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**SELECTED LEGAL ASPECTS OF SOCIAL
ENTREPRENEURSHIP FUNCTIONING
IN POLAND IN THE CONTEXT OF THE PROVISIONS
SET FORTH IN THE ACT OF 27 APRIL 2006
ON SOCIAL CO-OPERATIVES**

Summary: The wide variety of aspects of social entrepreneurship in Poland exceeds the number of legal measures supporting its functioning. As a consequence, certain available entrepreneurship forms become difficult or even impossible to be introduced into the economic environment, and their socially-oriented advantage may not be fully exploited for the benefit of the initially assumed purposes: the lack of proper legal regulations, particularly in the field of social co-operative activities, hinders the development of social entrepreneurship in Poland and affects the concealing of certain expressions thereof. This paper is an attempt to bring closer social entrepreneurship in Poland in its selected actual dimensions; it also includes elements of a confrontation of the environment in which the said form of entrepreneurship functions with its legal aspect, based upon selected case studies. Furthermore, it is an attempt to bring closer the disturbance patterns of its functioning. The paper is aimed to systematize a part of empirical material collected for the purposes of a doctoral thesis.

Keywords: social entrepreneurship, social co-operative, social economy, competitive advantage, establishing relationships.

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Work! Miracles don't happen.

Rev. Jan Piwowarczyk, PhD

1. Introduction

Social entrepreneurship constitutes a socially significant area of economic activity in Poland. Individuals and entities for whom operating within the traditionally organized market frameworks entails bigger risk or organizational effort than in the

case of traditionally organized enterprises see their place in the labor market and economic competition within the organizational, economic and legal capabilities provided by social entrepreneurship. Additional effort arises out of the consideration for added value of the functioning of social enterprises in the market. Added value of the functioning in the market shall be defined herein, among others, as a sense of attachment to the values realized by an entity, their manifestation and investing therein, which in turn influences the growth of competitive advantage of such entities.¹ The legal solutions available for those entrepreneurs, stipulated mainly in the Act of 27 April 2006 on Social Co-operatives, however, do not fulfil/are not capable of supporting the establishment, operation and development of the already functioning forms of social entrepreneurship in Poland, which reach beyond social co-operative activity within the traditional meaning of the term.

After 1989 no complete and coherent set of legal solutions has been developed which could dynamically respond to the economic environment in its social, commercial and legal aspect, including the environment of social entrepreneurship. The available legal measures are not favorable for a dynamic development of this element of economic practice.

This paper is an attempt to bring closer the phenomenon of social entrepreneurship in Poland in its selected actual dimensions; the aim of the paper is also to confront legal conditions for the functioning of the said entrepreneurship with the forms thereof functioning within the market, with the assumption that the terms “social economy” and “social entrepreneurship” are not equal. Social economy shall be defined herein as general practices based upon legal mechanisms for levelling social inequality, social inclusion and creating social capital, as well as the utilization of given human potential in activities incentivizing the economic self-reliance and independence. Social co-operatives are basic entities of social economy, while social enterprises are such forms of market organization which pursue the said goals of social economy without the support of social policy measures (legal support) that is granted to social co-operatives.

Figure 1 presents similarities and differences in the conditions for the functioning of social co-operatives, social enterprises, market entities (enterprises) and other than social cooperatives entities of the third sector. Other entities of the third sector presented in Figure 1, similarly to market entities, are to demonstrate two extreme points between which social co-operative activity and social entrepreneurship operate. They constitute the background for the analyses of this paper.

For the purpose hereof an assumption is made that in the academic theory, legislation and economic practice there is an intersection of the social entrepreneurship not taken into consideration within the social policy with the social co-operative activities and that it may be supported by the functioning tools of the mentioned form

¹ An example of such a market organization is a Poznań-based La Ruina Café maintaining the Paradise Cinema (Polish: Kino Raj). See: www.laruina.pl.

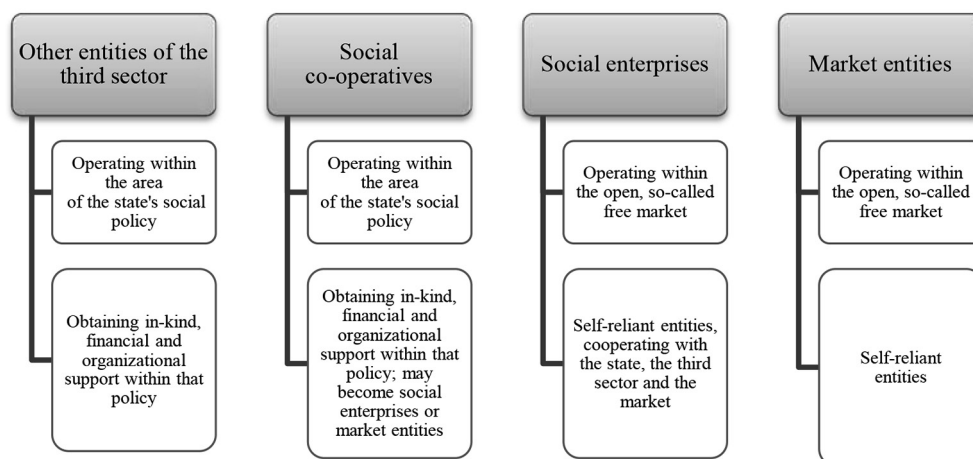


Figure 1. Similarities and differences of conditions for the functioning of social co-operatives, social enterprises, market entities (enterprises) and other entities of the third sector

Source: own elaboration.

of market activity. In view of the above, a legal instrument that to the widest extent may constitute a measure to support the development of social entrepreneurship in Poland is the Act of 27 April 2006 on Social Co-operatives and the examination thereof is one of the key elements of this paper.

2. Social entrepreneurship in Poland

The origins of social entrepreneurship in Poland date further back than the parliamentary democracy, real socialism or the 20th century wars. It has been one of the forms of actual market organization already since the times of the partitions, constituting contemporaneously the manifestation of the way Poles think about their subjectivity, creativity and economic ingenuity.

We may differentiate two main demarcation lines in Poland that in the 20th century determined the present shape of social entrepreneurship and affected the legal provisions concerning it.

The first historic turning points since the times of the partitions which changed the social perception of and the legal context for the functioning of social enterprises in Poland were the periods of World War I and World War II, as well as the consequence of the latter: the expropriation and the policy aimed at the nationalization of all the possible manifestations of economic activity. The consequence for the domestic social entrepreneurship was, *inter alia*, the fact that the possibility to perform any market activity depended on associating in unions and co-operatives issuing

permits and consents for the operations of entities of the type.² The aforesaid legal situation displayed both positive and negative effects. The nationalization of the social entrepreneurship entities had an impact on the services rendered thereby. The qualifications boasted by such enterprises had to be granted certification by objectively recognized experts. The negative consequences of the entrepreneurship nationalization include the fact that competitiveness disappeared; and it had been one of the mechanisms allowing a permanent verification of the service quality of those enterprises. This also had an impact on the pace with which innovations were implemented therein.³

The second significant historic moment having influence on the legal changes in the area of social entrepreneurship is believed to be the process of the system transformation commenced in Poland in 1989. Since that moment, the social reality and the law regulating that reality have had to face new challenges entailed by the free market, free competition and the privatization process of state enterprises. This has irretrievably changed the employment structure and compelled Poles to introduce a change of thinking – parallel to the system transformation – about their subjectivity in the context of a free competition market. The aforementioned two processes did not demonstrate a comparable pace, which affected the growing unemployment, expanding grey economy and increasing number of people who were not capable of dealing with the requirements of the new world. The result has been the utilization of financial and non-financial social support, long-term unemployment, learned helplessness or even social exclusion, as well as an increase in the demand for social co-operatives and the development of social entrepreneurship in Poland.

The currently dominating division of social economy is based on the following dichotomy: the old social economy vs. the new social economy. Among the institutions of the old social economy we could name co-operatives of entities producing various types of goods (e.g. food, crafts, agricultural products), savings and provident societies providing financial measures unavailable for example for the members of co-operatives in other forms, which “principally pursued their social mission through and as a result of conducting business activity” [Izdebski 2012]. The new social economy, on the other hand, is “aimed at social values and categories rather than collective market activities” and “strives to solve specific social problems” [Izdebski 2012], thus decreasing the value of commercial activity, entrepreneurship and accumulating financial profit, indispensable for an effective and efficient activity in the free market.

² Such a role was served by guild unions of craftsmen or caterers having their central body and local branches.

³ The last discussed negative consequence of social enterprises nationalization may be deemed also an advantage. Constraining the innovations in those enterprises constitutes now a reliable element of creating competitive advantage and a brand based on traditional values. An example of such entities may be Polish garment brands, currently in revival, e.g. You Have not Been in the Queue. The Łódź Cotton Industry [Polish: Pan Tu Nie Stał. Łódzki przemysł bawełniany]. See: <http://pantuniestal.com>.

The discussed polarization manifests a set of specific characteristics determining into what type of economy (new vs. old one) the activity of a given social enterprise is to be classified. It is worth emphasizing that no equality sign may be placed between social co-operative activity and social entrepreneurship, as is the fact that the above-presented division into the old and new social economy does not reflect the full picture of social entrepreneurship manifestations that we deal with currently. The most efficient social enterprises apply complex legal mechanisms, and use partnerships of various types joining them for example with authorities at the local level or other social enterprises. I understand the notion as referring to enterprises which are maintained in the market for the longest time, generating profits, succeeding in acquiring external funds for the business development and creating and implementing innovations.⁴

Polish social and economic environment provides many more entrepreneurship manifestations remaining outside of the main trends of studies in the field of social entrepreneurship; at the same time, they are succeeding within the social reality. As a consequence, the theoretical and legal representation of social economy are too limited, as they do not take into consideration phenomena that – according to the enquiry carried out in this paper – could be deemed to represent social economy.

3. The Act of 27 April 2006 on Social Co-operatives and Selected Forms of Social Entrepreneurship in Poland

The legal mechanisms currently in force support directly the entities of social economy, such as: foundations, associations, work co-operatives, social co-operatives, centers and clubs for social integration, establishments of vocational activity and mutual insurance companies.⁵ Simultaneously they disregard the differentiated and omitted by the legislator dimensions of social entrepreneurship which, among others, were manifested in the past. Social co-operatives constitute a type of a social economy entity regulated in the law in a manner that best reflects the substance of social entrepreneurship. Due to the similarity of actions undertaken and goals pursued by social co-operatives, the law and the social policy in its broad sense should support social entrepreneurship and not only social co-operative activities, which in their present form have minimal chances to completely execute the tasks designated for them [Sołtan-Kościelecka 2014].

The provisions of the Act of 27 April 2006 on Social Co-operatives do not provide for the fact that the establishing person, owner and administrator of such

⁴ An example of such a partnership may be the Local Partnership of Lwówek Area (Polish: *Partnersstwo Lokalne Ziemi Lwóweckiej*; located in Municipality of Lwówek, County of Nowy Tomyśl, Province of Wielkopolska).

⁵ As in the list of social enterprise entities provided on the websites of www.ekonomiaspoleczna.pl (01.07.2014).

a social entity may be people who would like to found their competitive advantage on the value system held by them, or the utilization of skills, for example crafts or cooking, in their own enterprise. In order to be able to compete in the free market, such entities need a starting point similar to the situation of people for whom the start into the economic life is hindered (due to the lack of initial assets – own contribution, lack of professional experience, etc.). The Polish co-operative law does not provide for such people to be for example graduates of universities with inconsiderable professional experience and abundant theoretical knowledge, or families intending to combine their private life with the professional one in a manner other than a full-time employment.⁶

The contemporary Polish law ignores also another important element and the original prerequisite of social entrepreneurship. Already the Charter of the Co-operative Society [Polish: Towarzystwo Kooperatystów] of 9 November 1906 includes a provision on founding the association of co-operatives on the similarity of the values and goals aimed at, and not on the “union of misfortune”:⁷ “§ 9. A member of the Society may be every person accepted by the General Board or a Branch Board. Note. The matters of confession, party membership or class shall not affect the issue of accepting a member” [Charter of the Co-operative Society... 1906]. Social entrepreneurship is defined herein as activities as close to the functioning of free-market entities as possible, thus a social co-operative and the legal basis for its functioning constitute the most frequent example in this paper.

Among significant constraints of the analyzed statute related to the development of not only social co-operative movement but also social entrepreneurship in Poland, we could name the following in particular:

- consequences of the fact that the Act on Social Co-operatives defines them as entities serving the purpose of dealing with difficult life standing, including those arising out of economic conditions, where the statute fails to include, among others, people who have just completed university education and seek alternatives for economic unionizing other than a sole proprietorship or e.g. working at a multinational company;
- failure to take into consideration the flexibility of the available support forms, thus denying the probability for a social cooperative to transform into a social enterprise or other market entity;
- exclusion of high specialization of social co-operatives: a worker of a co-operative may not be an expert – a theorist or practitioner in a given field, which

⁶ An example of such a strategy of economic activity is a Poznań-based couple of travelers, artists and caterers running a café, a funfair and a cinema in revived tenemental buildings of a historical quarter of Poznań, Chwaliszewo. See: www.laruina.pl.

⁷ The Act on Social Co-operatives of 2006 envisages that a co-operative may be established only by people remaining in a kind of a “union of social exclusion,” e.g. remaining unemployed for a long time or being disabled.

is not without impact for the establishment of competitive advantage and thus the continuation of an enterprise;

- lack of mechanisms allowing for measuring or calculating the social added value arising out of the establishment of a social co-operative (as well as social enterprises), e.g. into new jobs, growth of the life quality in a city (e.g. through expanding the available cultural events or other events dedicated to a particular milieu, age group, etc.), promotion of Polish brands (measured e.g. with their recognizability beyond the country) and others;
- lack of measures allowing to convert social benefits arising out of the activity of those entities into profit within its strict economic meaning and treating that profit as “own contribution” of social co-operatives (social enterprises). Own contribution is a necessary element of an efficient acquisition of projects funded by the European Union. It may also serve as a form of a surety (an equivalent of a security on property) in the market trade;
- lack of mechanisms providing social co-operatives with privileged treatment in public procurement procedures; given the lack of initial capital of those entities, it prevents them from acquiring contracts within public procurement (e.g. due to the lack of or insufficient own contribution or equipment, they may not compete with free-market enterprises, which join the procedure with machinery stock);
- funding sources available in the social environment, including subsidies for entities as social co-operatives, enhance their establishment; however, they do not prepare them/do not provide them with the tools for a long-lasting and commercially efficient (i.e. providing profit) operation within the market competitiveness conditions.

In the light of the above issues, which are not incorporated into the Act on Social Co-operatives, and in the face of other valid provisions⁸ of the Polish law, social co-operative members have only slight chances to become companies that could function within the market independently. Achieving such a position would facilitate the dissemination of social values promoted, among others, by social co-operatives, distinguishing their operations in the contemporary market; a market which is difficult to feature certification and does not provide for unified validation mechanisms, similar to those applied during the times of real socialism in Poland.

4. Conclusions

Despite the fact that the legislative activities do not support in full the manifestations of social entrepreneurship in Poland, they provide a functional pillar for its operations. The social, demographic, economic and cultural reality entails new challenges for the Polish legislator, allowing for perpetuating and enhancing the chance for success of

⁸ I mean among others the legal provisions on establishing business activity resulting in fact that an enterprise must bear certain costs of operations already since the first month of existence.

those manifestations of social entrepreneurship that are not regulated unambiguously by the law.

The legal measures proposed by the legislator do not meet the needs of the contemporary social entrepreneurship in Poland and do not keep up with the social and economic changes arising out of the demographic, political or cultural moment in which Poland is standing right now. The future legal solutions in the area of social co-operative activities and social entrepreneurship must become much more flexible and open, in order to keep up with the constantly changing reality constituting a foretoken of new forms of entrepreneurship and economic ingenuity of the economically active entities.

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WYBRANE ASPEKTY PRAWNE FUNKCJONOWANIA PRZEDSIĘBIORCZOŚCI SPOŁECZNEJ W POLSCE NA TLE ZAPISÓW USTAWY O SPÓŁDZIELNIACH SOCJALNYCH Z DNIA 27 KWIETNIA 2006 ROKU

Streszczenie: Różnorodność wymiarów przedsiębiorczości społecznej w Polsce przewyższa ilość dostępnych narzędzi prawnych wspierających jej funkcjonowanie. W konsekwencji takiego stanu rzeczy niektóre dostępne formy przedsiębiorczości stają się trudne bądź niemożliwe do wdrożenia w rzeczywistość ekonomiczną, a ich walor społeczny nie może zostać w pełni wykorzystany do realizacji pierwotnie założonych celów – brak odpowiednich uregulowań prawnych, szczególnie w zakresie spółdzielczości socjalnej, utrudnia rozwój przedsiębiorczości społecznej w kraju i wpływa na utajenie części jej przejawów. Artykuł stanowi próbę przybliżenia przedsiębiorczości społecznej w Polsce, w jej wybranych, realnych wymiarach; zawiera także elementy konfrontacji rzeczywistości funkcjonowania tej przedsiębiorczości z jej prawnym aspektem, oparte o studium wybranych przypadków. W tekście podjęta została także próba przybliżenia schematów zaburzeń jej funkcjonowania. Artykuł służy uporządkowaniu części materiału empirycznego zebranego na potrzeby przygotowania rozprawy doktorskiej.

Słowa kluczowe: przedsiębiorczość społeczna, spółdzielczość socjalna, ekonomia społeczna, przewaga konkurencyjna, budowanie relacji.