



# Current problems of entrepreneurial activity

## Problemas actuales de la actividad emprendedora

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#### ABSTRACT:

A scientific approach has been considered, according to which, it is advisable to study entrepreneurship in the context of crisis phenomena in the economy, which intensified in the second half of 2018. It has been proved that the concept of economic crisis is possible and appropriate to use in a wide context of modern conditions. For example, it is difficult to distinguish between the concepts of economic and budget crises.

**Keywords:** entrepreneurship, economic crisis, entrepreneurial risk, civil law, banks, population, state, society, legislation, education, investment.

#### RESUMEN:

Se ha considerado un enfoque científico, según el cual es aconsejable estudiar el espíritu empresarial en el contexto de fenómenos de crisis en la economía, que se intensificó en la segunda mitad de 2018. Se ha demostrado que el concepto de crisis económica es posible y apropiado para usar en un amplio contexto de condiciones modernas. Por ejemplo, es difícil distinguir entre los conceptos de crisis económica y presupuestaria.

**Palabras clave:** emprendimiento, crisis económica, riesgo empresarial, derecho civil, bancos, población, estado, sociedad, legislación, educación, inversión.

# 1. Introduction

## 1.1 Introduction to the Problem

In legal literature, the number of studies on entrepreneurial activity in the context of the economic crisis is increasing. Events of the fall of 2018 allow stating that this issue is reinforcing its relevance.

## 1.2. Importance of the Problem

N.V Rubtsova (2018), G.F. Ruchkina and O.V. Merkusheva (2017), O.A. Serova (2016; 2017), M.N. Moskalenko (2016), A.A. Anufriyeva (2016), V.A. Belov (2016), A.I. Chernyshev (2017), S.O. Shokhin (2016) and I.Sh. Ismailov (2016) devoted their work to the identification of the nature and specifics of entrepreneurial activity in the conditions of the economic crisis.

Certain issues related to the development of the theory and practice of civil law and, in general, legal science were studied in the works by the following authors: A.K. Solovyov (2018), V.A. Belov (2016a,b), S.V. Bazhanov and N.D. Boot (2016), N.L. Lyutov (2016), M.A. Zinkovsky (2016), etc.

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## 2. Methods

In the process of the study, we were guided by general logical methods of scientific knowledge (analysis, synthesis, analogy, induction, deduction), as well as general (systemic, structural-functional, etc.) and special scientific methods (comparative legal, formal legal, sociological), used for the analysis of state and legal phenomena and processes associated with the implementation of the constitutional right to education.

Since the entrepreneurial and, in general, economic activities are implemented by a wide range of subjects of relevant legal relations, we applied the structural-functional method, which allowed, in particular, studying the processes of interaction of economic phenomena not only in the Russian Federation, but also outside of it, as well as identifying and analyzing the features of organizational structure and internal mechanism of functioning of organizations engaged in the activity under study.

The use of the comparative-legal method allowed characterizing the process of functioning of not only Russian but also foreign business entities, the formation of new approaches to the nature and forms of such activities, identifying the most characteristic trends and patterns in their development and justifying the possibility of using the experience of their legal regulation.

Based on the application of the formal legal method, the civil legal status of entrepreneurial activity of the Russian Federation was investigated; its place and role in the system of legal and other values of the Russian

state were characterized. The described methodology allowed us to reveal some shortcomings (contradictions and gaps) in the legal regulation of entrepreneurial activity and develop proposals aimed at overcoming them.

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### **3. Results**

It has been found that doctrinal approaches are the most accurate in terms of understanding the substance of the categories analyzed in the article, in which entrepreneurship is investigated in the context of crisis phenomena and processes, including those taking place on a global scale.

We believe that the crisis significantly affects not only credit organizations but all business entities and economic activity in general.

It has been determined that the economic crisis can and should be used as an opportunity to establish a more balanced and equitable system of labor regulation by reducing excessive regulatory flexibility.

It has been proposed to form a systematic concept of anti-crisis activities in order to improve the legislation, taking into account modern economic realities, which lead to more conservative actions of participants in civil legal relations, increasing the importance of their prognostic actions.

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### **4. Discussion**

In modern realities, the economic crisis concept seems possible and appropriate to use in a wider context. For example, it is difficult to distinguish between the concepts of economic and budgetary crises, which are increasingly explored in the context of changes in pension legislation. As A.K. Solovyov writes, "every year, pensioners increase their social and economic importance among the main socio-demographic groups of the population: they accounted for 28.3% of the country total population; in the near future they will exceed the economically active population in Russia" (Solovyov, 2018, p. 46). It is not difficult to note that this issue is not only social, but also economic and crisis in nature (Zolotareva et al., 2017).

A.I. Chernyshev talks about this problem in the same crisis context. In the researcher's opinion, "the price of oil fell below the psychological mark of \$50 in spring 2015, at the peak of the crisis. The rapid collapse of oil quotes could not be predicted by any world analytical center. Naturally, this situation hit primarily Russia, which lost billions of dollars due to cheaper oil. As a result, a huge hole has been formed in the budget of the Russian Federation, which had to be closed somehow. At the same time, the number of pensioners (people receiving pensions for various reasons) increased annually in the country. As of January 1, 2016, there were already 42.7 million pensioners in Russia. All this led to a serious deficit of the Pension Fund of the Russian Federation!" (Chernyshev, 2017, p. 17).

We are talking not only about social issues but about economic ones as

well, which are interconnected in terms of the manifestation of various forces, factors and phenomena. The ecological crisis can be described as an example of a phenomenon that strengthens the economic crisis. Thus, scientists of the Financial University under the Government of the Russian Federation state that "experts of the World Economic Forum in Davos named environmental problems one of the main threats to humanity in 2017, the solution of which today is not only important for ensuring the sustainable development of society but also necessary for the very survival of mankind" (Burova et al., 2018, p. 224). Environmental risks have come to the fore — environmental disasters, extreme weather events and large-scale natural disasters, as well as humanity's inability to cope with climate change (Ruchkina and Merkusheva, 2017; Tinyakova et al., 2017).

It is interesting that some authors note the existence of a crisis both in legal phenomena and, in particular, in legal science; moreover, their emphasis is on civil law.

Professor V.A. Belov writes, "More than a quarter of a century separates us from the late 1980s — the early 1990s — the time, called by contemporaries the era of the explosive development of civil law. Now — 'from the heights of the past year' — this characteristic can be supplemented with many refinements and one can see various shades in it. The explosive development of civil law outgrew itself, first turning into the development of private law and then into the development of law in general, i.e. all legal law in Russia. Perhaps, there has not yet been a period in the history of our fatherland when the importance of law in the life of society as a whole and of each individual in particular increased so much. And up to this moment, this situation has not changed, the most daring, sometimes unrealizable hopes are still put on the right; the law is really overextended, aiming to achieve those goals at which it has never been aimed before and which it is not intended to serve now" (Belov, 2016b, p. 36).

It is obvious that this emotional statement can hardly be fully supported and, as T.Ya. Habriyeva rightly notes, "the idea of the crisis in legal science seems to me to be somewhat exaggerated" (Piskunov, 2016, p. 10).

At the same time, one cannot ignore V.A. Belov's statements regarding the development of civil legal science. "Where will science come from," this author asks, "which is to determine the subject of such an education, and who (in the absence of people who are engaged in this science) will teach it? Alas, back then, few people asked these questions — students and teachers at that time were interested in a high (even the highest) demand for lawyers, specializing in civil and economic law. With this, (a) prestige of legal education, (b) price of acquiring a legal diploma, (c) earnings of persons holding such a diploma increased. This revival ended in the late 1990s in the same way as any boom ends, with graduation inflation, i.e. overproduction of persons with documents with higher legal education and a deficit of proper lawyers" (Belov, 2016b, p. 37).

In many ways, M.N. Moskalenko took a similar position in the development of, for example, private international law, when he noted that "the concept of crisis phenomena is increasingly used in the scientific analysis of the situation in the development of modern international private law; it is largely determined by the problems that take place in the development of international relations as a whole. Of course, we are not interested in the political, but the civil legal aspect of this issue" (Moskalenko, 2016, p. 18).

However, it seems to us that it is necessary to address more specific problems that accompany the development of civil law in times of crisis since the global approach does not exclude the study of local issues.

For example, O.A. Serova claims that "the economic crisis in the country has become one of the reasons for the failure to fulfill the terms of loan agreements. Borrowers try to annul their obligations by declaring the transaction invalid or terminating the contract. The analysis of judicial practice shows that the justification for these requirements is insufficient. The freedom of the contract and the will of the participants in the credit relationship should also be manifested in the desire to change the terms of the contract" (Serova, 2017, p. 58; Sitdikova et al., 2018).

Researchers draw attention to the fact that this question is extremely relevant in civil law and the answers to it are fundamentally different. Thus, O.A. Serova, referring to the materials of judicial practice, which, in general, proceeds from the principle of civil law ("obligations must be fulfilled"), writes that borrowers interpret court decisions [not considering crisis as a basis for refusing to fulfill obligations] as the reluctance of the state to take into account the deterioration of their financial situation, they indicate aggressive actions by credit organizations that lure citizens into enslaving conditions of credit obligations. At the same time, the subject's behavior is not properly evaluated, there is no thoughtful action, the real need to use credible resources to satisfy personal needs is not taken into account. However, a mismatch of one's interpretation with judicial conclusions in the face of a significant deterioration in the economic situation reinforces legal nihilism in society (Serova, 2016; [Zhesterov et al., 2017](#)).

There is an opposite position, according to which, the transaction should always imply that the debtor retains the opportunity to refuse to fulfill the obligation when appropriate compensation (in the form of losses) is paid to the other party, otherwise, the transaction will be identical to the concept of slavery. In such circumstances, it should be concluded that such a reason for terminating the lease, such as loss of interest, including due to the global financial crisis, should be recognized as self-sufficient and, therefore, the termination of the lease should be satisfied by the court (Ryzhik et al., 2017). In this case, if the defendant proves the existence or potential threat of losses associated with the termination of the contract due to loss of interest, the plaintiff should be able to bear the burden of compensation. It seems that this approach will help to maintain a balance of interests of participants in civil turnover and

implement one of the main principles of civil law — equality of participants in relations regulated by it and freedom of contract (Belov, 2016a).

It is thought that more balanced assessments are needed, which, for example, should nevertheless take into account the realities of the modern development of the state (Lutovinova et al., 2016).

As noted by I.Sh. Ismailov, "The modern period in the development of the financial system of the Russian Federation is extremely controversial. On the one hand, a multilevel reform of financial regulation and supervision should significantly improve the quality of financial intermediation services provided in the country and ensure stability and transparency in the formation of financial infrastructure. On the other hand, the incredible depreciation of the national currency caused by some of the ongoing reforms, as well as unpredictable foreign policy factors, significantly increase the price of every mistake made and affect financial institutions far more than positive trends. It is rather difficult to evaluate the primary results of the financial supervision reform, which consisted in expanding the functions and powers of the Central Bank of the Russian Federation to the level of a mega-regulator of the financial market, because so far the mega-regulator functioned only in an extremely unfavorable financial environment and, therefore, could not demonstrate the maximum level of efficiency" (Ismailov, 2016, p. 25; Andryushchenko et al., 2017; Kurbanov et al., 2018).

It is easy to notice that (at the beginning of the article) we turn to banking since it is really difficult to overestimate its role in the possibility of stabilizing crisis phenomena.

According to the justified opinion of N.V. Rubtsova, "given the global economic crisis and the existing sanctions against Russia, which had an impact on the banking system, the consequences of such an impact should be assessed. Most foreign banks reduce their presence in the Russian market by refinancing their accumulated loan portfolios and suspending lending to Russian issuers" (Rubtsova, 2018, p. 154). In fact, at the present stage, many researchers write about this problem.

S.O. Shokhin draws attention to the fact that "indirect, extrinsic methods of withdrawing funds from the sphere of private finance are also used. Keeping the key rate of the Central Bank at a high level deprives entrepreneurs of the possibility of external financing — there is no profitability in giving loans under these conditions and usually, there are not enough own funds not only for extended but also for simple reproduction, especially in the current economic conditions. At the same time, the credit policy of state banks and development institutions has been publicly formulated by their leaders more than once — they should not give loans to small enterprises, the risks of defaults are too great. The policy of mass revocation of licenses from private banks is being implemented, while reorganization is extremely rare. And this means that hundreds of thousands of account holders in liquidated banks of private

legal entities and individual entrepreneurs lose their funds overnight, regardless of the results of their work, as they fall into the last, hopeless turn of creditors in bankruptcy. Thus, the share of private finance in the economy is objectively reduced not only in qualitative, but also in quantitative terms" (Shokhin, 2016, p. 8).

Obviously, it is necessary to turn to the analysis of specific proposals to improve the efficiency of modern entrepreneurial and, in general, economic activities, which, alas, are not so numerous, from stating the problem and allegations that there is an absolute need to take into account the factor of the economic crisis.

Of course, one can also find other anti-crisis proposals, various estimates and judgments related, for example, to the increase of the efficiency of the process of attracting foreign investment. As A.A. Anufriyeva writes, "The role of foreign investment for individual states and the economic growth of the international community as a whole is difficult to overestimate at the present stage of the development of the world economy. According to many authors, the number of funds transferred between state borders in connection with investment projects is, at least, not inferior to the cash flow associated with foreign trade transactions. In times of economic and financial crises, both areas of international economic turnover are certainly affected, but investment activities, more associated with non-commercial (political) risks, are more susceptible to the negative impact of such circumstances. Even though some researchers see positive aspects of foreign investment in economic crises, the majority, nevertheless, agree that the negative impact of crises is more noticeable and significant" (Anufriyeva, 2016, p. 112).

It seems to us that attention should be paid to the very concept of crisis considered from a civilistic perspective. In general, we agree with the opinion that "the concept of crisis as a civil law category has not yet been developed". However, it is difficult to agree with the second part of the statement "of course, the crisis also applies to banking law, since its consequences primarily affect the organization and operation of the national payment system, lending practices, the system of insurance of deposits of individuals, etc." (Zinkovsky, 2016, p. 67). Obviously, the crisis significantly affects not only credit organizations, but all business entities and economic activity in general.

In this regard, it may be necessary to resolve the issue of the formation of a systemic concept of anti-crisis activities, taking into account modern economic realities, which "force participants in civil relations to be more cautious when entering into contractual relations, including through the implementation of forecasting activities related to the prediction of possible fluctuations in financial market" (Belov, 2016a). However, the prediction of the vector of development of the national economy, not to mention the world economy, is an extremely difficult process. A forecasting error inevitably affects the stability of contractual relations, which leads to a loss of interest on the part of one of the participants in the transaction and is an inducing factor for initiating the termination of

the existing obligatory relationship (Shadskaja et al., 2015, p. 511).

In conclusion, it seems appropriate to mention the opinion that "the current difficult economic situation in Russia should not stimulate the legislator to immediately reduce social and labor standards, which will only lead to a strategic widening of the gap between the rich and the poor, growth of social tension and the country's slide into the "third world". On the contrary, the economic crisis can and should be used as an opportunity to establish a more balanced and fair system of labor relations regulation by reducing the excessive flexibility of legal regulation (Lutov, 2016).

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## 5. Conclusion

To conclude, we argue the position, according to which, the validity of the study of entrepreneurial activity in the conditions of the economic crisis is confirmed by the events of August-September 2018. The number of works, in which the wording of this problem is determined on a similar basis, is increasing: entrepreneurial activity is considered in terms of economic and budgetary crises. It has been proved that in modern realities, the concept of economic crisis is possible and appropriate to use in a broader context. For example, it is difficult to distinguish between the concepts of economic and budgetary crises, which are increasingly investigated in relation to changes in pension legislation.

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