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ENTREPRENEURS AND ENTREPRENEURSHIP IN THE LEGAL SYSTEM OF THE REPUBLIC OF SERBIA

ABSTRACT: An entrepreneur, as a natural person engaged in a specific economic activity for the purpose of generating profit, can be analyzed and considered from various perspectives, including economic, legal (commercial law, labor law, etc.), social, and others. This paper presents some of the specific characteristics of an entrepreneur as a business entity, as well as the features that distinguish them from other types of companies, highlighting the advantages and disadvantages associated with this form of business organization. A significant number of entrepreneurs in the Republic of Serbia, along with the persons they employ, underscores the importance of analyzing and defining the basic concepts, as well as determining the role of entrepreneurs and entrepreneurship within the legal system. A historical and legal review of the emergence and development of entrepreneurship is also necessary to provide a clearer understanding of the position entrepreneurs occupy in the modern economy and their legal and regulatory framework.

Keywords: *business entity, natural person, entrepreneurship, entrepreneur.*

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1. Introduction

The legal status of entrepreneurs is regulated by the Law on Companies, 2011, although opinions on the inclusion of entrepreneurs in the Law on Companies are divided, given that an entrepreneur has a different legal nature compared to other business entities organized in the form of legal entities (Škorić, 2016, p. 88). An entrepreneur is a legally capable natural person who carries out activities with the aim of generating income and who is registered as such in accordance with the law on registration. In order to carry out independent activities, an entrepreneur establishes a business, i.e. an appropriate form of business. Namely, an entrepreneur is a natural person who, through registration for a fixed or indefinite period, becomes a business entity, but does not obtain the status of a legal entity that carries out activities with the aim of making a profit (Law on Business Companies, 2011, Art. 83). A natural person registered in a special register, who performs a liberal profession regulated by a special regulation, is considered an entrepreneur within the meaning of the law, if so determined by that regulation. An individual farmer is not an entrepreneur within the meaning of this law, unless otherwise regulated by a special law.

Entrepreneurial activity has changed its forms and essence in accordance with the specifics of social circumstances in different historical periods, so in the early Middle Ages we have merchants - adventurers like Marco Polo, while in the 20th century entrepreneurs emerge as managers and innovators. The term entrepreneurship comes from the English word of French origin "entrepreneur", which in translation means: "one who takes between" or "to go between". An entrepreneur is considered to be "an individual who takes risks in order to start something new", (Hisrich, Peters & Shepherd, 2011, p. 5). An entrepreneur is, therefore, someone who is capable of successfully running their own business, although this success is learned. The mentality of expecting that it is necessary for the state to solve all problems, instead of tackling business and development problems with one's own strength, is a legacy and a remnant of the time of self-management socialism in our country.

2. Entrepreneur and Entrepreneurship

From a legal perspective, the central subject of this paper is the entrepreneur, while in a broader context he represents part of a system that we call entrepreneurship. Although at first glance it may seem that this is a similar

institute, their mutual relationship is actually a relationship of the general and the particular, where entrepreneurship is more broadly defined and more a subject of economic science and management (Dudić, 2022, p. 7).

The founder of the theory of entrepreneurship, Richard Cantillon, believed that “an entrepreneur is ready to take risks and to engage in independent action to make a profit” (Cantillon, 2001, p. 14). The basis of his approach is the risk that an entrepreneur bears when buying at known prices and selling at unknown ones, i.e. prices that will be formed in the future. To this day, theorists cite risk as the main characteristic of entrepreneurship. Cantillon first used the word entrepreneur in 1734 in his work “Discourse on the Nature of Trade”, where he classified economic entities into three types – landowners, entrepreneurs and tenants. One of the greatest authorities in the field of entrepreneurship, Howard Stevenson, provides a generally accepted definition of the modern understanding of entrepreneurship – “Entrepreneurship is the effort to exploit an opportunity, regardless of the resources currently possessed” (Stevenson, 1983, p. 12).

From an economic perspective, according to available and comparable data for the period from 2020 to 2022, there has been a noticeable increase in the number of entrepreneurs throughout the territory of the Republic of Serbia. Also, according to other macroeconomic indicators, it can be concluded that entrepreneurs and their businesses have a significant impact on the overall economy in the Republic of Serbia and its development.

Table 1. Selected macroeconomic indicators for enterprises by size and entrepreneurs, 2020-2022¹

Republic of Serbia Amounts in million RSD (except for VAT per employee)

	Entrepreneurs	Micro enterprises	Small businesses	Medium-sized enterprises	MSME/SME	Large companies
2020						
No. of business entities	298 279	90 106	12 187	2 716	403 288	584
No. of employees	272 446	167 316	246 883	278 816	965 461	518 409
Trade exchange	1 565 289	1 696 645	2 470 617	2 772 480	8 505 031	4 308 590

¹ Indicators that are not relevant to the research subject of this paper have been omitted from the original table.

VAT	416 499	271 227	477 248	604 631	1 769 605	1 218 454
VAT per employee	729,8	1621	1933,1	2168,6	1400,3	2350,4
No. of exporters	3 240	6 719	3 877	1 367	15 203	384
Export of goods	19 737	140 412	213 973	410 289	784 411	1 201 597
No. of importers	4 073	12 371	5 547	1 852	23 843	472
Import of goods	23 659	290 238	493 746	625 444	1 433 087	1 186 197
Basic capital	/	965 551	583 167	694 803	2 243 521	2 282 556
2021						
No. of business entities	303 300	89 655	12 607	2 800	408 362	612
No. of employees	280 387	166 634	254 584	287 853	989 458	546 176
Trade exchange	1 953 472	2 014 141	3 036 410	3 347 769	10 351 792	5 270 548
VAT	530 258	329 690	600 131	754 221	2 214 300	1 527 088
VAT per employee	908,5	1978,5	2357,3	2620,2	1712,9	2796
No. of exporters	3 520	6 655	4 000	1 414	15 589	409
Export of goods	23 969	171 699	275 310	460 698	931 675	1 560 106
No. of importers	4 469	12 363	5 725	1 905	24 462	490
Import of goods	29 249	322 677	618 284	768 520	1 738 730	1 511 869
Basic capital	/	947 553	543 430	756 174	2 247 157	2 400 348
2022						
No. of business entities	317 148	92 239	12 540	2 913	424 840	624
No. of employees	272 067	170 339	254 322	299 259	995 987	564 571
Trade exchange	2 255 191	2 504 155	3 607 433	4 059 980	12 426 759	6 535 357
VAT	648 822	424 611	693 386	933 114	2 699 932	1 761 036
VAT per employee	1101,2	2492,7	2726,4	3188,1	2056,1	3119,2
No. of importers	3 560	7 058	3 974	1 463	16 055	425
Export of goods	30 609	228 320	301 552	588 054	1 148 535	1 986 009
No. of importers	4 601	12 559	5 579	1 975	24 714	509
Import of goods	39 031	419 119	700 628	980 145	2 138 923	2 171 255
Basic capital	/	995 971	546 228	741 933	2 284 132	2 521 021

Source: Burzanović, M. (2024), p. 15.

Table 2. Number of business entities – entrepreneurs (by activity), 2020-2022²

	2020	2021	2022
REPUBLIC OF SERBIA	298 279	303 300	317 148
Agriculture, forestry and fisheries	3 020	3 063	3 059
Mining	167	153	144
Processing industry	44 054	44 628	45 013
Electricity, gas and steam supply	47	49	56
Water supply and wastewater management	897	1 064	1 147
Construction	24 441	26 479	32 130
Wholesale and retail trade and repair of motor vehicles	63 818	62 968	61 392
Transportation and storage	32 529	32 818	33 515
Accommodation and food services	25 152	25 219	25 674
Information & Telecommunications	15 582	16 172	18 960
Financial and Insurance Activities	1 761	1 726	18 960
Real Estate Business	1 321	1 384	1 471
Professional, scientific, innovation and technical activities	41 566	42 789	46 174
Administrative and Auxiliary Services	8 461	8 828	9 473
State Administration and Compulsory Social Security	/	/	/
Education	2 609	2 944	3 314
Health and social protection	6 278	6 423	6 604
Arts, Entertainment & Recreation	3 323	3 540	4 209
Other service activities	23 253	23 053	23 094
The Role of the Household as an Employer	/	/	/
Activities of Extraterritorial Organizations and Bodies	/	/	/

Source: Burzanović, M. (2024)., p. 18.

As could be seen, there is a wide range of activities in which entrepreneurs operate, as well as a significant number of persons employed by entrepreneurs as employers. The literature often attempts to answer the question of why this is so? Why, if it is generally known, conditionally speaking, the main drawback

² Indicators that are not relevant to the research subject of this paper have been omitted from the original table.

of this form of business entity, which is that “The entrepreneur is liable for all obligations arising in connection with the performance of his activity with all his assets, and this asset also includes the assets acquired in connection with the performance of the activity. Liability for obligations under paragraph 1 of this article does not cease upon the entrepreneur’s removal from the register” (Law on Business Companies, 2011, Art. 85).

Therefore, when starting a certain business, the entrepreneur consciously assumes responsibility and risk for possible bad business and losses, thus endangering his property that he acquired even before registration. However, available data indicate that a large number of people decide on this form of business organization. The answer to the question Why? can be found in the very definition of Entrepreneurship and what it represents. Namely, the available materials that analyze and explain entrepreneurship have in common that they view entrepreneurship in its entirety. Thus, there are the following definitions:

„There is no agreement on the definition of Entrepreneurship among the researchers since the field is on the organic phase of development“ (Salman Shabbir & Md Kassimet, 2019, p. 585). Henry, Hill and Leitch (2005) made a valuable contribution by extending the work of authors who had previously dealt with this topic, which defined the phenomena as “someone who has the ability to see and evaluate business opportunities; gather the necessary resources to take advantage of them, and initiate appropriate action to secure success” (p. 99).

The European Commission’s definition of entrepreneurship states that entrepreneurship is the ability of an individual to turn ideas into action, using creativity, innovation, and risk-taking (Bučalina Matić, Milanović & Vrcelj, 2016, p. 486). Entrepreneurship as a business activity involves identifying, assessing, and exploiting opportunities to create a new product, service, production process, new organizational structure, or market (Shane & Venkataraman, 2000, p. 218). Entrepreneurship exists when entrepreneurs have different ideas about the relative value of resources, that is, when resources move from inputs to outputs. According to these authors, entrepreneurship is based on different beliefs about the value of resources (Alvarez & Busenitz, 2001, p. 756).

Entrepreneurship as a growth factor and driver of development is present and has great importance in economies of different levels and degrees of development. However, the greatest impact of entrepreneurship on the above is noticeable in economies that are in transition (Bučalina Matić & Pejanović, 2022, pp. 244–245). Entrepreneurship can be defined as an innovative and

dynamic process of creating, organizing and developing a certain business venture with the aim of creating new value in a changing environment. As such, it involves noticing and exploiting opportunities from the environment in order to solve certain problems present in the market or industry in which they operate (Jovanović-Božinov, Živković, Langović & Veljković, 2004, p. 12). Entrepreneurship as a business activity influences the successful solution of problems that arise in consumption, influences the reduction of unemployment, and at the same time represents a path for the discovery and development of new markets. Based on all of the above, it can be said that entrepreneurship represents a new sector of the modern economy (Bučalina Matić & Pejanović, 2022, p. 245).

There are also authors who emphasize the social and economic impact of entrepreneurship in such a way that it is imperative that government support is provided to entrepreneurship in order for self-employment to flourish and prove fruitful. Entrepreneurship has seemed like an imperative socio-economic topic of academic investigation and debate in the last few decades (Fayolle, 2006).

From this it can be concluded that most definitions of entrepreneurship emphasize its advantages and emphasize innovation, as well as the special qualities that an entrepreneur should possess, and therein lies the answer to the question of why entrepreneurs exist, and that their number is increasing from year to year.

3. Specificities of an entrepreneur as a business entity

The positive legal position of entrepreneurs in the Republic of Serbia, as previously written, is regulated by the Law on Companies, which can be considered a certain legal nonsense, because an entrepreneur is a natural person, while companies are all, without exception, legal entities. Also, the very name of the Law - the Law on Companies - directly implies that it contains legal norms that regulate the legal position of companies, and then in these provisions we find the section Entrepreneur, which is not a company. However, this was not always the case. Before 2012, the legal position of entrepreneurs was regulated by the Law on Private Entrepreneurs, 1989.³

Positive legal provisions stipulate that an entrepreneur is established for a fixed or indefinite period of time and is entered in the business register

³ Namely, starting in 2012, the Law on Private Entrepreneurs ceased to be valid, and the provisions regulating their status were incorporated into the Law on Companies, 2011.

maintained by the Business Registers Agency. As of January 1, 2018, as part of the digitalization project, electronic registration of the establishment of an entrepreneur is also possible at the Business Registers Agency. The possibility of submitting an electronic application was announced back in 2012, with the entry into force of the Law on the Registration Procedure in the Business Registers Agency, 2011, which stipulates that the electronic application is submitted to the Agency via a user application for receiving electronic applications, which ensures the receipt of electronic documents and proof of payment of the registration fee, and that the signing of the electronic application and documents, as well as the verification of electronic documents, is carried out in accordance with the regulations governing electronic signatures and electronic documents. However, the application of digital technologies in the registration and establishment of business entities is very significant and has existed far longer than e-registration. Along with the increasing application and importance of digital technologies in this area, some new dilemmas are opening up, new challenges are emerging that modern business entities face. The same applies to the new challenges facing the authorities authorized for registration (Škorić, 2020, p. 10). More than six years have passed since the possibility of its implementation, which has greatly facilitated the registration process, during which time both a software solution and a set of regulations were awaited to enable electronic registration, primarily those that regulated the issue of electronic signatures and electronic documents. If we compare the possibility of e-registration legally, it is, for example, also enabled in Slovenia and Croatia, thereby simplifying both the establishment of entrepreneurs and all subsequent changes, databases, etc⁴.

A natural person, therefore, can carry out a certain business activity only if he or she acquires the status of an entrepreneur, because this right is not an integral part of the business capacity of every natural person and is not acquired by birth, but by the fact of registration in the legal form of an entrepreneur in the prescribed register. By registering, an entrepreneur also acquires a special business name, which must contain the entrepreneur's first and last name, the designation "enterprise" or "pr" and the place where the entrepreneur's registered office is located (Law on Business Companies, 2011, Art. 86). In accordance with the law, a business name may also contain the entrepreneur's name and business activity, all in accordance with the law and the principles that apply to the business name of every business entity.

⁴ Croatia: eObrt, <https://e-obrt.gov.hr/>, Slovenia: Ajpes, <https://www.ajpes.si/> - in Slovenia there is the possibility for users to search the European register of business entities on this portal.

The specificity of an entrepreneur in relation to other forms of business companies has already been mentioned, which concerns the entrepreneur's property and his liability for obligations undertaken in commercial transactions, where liability does not cease even after the entrepreneur is deleted from the business register. The Law on Business Companies does not regulate what constitutes the property of an entrepreneur. The concept of property is regulated by civil law regulations (Marković, 2015, p. 171). The Business Register Agency maintains a register of entrepreneurs and enters them only based on the request of a natural person who intends to carry out a business activity. Information about an entrepreneur must always be available to the public and, as a rule, an entrepreneur does not form separate property for carrying out the activity, but all the rights and obligations of the entrepreneur as a natural person constitute his unique property. The principle of the unity of the entrepreneur's property is the basic rule according to which the property used for carrying out the activity and the personal (private) property of a natural person that is not used for these purposes are equated. Domestic case law also goes in this direction, and it is considered that the founder of an entrepreneurial activity is liable with all his personal property for obligations arising in connection with the entrepreneurial activity until the moment of the entrepreneur's deletion from the competent register due to the continuation of the activity in the form of a company, (Liability of the founder of an entrepreneurial activity, the ruling of the Supreme Court of Cassation Rev 2493/2020 of 21.01.2021. adopted at the session of the Civil Department on 16 March 2021).⁵ This fact does not exclude the obligations of a natural person arising in the period before he registered as an entrepreneur.

From a comparative point of view, the entrepreneur and his property are treated equally or very similarly in Croatia and Slovenia, with the exception that there are certain differences regarding the taxation of these economic entities, and Slovenia leads the way in the benefits for the Sole trader form, which is defined as: "A sole trader (s.p.) is a natural person independently pursuing a gainful activity on the market. Registering as a sole trader is quick, easy and free of charge. No initial capital is required." Therefore, in Slovenia, the legal form of an entrepreneur is called a sole trader, and legally it fully corresponds to the legal form that exists in Serbia, and in the Slovenian language the term "Samostojni podjetnik" is used (Act on Companies - ZGD-1, 2006), which would correspond to the Croatian term "Poduzetnik", that is, the Serbian "Preduzetnik". In the UK, there is also a form of Sole trader,

⁵ Presuda Vrhovnog kasacionog suda [The Ruling of the Supreme Court of Cassation]. Rev 2493/2020 od 21.01.2021. godine.

with with the same legal designation as Entrepreneur (unlimited liability for assumed obligations, etc.), so it is not entirely clear whether there is also the form of Entrepreneur or if it is just a synonym and that both Sole trader and Entrepreneur represent the same form (see more: Set up business, 2025).

The law regulating compulsory enforcement regularly takes into account the social minimum of natural persons and their subsistence minimum. Thus, all exemptions in the enforcement procedure that apply to natural persons will be equally valid when enforcement is carried out against an entrepreneur, which is a direct impact of the principle of the sole property of an entrepreneur (Law on Enforcement and Security, 2015). If enforcement is carried out by blocking the current account of the entrepreneur but there are no funds on it, the creditor can also carry out enforcement on the accounts of the natural person, so entrepreneurs often mistakenly believe that by transferring funds from the entrepreneur's account to the account of the natural person before enforcement, they will be able to avoid collecting the claim.

Another situation is noticeable in practice, and that is the attempt to delete an entrepreneur. Namely, the blocking of an entrepreneur's account is not an obstacle to deleting the entity from the register, which entrepreneurs often do, and then register a new entrepreneur and continue with their activities, believing that they have avoided claims. However, creditors can also carry out enforcement on the property of a natural person, but precisely due to the principle of single property and on another entrepreneur that that natural person registers.

In civil proceedings, there was also a dilemma about what to do if an entrepreneur is deleted even though proceedings have been initiated against him. They continue even after deletion, so that the civil proceedings are completed against the natural person (Law on Civil Procedure, 2011).

The situation is similar with actual jurisdiction. If the civil proceedings are initiated before a commercial court due to the nature of the party, the loss of the status of an entrepreneur does not affect the jurisdiction of the commercial court, if the lawsuit was filed at the time when the entrepreneur had such legal status. On the other hand, if the lawsuit is filed for a claim that a creditor had against an entrepreneur, and he was later deleted from the register, the court of general jurisdiction over the defendant natural person will have jurisdiction, regardless of the nature of the debt, i.e. regardless of whether it arose in the course of carrying out business activities as an entrepreneur.

4. Conclusion

The role of entrepreneurs is becoming increasingly important and they are becoming an important factor in successful business in a market economy, as a result of changes in which, in addition to capital, the main source of income is knowledge and information. Entrepreneurs are increasingly initiating and creating products, implementing new technologies, developing services and contributing to the economic growth of the entire society. They also initiate changes in the wider environment through their actions.

Entrepreneurship in Serbia was once exclusively associated with old crafts and craftsmen. What has changed is that masters of their crafts are increasingly found in many fields that no longer bear old names such as blacksmith, carpenter, tailor, painter..., but new names, and even new services, which are equally recognized throughout the world, such as: “freelancer”, “influencer”, “digital marketing”, “life coach”, “consulting” and many others.

What inspires confidence are the new generations of capable entrepreneurs with positive characteristics and well-educated people, which speaks in favor of the fact that the future of entrepreneurial society in Serbia has a realistic perspective.

Conflict of Interest

The authors declare no conflict of interest.

Author Contributions

Conceptualization, S.Š. and N.P.; methodology, S.Š.; software, S.Š.; formal analysis, S. Š. and N.P.; writing - original draft preparation, S. Š. and N.P.; writing - review and editing, S.Š. All authors have read and agreed to the published version of the manuscript.

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PREDUZETNIK I PREDUZETNIŠTVO U PRAVNOM SISTEMU REPUBLIKE SRBIJE

APSTRAKT: Preduzetnik, kao fizičko lice koje obavlja određenu privrednu delatnost radi sticanja dobiti, može se analizirati i posmatrati sa različitih aspekata, kao što su ekonomski, pravni (privrednopravni, radnopravni i sl.), socijalni i drugi. U radu autori prikazuju neke specifičnosti vezane za preduzetnika kao privrednog subjekta na prvom mestu, a onda i njegove posebnosti koje ga izdvajaju od ostalih privrednih društava, sa brojnim prednostima i nedostacima koje ova vrsta privrednog organizovanja može da ima. Značajan broj preduzetnika u Republici Srbiji, kao i lica koja zapošljavaju preduzetnici, itekako opravdavaju analizu i definisanje osnovnih pojmova, kao i određivanje mesta preduzetnika i preduzetništva u pravnom sistemu. Istorijiskopravni osvrt na nastanak i razvoj preduzetništva takođe se nužno nameće, kao i njegovo pravno i zakonsko uređenje, sa ciljem preciznijeg razumevanja položaja koji preduzetnik zauzima u savremenoj ekonomiji.

Ključne reči: *privredni subjekt, fizičko lice, preduzetništvo, preduzetnik.*

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