative indicators. For example, to evaluate the efficiency of the special economic zones, such indicators include the quantity of the residents, the number of the work places created, the volume of the investment and the revenues and etc⁴. At the same time, the social effect, outside the context of the economic efficiency,

² *Presidential Address* to the Federal Assembly dd December 3, 2015// Rossiyskaya Gazeta. 2015, December 4.

³ *Government Executive Order* dd November 17, 2008. №1662–R // Collection of Laws of the Russian Federation. 2008. № 47, Article 5489.

⁴ *About Approval of the Rules of Evaluating the Efficiency of the Special Economic Zones Functioning: Regulation of the RF Government* dd June 10, 2013. №491 // Collection of Laws of the Russian Federation. 2013. №25, Article 3155.

is very difficult to define. The social effect has an indirect character, it is connected with the creation of the high-technology medical centres, introduction of the new companies manufacturing the products that had been purchased earlier from abroad and others. As it was mentioned, conclusion of the PPP contract involves the creation or the reconstruction of the infrastructure which can be used by the companies – the social entrepreneurs. But in the individual contracts, the public partner is to settle the social obligations laid upon the other party of the agreement. These obligations shall be associated with providing the access to the social services which will be rendered by the private partners owning the objects of the social infrastructure. This can be, for example, rendering free social medical services in the rehabilitation and medical centres, reservation of the definite number of the work places for persons in difficult life situation and etc. With this, the use of the budget funds with the subsequent transfer of the property right for the constructed objects of the social infrastructure cannot be treated as such an effect because it is not aimed at solving specific social issues. Otherwise the state will be forced to allocate significant amounts in the form of subsidies for the citizens in need for getting the desired social services or goods, and this will raise doubts about the declared purposes and principles of the public-private partnership mechanism. That is why we think that the priority criterion of the project social efficiency should be its real capacity to solve the social problems.

When the PPP contract is concluded in the social sphere, the private partner undertakes enhanced obligations for rather a long period of time. But this circumstance fully complies with the concept of the social entrepreneurship which has been developed in the world by the present time. Such a self-restriction in the opportunity to get profit is a consequence of realization of the socially-responsible business concept which is a part of the social entrepreneurship. In these conditions, the tasks of the legislator will be the development of such mechanisms of supporting the initiatives which could serve the public interests not allowing for spending the significant state resources by persons who only hide behind the ideas of the social entrepreneurship.

References

1. *Aksenova-Sorokhitej Yu. N., Baranovskaya E. A., Serebryakova A. A., Serova O. A. Aktual'nye problemy pravovogo regulirovaniya gosudarstvennogo-chastnogo partnerstva v RF* [The Topical Issues of the Public-Private Partnership Legal Regulation in RF]. *Uspekhi sovremennoy nauki i obrazovaniya – Success of Modern Science and Education*. 2016. Issue 4. Vol. 2. Pp. 147–152. (In Russ.).
2. *Barkov A. V. O sotsial'noy znachimosti i aktual'nosti legalizatsii definitsii «sotsial'noe predprinimatel'stvo» v rossiyskom zakonodatel'stve* [About Social Significance and Relevance of Legalization of the Definition “Social Entrepreneurship” in Russian Legislation]. *Ekonomika. Predprinimatel'stvo. Okruzhayushchaya sreda – Economics. Enterprise. Environment*. 2015. Issue 1(61). Pp. 67–69. (In Russ.).
3. *Barkov A.V. O neobkhodimosti ucheta tendentsii sotsializatsii chastnogo prava pri sovershenstvovanii rossiyskogo grazhdanskogo prava* [The Need of Taking into Account the Tendency of Private Law Socialization for Improving Russian Civil Legislation]. *Vestnik Nizhegorodskogo universiteta im. N. I. Lobachevskogo – Vestnik of Lobachevsky University of Nizhni Novgorod*. 2015. Issue 4. Pp. 104–110. (In Russ.).
4. *Belickaya A. V. Pravovoe regulirovanie gosudarstvenno-chastnogo partnerstva: monografiya* [Legal Regulation of Public-Private Partnership. Monograph]. Moscow, 2012. 191 p. (In Russ.).
5. *Vikeev S. V. Osnovnye tseli sotsial'nykh investitsiy* [The Main Goals of Social Investments] *NB: Ekonomika, trendy i upravlenie – NB: Economics, Trends and Management*. 2014. Issue 2. Pp. 1–11. DOI: 10.7256/2306-4595.2014.2.6802. (In Russ.).
6. *Grishina Ya. S. Innovatsionno-pravovoe regulirovanie podderzhki sotsial'nogo predprinimatel'stva v sfere srednego i malogo biznesa* [Innovative Legal Regulation of the Support for Social Entrepreneurship in the Area of Small and Medium Business]. *Vestnik Nizhegorodskogo universiteta im. N. I. Lobachevskogo – Vestnik of Lobachevsky University of Nizhni Novgorod*. 2014. Issue 3 (2). Pp. 63–69. (In Russ.).
7. *Grishina Ya. S. Kontseptual'naya model' pravovogo obespecheniya rossiyskogo sotsial'nogo predprinimatel'stva: monografiya* [Conceptual Model of Legal Support for Russian Social Entrepreneurship. Monograph]. Moscow, 2016. 462 p. (In Russ.).
8. *Grishina Ya. S. Mekhanizm vzaimodeystviya chastnykh i publicnykh pravovykh sredstv obespecheniya sotsial'no-imushchestvennykh potrebnoy v usloviyakh modelirovaniya yuridicheskoy konstruksii sotsial'nogo predprinimatel'stva; pod red. prof. N. A. Barinova* [Mechanism of Interaction between Private and Public Legal Means for Ensuring Social and

- Property Requirements under Conditions of Modeling the Statutory Concept of Social Entrepreneurship; ed. by prof. N. A. Barinov]. Saratov, 2014. 476 p. (In Russ.).
9. Ivanova A. O. *Razvitie gosudarstvenno-chastnogo partnerstva v Yaponii: dis ... kand. ekon. nauk* [Development of Public-Private Partnership in Japan. Cand. econ. sci. diss.]. Moscow, 2010. 24 p. (In Russ.).
 10. Kicaj Yu. A. *O vozmozhnosti vklyucheniya sotsial'no orientirovannykh organizatsiy v polozheniya Grazhdanskogo kodeksa Rossiyskoy Federatsii o yuridicheskikh litsakh* [On the Possibility of Inclusion of Socially Oriented Organizations into the Provisions of the Civil Code of the Russian Federation on Legal Entities]. *Ekonomika. Predprinimatel'stvo. Okruzhayushchaya sreda* – Economics. Enterprise. Environment. 2015. Issue 3 (63). Pp. 106–110. (In Russ.).
 11. Podkorytov R. A. *Gosudarstvenno-chastnoe partnerstvo v sfere pensionnogo obespecheniya Chili: avtoref. dis. ... kand. ekon. nauk* [Public-Private Partnership in the Field of Pensions in Chile. Synopsis of Cand. econ. sci. diss.]. Moscow, 2010. 24 p. (In Russ.).
 12. Serebryakova A. A. *Unifikatsiya pravovogo regulirovaniya otnosheniy sotsial'nogo predprinimatel'stva v Rossiyskoy Federatsii* [Unification of Legal Regulation of Relations in Social Enterprises of the Russian Federation]. *Pyatyy permskiy mezhdunarodnyy kongress uchenykh-yuristov: materialy mezhdunar. nauch.-prakt. konf. (Perm, 24–25 oktyabrya 2014 g.); otv. red. O. A. Kuznetsova* [The Fifth Perm International Congress of Legal Scholars: Proceedings of the International Scientific-Practical Conference (Perm, PSU, October 24–25, 2014); ed. by O. A. Kuznetsova]. Perm, 2014. Pp. 175–176. (In Russ.).
 13. Serova O. A. *Sotsial'noe predprinimatel'stvo kak pravovoy fenomen i ego vliyanie na izmenenie kontseptsii yuridicheskogo litsa v Rossii* [Social Entrepreneurship as a Legal Phenomenon and its Impact on the Change in the Concept of the Legal Entity in Russia]. *Sbornik statey uchastnikov IV Ezhegodnoy mezhdunar. nauch.-prakt. konf., posvyashhennoj pamyati N. M. Korshunova; otv. red. Yu. S. Kharitonova* [Collection of Scientific Papers of Participants of the 4th Annual International Scientific-Practical Conference Dedicated to the Memory of N. M. Korshunov; ed. by Yu. S. Kharitonova]. Moscow, 2015. Pp. 348–356. (In Russ.).
 14. *Sotsial'noe predprinimatel'stvo v Rossii i v mire: praktika i issledovaniya; otv. red. A. A. Moskovskaya* [Social Entrepreneurship in Russia and in the World: Practice and Research; ed. by A. A. Moskovskaya]. Moscow, 2011. 284 p. (In Russ.).
 15. *Fil'chenkov V. A. Usloviya i napravleniya razvitiya gosudarstvenno-chastnogo partnerstva v sotsial'noy sfere regiona* [The Trends and Conditions of the State and Business Partnership Development in the Regional Social Sphere]. *Servis plus – Service Plus*. 2008. Issue 2. Pp. 33–37. (In Russ.).
 16. *Chistyakova L. «Eto nashi kamni» (Artur Sarnic o Korolevskom zamke, sovremennoy zastroyke i problemakh Kaliningrada)* [“These are our Stones”: Artur Sarnits about the Royal Castle, Modern Building and Problems of Kaliningrad]. Available at: <http://www.nb-forum.ru/social/symply-said/eto-nashi-kamni.html> (accessed 17.05.2016). (In Russ.).
 17. *Alter S. K. Social Enterprise Typology*. Virtue Ventures LLC. 2007. Nov. 27 (revised vers.). (In Eng.).
 18. *Boschee J. Social Entrepreneurship. Across the Board; Found of National Centre for Social Entrepreneurs*. 1995. № 32(3). Pp. 20–25. (In Eng.).
 19. *Dees J. G. Creating Large-scale Change: not ‘Can’ but ‘How’*. Available at: <http://qps.ru/zxXrS> (accessed 11.06.2016). (In Eng.).
 20. *Dees J. G. The Meaning of Social Entrepreneurship*. Center for Advancement of Social Entrepreneurship, Duke University's Fuqua School of Business, 2001 (revised vers.). Available at: http://www.caseatduke.org/documents/dees_sedeef.pdf (accessed 11.06.2016). (In Eng.).
 21. *Defourn J., Nyssens M. Conceptions of Social Enterprise in Europe: Recent Trends and Developments*. EMES WP. No. 08/01. 2010. (In Eng.).
 22. *Drucker P.F. Innovation and Entrepreneurship: Practice and Principles*. New York: Harper Business, 1985. 268 p. (In Eng.).
 23. *Drucker P. F. The Practice of Management*; Harper and Row Publishers, 1954. 404 p. (In Eng.).
 24. *Esposito R. T. The Social Enterprise Revolution in Corporate Law: A Primer on Emerging Corporate Entities in Europe and the United States and the Case for the Benefit corporation*, 4 Wm.&Mary Bus. L. Rev. 639 (2013). Available at: <http://scholarship.law.wm.edu/wmblr/vol4/iss2/7> (accessed 11.06.2016). (In Eng.).
 25. *Galera G., Borzaga C. Social Enterprise: An International Overview of its Conceptual Evolution and Legal Implementation*. Available at: <http://qps.ru/LXIIB> (accessed 05.06.2016). (In Eng.).
 26. *Horusitzky P., Julienne K., Lelièvre M. Un Panorama des Minimales Sociaux en Europe*. Etu-

- des et Résultats, DREES, № 464, 2006. Pp. 191–225. (In French).
27. *Kerlin J. A.* Social Enterprise in the United States and Europe: Understanding and Learning from the Differences. International Society for Third-Sector Research and The Johns Hopkins University. 2006. Vol. 17. Pp. 247–263. (In Eng.).
28. *Mair J., Marty I.* Social Entrepreneurship Research: A Source of Explanation, Prediction, and Delight. *Journal of World Business*. 2006. № 41. Pp. 36–44. (In Eng.).
29. *Prahalad C.* The Fortune at the Bottom of the Pyramid: Eradicating Poverty through Profits. Upper Saddle River, New Jersey: Wharton School Pub., 2005. 401 p. (In Eng.).
30. *Yunus M.* Banker to the Poor: Microlending and the Battle against World Poverty. New York: Public Affairs, 1999. 259 p. (In Eng.).
8. *Гришина Я. С.* Механизм взаимодействия частных и публичных правовых средств обеспечения социально-имущественных потребностей в условиях моделирования юридической конструкции социального предпринимательства / под ред. проф. Н. А. Баранова. Саратов: Слово, 2014. 164 с.
9. *Иванова А. О.* Развитие государственно-частного партнерства в Японии: дис. ... канд. экон. наук. М., 2010. 24 с.
10. *Кицай Ю. А.* О возможности включения социально ориентированных организаций в положения Гражданского кодекса Российской Федерации о юридических лицах // Экономика. Предпринимательство. Окружающая среда. 2015. № 3. С. 106–110.
11. *Подкорытов Р. А.* Государственно-частное партнерство в сфере пенсионного обеспечения Чили: дис. ... канд. экон. наук. М., 2010. 24 с.
12. *Серебрякова А. А.* Унификация правового регулирования отношений социального предпринимательства в Российской Федерации // Пятый Пермский международный конгресс ученых-юристов: материалы междунар. науч.-практ. конф. (г. Пермь, ПГНИУ, 24–25 окт. 2014 г.) / отв. ред. О. А. Кузнецова. Пермь, 2014. С. 175–176.
13. *Серова О. А.* Социальное предпринимательство как правовой феномен и его влияние на изменение концепции юридического лица в России // Сб. ст. участников IV Ежегод. междунар. науч.-практ. конф., посвящ. памяти заслуженного юриста РФ, д. ю. н., проф. Н. М. Коршунова / отв. ред. Ю. С. Харитонов. М., 2015. С. 348–356.
14. *Социальное предпринимательство в России и в мире: практика и исследования* / отв. ред. А. А. Московская. М.: Изд. дом Высшей школы экономики, 2011. 284 с.
15. *Фильченков В. А.* Условия и направления развития государственно-частного партнерства в социальной сфере региона // *Сервис plus*. 2008. № 2. С. 33–37
16. *Чистякова Л.* «Это наши камни» (Артур Сарниц о Королевском замке, современной застройке и проблемах Калининграда). URL: <http://www.nb-forum.ru/social/symply-said/eto-nashi-kamni.html> (дата обращения: 17.05.2016).
17. *Alter S. K.* Social Enterprise Typology. *Virtue Ventures LLC*. 2007. Nov. 27 (revised vers.).
18. *Boschee J.* Social Entrepreneurship. Across the Board // *Found of National Centre for Social Entrepreneurs*. 1995. № 32(3). Pp. 20–25
19. *Dees J. G.* Creating Large-scale Change: not 'Can' but 'How'. URL: <http://qps.ru/zxXrS> (дата обращения: 11.06.2016).

References in Russian

1. *Аксенова-Сорохтей Ю. Н., Барановская Е. А., Серебрякова А. А., Серова О. А.* Актуальные проблемы правового регулирования государственно-частного партнерства в РФ // *Успехи современной науки и образования*. 2016. № 4, т. 2. С. 147–152.
2. *Барков А. В.* О социальной значимости и актуальности легализации дефиниции «социальное предпринимательство» в российском законодательстве // *Экономика. Предпринимательство. Окружающая среда*. 2015. Т. 1, № 61. С. 67–69.
3. *Барков А. В.* О необходимости учета тенденции социализации частного права при совершенствовании российского гражданского права // *Вестник Нижегородского университета им. Н. И. Лобачевского*. 2015. № 4. С. 104–110.
4. *Белицкая А. В.* Правовое регулирование государственно-частного партнерства: монография. М.: Статут, 2012. 191 с.
5. *Викеев С. В.* Основные цели социальных инвестиций // *NB: Экономика, тренды и управление*. 2014. № 2. С. 1–11. DOI 10.7256/2306-4595.2014.2.6802.
6. *Гришина Я. С.* Инновационно-правовое регулирование поддержки социального предпринимательства в сфере среднего и малого бизнеса // *Вестник Нижегородского университета им. Н. И. Лобачевского*. 2014. № 3. С. 63–69.
7. *Гришина Я. С.* Концептуальная модель правового обеспечения российского социального предпринимательства: монография. М.: Юрлитинформ, 2016. 462 с.

20. *Dees J. G.* The Meaning of Social Entrepreneurship. Center for Advancement of Social Entrepreneurship, Duke University's Fuqua School of Business, 2001 (revised vers.). URL: http://www.caseatduke.org/documents/dees_se_def.pdf (дата обращения: 11.06.2016).
21. *Defourny J., Nyssens M.* Conceptions of Social Enterprise in Europe: Recent Trends and Developments. EMES WP. No. 08/01. 2010.
22. *Drucker P. F.* Innovation and Entrepreneurship: Practice and principles. N. Y.: Harper Business, 1985. 268 p.
23. *Drucker P.F.* The Practice of Management / Harper and Row Publishers, 1954. 404 p.
24. *Esposito R. T.* The Social Enterprise Revolution in Corporate Law: A Primer on Emerging Corporate Entities in Europe and the United States and the Case for the Benefit corporation, 4 Wm. & Mary Bus. L. Rev. 639 (2013), URL: <http://scholarship.law.wm.edu/wmblr/vol4/iss2/7> (дата обращения: 11.06.2016).
25. *Galera G., Borzaga C.* Social enterprise: An international Overview of its Conceptual Evolution and Legal Implementation. URL: <http://qps.ru/LXIIВ> (дата обращения: 05.06.2016).
26. *Horusitzky P., Julienne K., Lelièvre M.* Un Panorama des Minimas Sociaux en Europe. Etudes et Résultats, DREES. 2006. № 464. Pp. 191–225.
27. *Kerlin J. A.* Social Enterprise in the United States and Europe: Understanding and Learning from the Differences // International Society for Third-Sector Research and The Johns Hopkins University. 2006. Vol. 17. Pp. 247–263.
28. *Mair J., Marty I.* Social Entrepreneurship Research: A Source of Explanation, Prediction, and Delight // Journal of World Business. 2006. № 41. Pp. 36–44.
29. *Prahalad C.* The Fortune at the Bottom of the Pyramid: Eradicating Poverty through Profits // Upper Saddle River, New Jersey: Wharton School Pub., 2005. 401 p.
30. *Yunus M.* Banker to the Poor: Microlending and the Battle against World Poverty. N. Y.: Public Affairs, 1999. 259 p.