

# *Classification of the Economic Activities of Universities in the Context of Legal Status*

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**Abstract**—Taking into account the fact that all educational organizations, including higher educational institutions, according to the current Russian legislation, have non-commercial status, there is a need for a normative definition at the level of law of an exhaustive list of economic activity types permitted to higher educational institutions of all forms of ownership. The article also substantiates the theoretical and practical significance from a legal point of view of classifying types of economic activities of higher educational institutions into two groups - core and non-core activities. It is stated in this work that the economic activities of higher educational institutions should under no circumstances be recognized as entrepreneurial, but can only be considered as non-commercial economic activities.

**Keywords**—economic activity, paid services, higher educational institutions, non-profit organizations, legal status

## I. INTRODUCTION

In the Federal Law of the Russian Federation “On Education in the Russian Federation”, the types of economic (business) activities permitted to educational organizations are not defined, but the very right of these organizations (and among them, above all, higher education institutions) to be engaged in economic activity is, of course, undoubted. Thus, the financial and economic activities of educational organizations are directly mentioned in articles 27 (part 11) and 28 (part 1) of the aforementioned Federal Law, respectively [1]. In addition, articles 54 and 101 of the Law under review fix the possibility of educational organizations to provide paid educational services at the expense of individuals and legal entities [1].

It seems that the absence in the Russian legislation of a clear list of the types of economic activities which are permissible for educational organizations of all forms of ownership is a significant gap. After all, we should not forget that since 1997 all educational organizations in our country (including private ones) can only be created in the form of non-profit organizations, and the latter, according to the provisions of the Civil Code of the Russian Federation, are known to have special legal capacity and, therefore, are permitted to carry out only those activities that must comply with the basic statutory goals of their creation. With regard to the economic (business) activities of non-profit organizations, this principle is essentially directly stated in Part 4 of Art. 50 of the Civil Code of the Russian Federation, where it is said

that non-profit organizations can carry out income-generating activities, if it is provided for in their charters, only insofar as this serves the achievement of the goals for which they were created and if it corresponds to such goals [2].

Thus, the exclusively non-commercial status of all educational organizations requires that the subject of their economic (business) activities must have a clear regulatory certainty. This point is especially relevant for educational organizations in the field of higher education, i.e. for higher educational institutions, since they are the most actively involved in economic relations, widely providing paid educational and other services, as well as performing contractual research works.

## II. PURPOSE AND QUESTIONS OF RESEARCH

So, what is the best way to eliminate the above-mentioned gap, which exists in the Russian legislation concerning the types of economic activity of higher educational institutions? It seems that it can be done only in two ways: it is imperative to establish an exhaustive list of the types of such activities either permitted or prohibited for them. The first method, of course, looks preferable, because it achieves the complete clarity of the economic possibilities of this or that educational institution of higher education. Moreover, in our opinion, it is advisable to fix an exhaustive list of types of economic activities allowed to higher educational institutions not in a sub-legal regulatory act, but in the law. Such an approach would correspond to the tendency that has emerged in recent years of determining the legal status of any legal entities solely by laws.

Thus, in our opinion, it is advisable to state the list of economic activities, concerning higher educational institutions (regardless of the form of ownership), directly in the Federal Law “On Education in the Russian Federation”, and this list should be understood as exhaustive. At the same time, the founders of higher educational institutions, of course, cannot be deprived of the possibility to limit the range of types of economic (business) activities permitted by law in the charter of a particular educational institution.

Now it makes sense to refer to the classification of the types of economic activities of higher educational institutions. In this regard, it should be emphasized that their activity, which is expressed in the provision of paid educational services (for private higher education institutions it is the main, while for state and municipal ones it is optional), is also

economic, since the corresponding services are of certain value and price. This activity has a dual nature: from the point of view of its content, it is socio-cultural (non-economic), but from the point of view of the way how it is organized and alienated, it is fully covered by the concept of economic (business) activity established in the doctrine of civil and business law.

In the legal literature there are various classifications of higher educational institutions' activities. So, one of the domestic authors identifies at least four groups of their activities: the main economic activity of a university, that is the educational process itself; activities directly related to it - research, production of educational, methodical and scientific literature; activities included in the infrastructure of the university and providing the main and related activities; other types not determined by the purpose of the university [3, p.31-40].

In a more expanded form, this classification is characterized by the following positions. The first group includes educational activities, i.e. the implementation of educational programs. The second group includes research projects, which are divided into fundamental and applied. These include: the creation and transfer of scientific and technical products, including experimental research, new technologies and intellectual property; rendering scientific services, consulting, expert evaluation, conducting patent work, reviewing, R&D on the competitive basis, including grants. Such activities are closely connected with the main goal of the university, causing the creation of educational and scientific complexes. All types of research need the adequate provision of scientific information resources in the form of monographs, articles, other types of scientific and business literature and information.

The third group of activities of a higher educational institution is the implementation of works and services in the direction (profile) of its main activity (training of specialists) of this educational institution. This is the provision of medical and veterinary services in high school clinics and veterinary clinics, production of goods in the relevant departments of the university - in factories and workshops, production of books of the appropriate focus, experimental production, etc. In carrying out these activities, the material and intellectual potential of the university and its other infrastructure, i.e. the property that belongs to the founder or the university itself, is used for its main purpose. Such activities, as a rule, are associated with the profile of a higher educational institution and are implemented mainly not by its educational and research departments, but by other departments and organizations that are part of its organizational structure and have certain autonomy, including economic. According to its characteristics, such an activity, as a rule, coincides with the educational goal of a higher educational institution, is closely connected with it, and is aimed at providing the educational and research process, but it can be implemented independently.

The fourth group should include exactly those types of activities that Part 2 of Article 47 of the previous Law of the Russian Federation "On Education" of 1996 [4] referred to entrepreneurial activity: trade in purchased goods and

equipment; rendering intermediary services; equity participation in the activities of other institutions (including educational) and organizations; the acquisition of shares, bonds, other securities and the receipt of income (dividends, interest) on them; maintaining other income-generating non-sales operations which are not directly related to their own production of goods, works and services, provided for by the charter [3, p.31-40].

Another Russian scientist identifies five main areas of extra budgetary activities of a higher education institution: the sphere of educational services (preparation for entering a university, training in basic specialties, advanced training, training of foreign students, training of graduate students and doctoral students, individual paid consultations, paid short-term courses and seminars etc.); research and production activities (contractual research work, consulting activities, innovation activities, innovation incubators and science-and-technology parks, organization of paid conferences and scientific seminars, etc.); commercial activities (publication of textbooks, educational, methodological and scientific literature, advertising in the media belonging to the university, rent and hire of scientific equipment, creation of information sale centers, trading and intermediary activities, renting space, selling patents and licenses, equity and full participation in enterprises, etc.); services for students and employees of the university (catering, medical and health services, health centers, sports and children's camps, etc.); management of financial assets (operations with banks, real estate transactions, operations in the securities market, etc.) [5, p.29].

Each of the above classifications of types of economic (business) activities of higher educational institutions has certain logic, but it seems that they are still rather cumbersome, and none of them is reasonable enough from the point of view of legal science and economic practice. In our opinion, when classifying the types of economic activity of higher educational institutions (regardless of the form of their ownership), it makes sense to select only two groups of such types of their activity: the first group is their main core activity, which is carried out on the fee basis and is mainly expressed in the provision of paid services corresponding to their functional purpose; the second group combines all other types of economic (business) activities permitted by legislation to these organizations, both related to their main profile and unrelated to it. The advantages of this approach to classifying types of economic activity of universities are that it is simple enough to understand and at the same time as close as possible to the needs of real business practice, in particular, from the point of view of taxation.

Thus, the types of economic activities of higher educational institutions should be divided into two groups, which can be called the "core" and "non-core" types of their economic activity, respectively. Since the composition of the second group is determined by the residual principle, it is necessary, first of all, to establish what kinds of economic (business) activities of higher educational institutions should be attributed to the first group.

In our opinion, a very limited number of types of economic activities permitted to the universities can be recognized as

corresponding to their main functional profile of a higher educational institution of any form of ownership. As such activities we suggest to consider only the following: the provision of paid educational services; contractual scientific and technical activities; publishing activity. All other types of economic activities of higher educational institutions should be referred to as the "non-core", that is, to the second group.

Each of these specialized types of economic activities of higher educational institutions should be detailed in the Federal Law "On Education in the Russian Federation". For example, in the framework of such activities as the provision of paid educational services, in addition to training contract students in basic specialties, it is necessary to distinguish: pre-university training, advanced training, training of foreign students, training of graduate students and doctoral students, paid short-term courses and seminars, additional educational services, etc. In the framework of scientific and technological activities of higher educational institutions, in addition to performing contractual research, developmental and technological works, it would be necessary to highlight: scientific advice, conducting scientific examinations, the activities of innovation incubators created at universities, scientific and technical parks, paid conferences and scientific seminars, etc. At the same time, such detailing should not be excessive.

Speaking about the main profile type of economic activity of higher educational institutions, it makes sense to pay attention to the critical attitude of a number of scientists to the term "educational service". So, according to E.A. Sukhanov, "in a normal university not educational services are provided, but the process of training and education is going on" [6, p.54].

If we take the legal aspect of the term "service", then, according to Professor A.P. Sergeev, a service should be understood as the actions of "the subjects of civil turnover, which either do not end with any definite result, but contain a useful effect in themselves, or have a result that is not embodied in a materialized form" [7, p.278]. The lack of a materialized result distinguishes the obligations to provide services from the obligations to carry out work. If the material result is not achieved after performing the work, the obligation is considered to be unfulfilled, even if the obliged person has done everything necessary to achieve it. In the commitments to render services, "if the assigned case is being conducted properly, it is considered that the counter-agent fulfills the assumed obligation, even if the expected effect does not occur" [8, p.484].

Educational activity on the reimbursable basis, in our opinion, should be attributed to services, since it fully corresponds to the properties of services, as a special group of objects of civil legal relations. This position is also shared by the domestic legislation, which in many legal acts directly calls educational activities services. When a service is rendered, not the result itself is "sold", but the actions that led to it; in our case, the activities of a higher educational institution in socialization of a student are subject to payment.

The goal of a student in concluding a contract for the provision of educational services is to receive education as a combination of knowledge and skills in a certain area of

human life and a document confirming the receiving of a certain level of education by contract. The peculiarities of educational services, according to M.A. Lukashenko, are: the coincidence in space and time of the processes of its production and consumption; intangibility; the impossibility of accumulation and redistribution due to simultaneous production and consumption, the immateriality of the service, the impossibility of estimating the expected personal effect of the educational service by the consumer due to the difficulty of predicting the state of labor market at the end of the course; the active role of the consumer of educational services in the process of its consumption, etc. [9, p.21-26]. Of the above features, in our opinion, the most significant is the dependence of the process of rendering educational services on the behavior, initial preparedness and personal qualities of a student.

Within the meaning of part 4 of Article 28 of the Federal Law "On Education in the Russian Federation" scientific activity is an integral part of the educational process of higher educational institutions [1]. However, it is necessary to emphasize that only such scientific and scientific-technical activity of higher educational institutions, which is carried out on the contractual basis, and not at the expense of basic budget funding, will respond to the signs of economic (business) activity. At the same time, it must not be forgotten that budget financing of scientific research can also be carried out through targeted financing program in the framework of executing a state order on the basis of a government contract (which is nothing more than an economic agreement) - and then the corresponding R&D will be carried out covered by the concept of economic (business) activities.

The third profile type of economic (business) activities of higher educational institutions – publishing - is subject to the very extensive legal regulation. However, oddly enough, the Federal Law "On Education in the Russian Federation" does not directly mention the right of universities to be engaged in publishing activities, and the publishing offices are not mentioned as the important structural subdivisions of a university. It seems that this gap, of course, must be filled by our legislator.

As for the "non-core" types of economic (business) activities of higher educational institutions, since their possible range is rather wide, it makes no sense to give their characteristics here. I would just like to draw attention to the fact that among them it is possible to single out those activities that, to a certain extent, are associated with the main goal of a higher education institution — the educational process (manufacturing and selling consumer goods in educational and production departments of a higher education institution, paid consulting services, etc.), and those that are completely unrelated to the main goal and profile of the university (for example, parking services, various repairs, carriage of goods, etc.).

Such a classification of non-core types of economic activities of higher educational institutions is of practical importance, first of all from the point of view of taxation procedure of the income derived from their implementation,

which, logically, should be different in case of types of the activity related to the first and the second groups.

As for the special legal regulation of non-core economic activities of higher education institutions, the educational legislation in this regard essentially refers to the norms of civil and business law regulating specific types of contractual obligations and establishing additional conditions for the implementation of certain types of activities, such as: obtaining special permits (licenses), the acquisition of patents, product certification, etc.

Now it is appropriate to raise the question: can the considered core and non-core types of economic activities of higher educational institutions have the character of entrepreneurship? In answering this question, we, of course, will proceed as before from the fact that educational organizations should have only non-commercial status. In relation to non-core types of their activities, the question posed suggests a positive answer, because they are usually aimed at making a profit, or at least implying its receipt (another thing is that this profit cannot be appropriated in any part by the founders of higher education institutions). With regard to their core activities, a positive answer, although not so obvious, is also quite legitimate, based on the analysis of current legislation, which does not prohibit higher education institutions to include profitability in the price of educational services and in the cost of research and development and design work, and especially in the price of its publishing products.

However, with such interpretation of the profile economic (business) activities of higher educational institutions, we are faced with a significant contradiction. If we assume that the provision of paid educational services, which bring profit to a higher educational institution, is always an entrepreneurial activity, then inevitably it should be concluded that the goal of creating practically all private higher education institutions is essentially to make a profit, which means that such universities themselves should be recognized as commercial organizations. Such thesis could probably be applied to some state also to municipal higher educational institutions. To eliminate this contradiction, in our opinion, is possible only in one way: the provision of paid educational services, as well as other specialized types of economic (business) activities of higher educational institutions, both in theory and in legislation, should not be considered as entrepreneurial activities.

This approach to solving the identified problem should not be perceived as an artificial technical and legal method, because by their very nature, the core activities of any higher education institution, and especially its educational activities, are primarily focused not on making profits, but on creating intangible goods, the socialization of an individual and the improvement of the intellectual and cultural level of the society. It should be borne in mind that the risk component of paid educational activities of higher educational institutions is extremely insignificant.

Having shown that the core types of economic (business) activities of higher educational institutions are not entrepreneurship, we take the liberty to assert that it is also unreasonable to consider non-core types of their economic

activities as entrepreneurship, even when they are aimed at making a profit from the point of view of tax legislation.

The last point is explained by the following considerations. First, on the basis of the legal definition of entrepreneurial activity given in the Civil Code of the Russian Federation (Art. 2), it can be concluded that in a strict sense only that profit-oriented economic activity that is carried out by individuals and legal entities registered as subjects of entrepreneurship is considered entrepreneurial [2]. Secondly, in our opinion, the differentiation of the economic (business) activities of non-commercial organizations into entrepreneurial and non-commercial has no particular practical meaning. The fact is that the entrepreneurial activity of non-profit organizations, due to its subordination to their main mission, has a rather significant specificity and, as a result, a special legal regime, which usually does not differ from the legal regime of purely non-profit economic activities of these structures.

It is not by chance, therefore, that the domestic legislation, at least in the norms of the Civil Code of the Russian Federation, refused to use the term "entrepreneurial activity" in relation to non-profit organizations, replacing it with the neutral term "income-generating activity" (see, for example, part 4, art. 50 Civil Code) [2].

### III. RESEARCH METHODS

The methodological basis of the study consists of such basic methods as: formal-logical, analytical-synthetic, historical and system-structural method.

By means of formal-logical and historical methods, the processes of formation and development of the regulatory framework of higher educational institutions were studied.

The analysis of the current state of legislation addressed to higher education institutions was carried out by the author using the analytical-synthetic method, which, moreover, was used in the process of developing proposals for improving the legal regulation of the economic activities of these organizations. The system-structural method was used in the study of individual elements of the legal status of higher educational institutions in the context of the topic of this work.

### IV. CONCLUSION

Summarizing the above reasoning, we can formulate the following conclusions.

1. In order to strictly define the subject of economic activities of higher education institutions with a view to its compliance with their main purpose, it is advisable to formulate directly in the Federal Law "On Higher Education in the Russian Federation" an exhaustive list of types of economic activities permitted for higher educational institutions of all forms of ownership.

2. From the legal point of view, it is expedient to classify the types of economic activities of higher education institutions into two groups - core (including the three main types of their activities: provision of paid educational services; performing contractual research and development activities; publishing) and non-core (including all other business operations permitted by law).

3. The economic activities of higher education institutions should under no circumstances be recognized by the legislator as an entrepreneurial activity. Any income-generating activities of higher education institutions, by virtue of their non-commercial status, can only be considered as non-commercial economic activities.

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