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DEFINITION AND ELEMENTS OF COMMERCIAL ACTIVITY (ENTREPRENEURSHIP)

I. Role of elements of commercial (entrepreneurial) activity in commercial (entrepreneurial) law.

Commercial (entrepreneurial) law is a special area of private law, which individuals and legal persons are subject to in their relation to commercial activities. As can be seen from this definition, the notion of commercial law is grounded in entrepreneurial activities. Indeed, it is not uncommon to hear commercial law described, for simplicity's sake, as regulating entrepreneurial activities.[1]

Therefore, defining commercial law through commercial activity makes it necessary to expound the concept of "commercial activity" in some detail. What is the meaning and substance of "commercial activity" and indeed the term "commerce" itself? This question can be answered differently from economic and legal perspectives.

Let us first consider its explanation from the economic point of view. In general, economic activities are commonly divided into four groups (types):

1) **Labor** and **production** of goods and services to derive monetary income (wage, profit, etc.).
2) **Consumption**, i.e. use of goods and services to derive economic utility.
3) **Exchange**, serving as a functional link between production and consumption. Exchange is further subdivided into two types: (i) delivery of goods and services towards (closer to) end users, i.e. a change of spatial location of goods and services; and (ii) trade, also known as sale, i.e. a transfer of ownership over goods or delivery of services to end users.
4) **Distribution** of income or material benefits.

Commerce, in the economic sense, denotes the third type of economic activity: delivery and sale of goods and services to users (consumers who demand those goods and services). People engaged in commerce (trade) are called merchants or traders (commercial agents).

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[1] See e.g. Poroy Yaşaman. *Ticari Hukuku*, 7. Baskı, İstanbul 1995, s.1.

Thus, "commercial activity" in the economic sense does not cover production, because a producer in economics is not concerned with delivery of goods and services to consumers but with production (manufacture) of goods and other material benefits. In short, a producer in economics is not a commercial agent (merchant, trader, etc.).[2]

From a legal perspective, commerce has a wider scope. In law, commercial activity covers not only intermediary exchange functions for goods, services and real estate, but also production and distribution activities. Legally, industrial (manufacturing) activity, comprising procurement and use of inputs (e.g., raw materials, other goods or commodities) and their processing through use of labor and machinery to produce outputs, i.e. new goods with values higher than that of original inputs, is also considered a kind of commercial activity. A producer in the legal sense is a person engaged in a commercial activity, in other words, an entrepreneur. That is, *commercial activity in the legal sense encompasses any economic activity generating income or aimed at obtaining profit* (profit-seeking).

I believe that commercial law in Azerbaijan should use words "commercial" and "commerce" in this wider legal sense. Currently, the official term used in reference to a person engaged in commercial activities is *sahibkar*, which is translated into English as "entrepreneur". I maintain that this term is inappropriate for a number of reasons set out below:

1. The term "entrepreneur" in Azeri, *sahibkar*, can be rendered into two parts: *sahib* + *kar*. The first part means "possessor, holder, owner, proprietor, master", and the second part is a suffix denoting occupation or disposition of a person, such as in *sənətkar*, which means "artisan, craftsman" or "man of arts", where *sənət* means "art"; or in *riyakar,* which means "hypocrite", where *riya* means "hypocrisy". Hence, *sahibkar* can be understood as "owner by occupation", i.e. a person whose livelihood is derived from possessing certain property, "proprietor". Use of the same word *sahibkar* in the two meanings "owner, proprietor" and "entrepreneur", however related they may be under certain circumstances, is not desirable either from substantial (correspondence between actual and legal sense) or functional point of view (ease of use and understanding in all instances within a given semantic area).

2. For this reason, Chapter 4 of the Civil Code of the Republic of Azerbaijan does not derive the term used in reference to legal persons (entities) engaged in trade or commerce from the term *sahibkar*. Instead, based on the internationalized Latin root "commerce", the Civil Code variously names such entities as *kommersiya təşkilatları* "commercial organizations" or *kommersiya hüquqi şəxsləri* "commercial legal persons", as opposed to "non-commercial legal persons".

[2] Tuna. *Ticaret Hukuku*, C. I., İstanbul, 1993, s.2.

3. As can be seen from the above definition of commercial law (linked to the notion of commercial activity), economic activities do not include a separate type or notion of "business". On the other hand, since ancient times, establishment and maintenance of contacts for the purpose of economic exchange has been called "trade" or "commerce", and a person doing it is referred to as a "trader" or "merchant".

In Azerbaijan, however, reluctance to use terms *ticari* "commercial" and *tacir* "trader, merchant" in legal texts has social and psychological rather than substantial reasons. In the Soviet period, any business initiative was punishable, and private ownership of means of production and income was prohibited or severely restricted. The stated reason for that, as is well known, was to ensure economic equality. Clearly, people possessing means of production can gain more material benefits than those who did not have them or failed to use them in an optimal way; people with initiative can also attain more material benefits than those who lack initiative or whose initiative is ill-thought or unsuccessful.

Hence, to maintain economic equality understood as equal or nearly equal possession of material benefits, the state deprived people of means of production, proscribed their purchase or use by individuals and discouraged any initiative aimed at personal enrichment. Of course, it was much easier to deprive people of private property and means of production than to control all manifestations of personal initiative. Property and means of production are mostly physical objects, easy to transfer to and keep in the hands of the state or otherwise control and account for.

Without property and means of production, any exercise of initiative was severely restricted and rendered largely ineffective. Still, it is characteristic that even under the Soviet system the state was not able to stamp out private initiative entirely. Unable to fully prevent it, the state fell back on various methods of discouragement, from public disapproval and disparagement to criminal prosecution. People engaged in trading were not called "traders" but "speculators" with the implication of an unfair gain. Words "trade" and "commerce" were given highly negative association. Speculators were believed to be people of low social standing, skulks and good-for-nothings. "Speculation" was considered a socially useless activity without any public benefit. In the Soviet Union, "speculation" was not a proper occupation for "real Soviet people"; those engaged in it were seen as second-class citizens. Self-respecting people, people with social aspiration would never do it, like ancient Romans who thought that trading was beneath them. Unlike in Rome, though, "speculation" in the USSR was considered a criminal offence and prosecuted accordingly.

Even after regaining independence, the official renunciation of the Marxist ideology and the communist superstructure built on it, people – members of the society – remain the

same as under the previous regime. Mentality formed under the Soviet system could not and did not change overnight.

Although the system built on the denounced Communist ideology was swept aside, people had some difficulty in using terms and expressions required in a new market economy. Because of the above-described reasons, "commerce" had not existed in the USSR in any theoretical or practical legal sense. Comprehending, absorbing definitions and notions acquired from another system (and a system which had been actively reviled at that) was mentally quite challenging.

This is what I mean by psychological reluctance to use traditional words like "commerce" and "merchant". Therefore, in legal texts dealing with commercial activities preference is given to words borrowed from English (*kommersiya* "commerce, *biznes* "business", etc.) instead of traditional *ticari* "commercial" and *tacir* "trader, merchant" because when pronouncing the latter in Azerbaijani, we subconsciously feel anxiety unlike when expressing the same concepts with words borrowed from foreign languages.

II. The definition of commercial (entrepreneurial) activity and its elements

A. The current definition of commercial (entrepreneurial) activity

The definition of entrepreneurial activity is provided in Article 13 of the Civil Code. Even before the enactment of the Civil Code, the law on entrepreneurship of 1992 provided a definition of entrepreneurial activity. Both definitions are worded using the same phrases in the same sequence, but the amendments of 25 June 2005 removed the previously featured phrase "at own risk" from the Civil Code definition of commercial activity. .

Before considering the substance and elements of the definition of commercial (entrepreneurial) activity, it must be noted that the exclusion of reference to risk did not alter the substance and elements of the concept of commercial (entrepreneurial) activity. From the legal point of view, no difference arises from the inclusion or exclusion of this phrase in the definition. Perhaps, this "indifference to risk" was the reason why the reference to risk was deleted from the text of the Civil Code.

To analyze the legal meaning of commercial activity, we shall choose the latest definition which has been adopted (amended), i.e. the one from the Civil Code. Article 13 of the Civil Code states that entrepreneurial activity is an independently conducted activity with the primary purpose of making profit from use of property, sale of goods, performance of works, and provision of services. This definition contains two principal elements: (i) that an activity should be independent, and (ii) that it should have the profit making motive. If

we attempt to understand the substance of entrepreneurial activity based on the principal elements of the above definition, that is, if we interpret any activity containing these two elements as entrepreneurial, then almost all relations under civil law should be categorized as commercial activities, and every person engaged in those civil law relations considered as an entrepreneur. Civil law relations are usually related to property which has intrinsic economic value because it generates income or other economic benefits.[3]

If we restrict ourselves to the two abovementioned features of commercial (entrepreneurial) activity and hence overgeneralize this definition, there would be no sense in having separate commercial law and legislation, adoption of government programs for promotion of commercial (entrepreneurial) activity or establishment of special courts, rules and procedures dealing with commercial disputes or other aspects of such activities. My point is that using only two abovementioned features is insufficient for clarifying the essence of commercial activity. Examples that demonstrate this definition to be unsustainable will help clarify the issue.

By the logic of the above definition, a student paying for public transport to commute between college and home, or paying for lunch at a college cafeteria to quell his/her hunger, sale of a used cell phone to buy a new one, begging on the street, working for a reward in kind, etc. should all be considered examples of commercial (entrepreneurial) activities and persons acting in this way should be known as merchants (entrepreneurs). Let us analyze the above examples one by one based on a single legal definition.

1. A student who pays for using public transport to commute between college and home is getting a tangible benefit whose utility outweighs the value of the payment made. Here the payment for using public transport (e.g. bus fare) is made in exchange of "asset use", and the purpose of the payment is to obtain a "tangible benefit", because service provided by the public transport system has a certain economic value which is met by the student by paying the fare. Evidently, all above actions are performed independently. Based on the Civil Law definition, the described activity should be considered commercial as it contains all the essential elements of the definition of commercial activity.
2. A person sells his/her old phone to be able to afford buying a new one; a sale is considered a "product sale" generating income (profit) for the seller. These actions, being conducted independently, are in agreement with the essential elements of the definition of commercial activity. If a person then buys a new phone that would create an extra utility for him, this action would also fall under the scope of the same definition.

[3] A right (a law) is a legally protected interest. Proprietary rights arise if legally protected interests have economic value. Otherwise, legally protected interests without economic value give rise to non-proprietary rights.

3. The same goes for a case of a hungry student paying for his/her lunch at a campus cafeteria – the two definitional conditions apply here as well. By this logic, every visit to a public eatery or use of catering services should be considered a commercial activity. The purpose of payment is to meet nutritional needs and, therefore, the price expresses economic value of food (more exactly, economic value of consuming food, i.e. satisfying a demand for nutrients). It is also clear in this case that the student acts completely independently.
4. A street beggar and a self-employed worker or artisan are more straightforward cases because they directly gain monetary income (earn profit) in the process. The discussed legal definition would categorize them as being engaged in commercial activities and, therefore, classify them as commercial traders (entrepreneurs).

From the examples cited, it is clear that the above-stated legal definition is out of sync with the current legal system and is contrary to logic and societal perceptions.

Using the word "profit" in the legal definition, in its general meaning of "gain", without clarifying the purpose is also not advisable. Various gains (including those of natural persons) could be quite different in origin; a part of such gain may be not related to a person's assets. For instance, someone may feel to be gaining from (or advantaged by) his/her compatriot winning an international competition, or from being elected to public office. Someone else, upon being drafted into military service, may feel advantaged (gaining) from being assigned to a region in the country where he/she wanted to serve. The fact that the law does not prescribe the purpose of profit (gain) renders itself to various interpretations and creates uncertainty.

All of the above makes it clear that the legal definition has been put together without due attention to detail. It is therefore necessary to define "commercial activity" in a way that would clearly distinguish it from other types of activities under civil law, correspond more closely to the needs of the market economy system, be fair, and stay in line with social perceptions and expectations.

B. The proposed definition of commercial (entrepreneurial) activity and its elements

By taking into account the above considerations and clarifications related to the concept of commercial (entrepreneurial) activity, we can conclude that the legal definition of commercial activity shall comprise of the following elements:

1) Independence
2) Profit making purpose
3) Intention of sustained activity
4) Revenue (sales) above a threshold value

5) Investment based activity

Only after clarifying the elements enumerated above, we can formulate an acceptable legal definition of commercial activity. Before doing that, it shall be noted that without one of those essential elements an activity cannot be seen as inherently commercial (entrepreneurial), whereas a lack of one of the elements of the current legal definition (independence and profit making) would make any activity absolutely non-commercial in character. Therefore, we can say that the two elements of the current definition are necessary but not sufficient, i.e. the presence of these two elements does not help us to clearly distinguish between commercial (entrepreneurial) activity and other activities under civil law. Hence, a definition based on the two original elements cannot help regulate commercial (entrepreneurial) activities within the existing legislative framework.

1. Independence

For a person to be considered a commercial agent / trader (entrepreneur), he/she shall act independently of outside will or interference, be able to self-define a scope and schedule of his/her works or other activities in any way necessary for their conduct and be able to accomplish his/her activity or initiative under own name and at own account in a chosen field of economy. The expression "under own name" ("on his/her own behalf") means that all goods produced or sold, services provided and works performed as well as contracts executed in relation to the commercial activity are done under an entrepreneur's (merchant's) name (on his/her behalf), i.e. the legal outcomes of an entrepreneur's activities and contracts have immediate implications on him/her and bear directly on his/her property (assets).

2. Profit making purpose

For an activity to be legally recognized as commercial, it must be conducted with a profit making purpose. Otherwise, such activity cannot be seen as commercial. If Person A helped Person B to clear B's good through customs just to gain B's good graces or win B's sympathy, this alone does not make A into a customs broker and does not qualify A's efforts as "commercial activity". But if B's sympathy will secure for A certain economic gains, and A helped with customs clearance with the intention to obtain those gains, then such activity can be seen as commercial as it was conducted with a profit making purpose.

Profit making does not necessarily mean money making. *Profit making means increasing a person's estate or welfare (achieving a positive balance between assets and liabilities) with an attendant economic gain*. Estate (property) does not necessarily mean any particular *res.*

(corporeal or proprietary right) but a legal right[4] that has material value with a net sum of assets (benefits) and liabilities. All rights possessed by a person (whether natural or legal) which can be expressed in material terms constitute that person's assets, and all such commitments constitute liabilities.[5]

Estate is a set of rights that have economic value and therefore expressed and measured in monetary terms. All rights included in estate (property) are called proprietary rights. Proprietary rights comprise personal rights (a right in action), proprietary rights, indicative rights with material values (a right to single sourcing); error, fraud or excessive wear and tear justified by life-threatening emergency, etc.), and intellectual property rights (e.g. patent rights, copyright, etc.). Rights that do not have material value or, more precisely, not expressed and measured in monetary terms are considered non-proprietary rights. Although non-proprietary rights cover wide-ranging interests, they can be grouped together because of the common element of being immeasurable in monetary terms. In other words, the main function of non-proprietary rights is not to obtain economic gain. Examples of non-proprietary rights are the right to protection of privacy, the rights related to freedom, honor and dignity of human beings, the family rights, the individual non-proprietary rights, the electoral rights (the right to elect and the right to be elected), the right to hold a public office, and other political and civil rights.

Likewise, legally recognized liabilities expressed in monetary terms are related to estate (property). Those liabilities unrelated to estate (property) are known as non-proprietary obligations (e.g. the obligation of non-disclosure of military or state secrets, the obligation to defend homeland, etc.).

Therefore, *a sum of all rights and obligations of a person having a material value is called estate (property), i.e. estate (property) is a legal concept expressing commonality of all personal rights and obligations substantial from the economic point of view*. There could be no rights and obligations without a subject they pertain to. Any person, whether legal or natural, rich or poor, has certain "property", and only one estate.

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[4] The word *qanun* "law, legal act, statute" in Azerbaijani is borrowed from Arabic where it is a plural form of the word "right". In some other languages "right" and "law" are synonymous, e.g. French *droit*, German *recht*, Italian *dritto*, Russian *pravo, etc.* In these languages, it is common to add qualifiers such as "objective" (to express the meaning of "law" as the entire legal system, or a certain field of legal theory or practice) and "subjective" (to express the meaning of "right" as a certain legally recognized interest) before these words to make distinction between the two possible meanings. For example, in Russian 'objective' *pravo* denotes the legal system, a field or an institution of law (e.g. "law" as the legal system; "law" as opposed to, say, physics; fields of law such as private law, commercial law, property law, etc.) and 'subjective' *pravo* expresses a person's right (e.g. a property right, a pledge right, a contractual right, etc.). Because Azerbaijani (and English) have different terms for communicating these two meanings, there is no confusion in using them without qualifiers.

[5] The Civil Code where it deals with matters of inheritance (Article 1151.1) contains an indication about these attributes of property (estate).

Taking into consideration of the above, the three main features of property can be stated as below:

i) *Estate (property) is a legal concept* which includes rights and obligations.
ii) *Estate (property) is organized from rights and obligations expressing economic value (worth)*. Rights and obligations not expressible in monetary terms are not part of estate.
iii) *Each person has one and may have only one estate*. Every person, no matter how rich or poor, has certain estate (understood as a sum of proprietary rights and obligations). By the same token, a person may have only one estate and not many. The total value of the estate owned does not matter – it is still one and only one.

Furthermore, with respect to gain, determination of an objective economic value of a gain hinges on whether it can be expressed and measured in monetary terms. Nevertheless, not every activity with a gain-seeking purpose shall be considered as a profit making activity. For example, a car owner buys fuel for his/her car. If this is done regularly, it is clear that the car owner gains from this transaction (her utility of using fuel is higher than its price). But this activity cannot be considered commercial (profit making) as its purpose is not to increase economic value of the car owner's estate. Therefore, we found a way to distinguish between commercial activity and buying car fuel for personal use.

It should be specially noted here that although *a profit making purpose is the principal condition of recognizing an activity as commercial, the fact of earning profit is not required for the definition*. That is, if nothing is gained in the process of commercial activity, even if a person engaged in this activity sustains a loss, this does not disqualify the activity from its commercial status because the definition is conditioned on the intent (purpose) and not the fact of profit (gain). The purpose of gain is a part of the legal definition in the same way as the fact of gain is not. Alternatively, if a person actually earned a profit as a result of a given activity which was conducted without the purpose of making gain, this activity should not be legally considered as commercial. One can refer to activities of the Central Bank of the Republic of Azerbaijan to illustrate this point. The Central Bank does not pursue the objective of profit making (see the Law on the Central Bank of the Republic of Azerbaijan, Part 4.3). Even if the Central Bank would make a gain as a result of a certain transaction, this would not make it a commercial organization or its activities commercial.

From the point of the legal definition of a profit making (commercial) activity, it is immaterial whether it is performed by a natural or legal person, by an individual or a group, on a temporary or permanent basis, through application of manual labor or intellectual efforts, etc. Who uses, where and how, profits (gains) made in the process of such activity does not matter as well.

3. Intention of sustained activity

For a gain seeking activity to be considered commercial, it needs to have a sustained character. Without an element of permanence, commercial (entrepreneurial) activity and other civil law relations beyond entrepreneurship become undistinguishable. More precisely, without a requirement of holding an intention to conduct "sustained activities", such notions as "commerce" (entrepreneurship), "commercial agent" (entrepreneur) and "commercial (entrepreneurial) law" would be unfeasible, and, therefore, rule out all norms and institutions pertaining to these notions. In the course of their normal everyday lives, people enter into various civil law relations related to economic gain. Without a "sustained character" (permanence) requirement indicating a special type of activity, the notions of "commercial (entrepreneurial) activity" and "commercial agent" (entrepreneur) lack the clearly definable meaning and legal function.

Here, "permanence" is meant to stand neither for immortality and eternity, nor for continuity in the sense of being uninterrupted. It does not even require an activity being long-term. *A sustained character of an activity expresses an indefinite number of commercial works and contracts to be executed*. For example, to be engaged in trade can mean turning commerce into one's major preoccupation. This in itself presupposes permanence or a sustained character of an activity. But even without the fact of permanence, *an intention to sustain the activity on the part of its initiator or initiators is sufficient to qualify it as commercial activity*. Hence, if someone opens a large shopping center, there is no need to wait for a long time to conclude that the purpose of this project is a sustained activity. Indeed, even if the shopping center would be shut down shortly after its inauguration, its operation from opening to closure would be considered to fall under the scope of commercial activity. The very fact of opening a shopping center clearly indicates that it is done with an intention of a sustained activity, i.e. displays a purpose of entering into an indefinite number of contracts in the future. Therefore, the activity in this example shall be seen as commercial, and its initiator shall be considered a commercial agent (entrepreneur) from the moment of establishment of the shopping center.

4. Revenue (sales) above a threshold value

Unfortunately, up to now, no substantial rule with respect to commercial (entrepreneurial) activity has formulated a condition of a required volume (turnover) of such activity, i.e. under law, there is no need for an activity to reach a certain revenue threshold to be recognized as commercial. In absence of this requirement, a barber earning a subsistence wage, a street vendor selling sunflower seeds, a shoe-shiner or a longshoreman for hire shall all be classified as entrepreneurs as they are independent, gainfully employed, and have a sustained occupation.

Taking into consideration the fact that recognizing someone as an entrepreneur can have serious legal implications when seen in the context of Articles 468.2, 418.2 and 420.1 of the Civil Code, bankruptcy legislation, and stricter responsibility for wrongdoing; failure to distinguish entrepreneurs from non-entrepreneurs becomes clearly unsatisfactory.

Hence, it is both fair and appropriate from the point of public needs and perceptions that a certain threshold value should be exceeded before we identify an activity as commercial (entrepreneurial). Even if an activity is based on investments, it would not be legally expedient to designate it as "commercial activity", unless it yields a certain level of revenue. People involved in petty trade (with receipts below the established threshold) should not be considered as entrepreneurs (business persons, commercial agents) from the legal point of view, and disputes involving them should be resolved (both substantially and procedurally) within civil law norms applicable to natural persons.

Therefore, it is proposed that a profit making activity should be designated as commercial only if it clears a certain threshold of revenue (sales, turnover).

The next logical question is what should be the minimum threshold value? It would be rational to presume that if annual revenue generated from business activity is close to annual wages of an employee or a public servant who receives an above-average salary in today's Azerbaijan, it is not advisable to designate such activity as commercial (entrepreneurial). That is, *if annual economic value of civil law activity, performed independently with a profit making purpose, does not significantly exceed an annual wage that provides for minimum everyday needs of one average family*, this activity shall not be considered commercial from the legal point of view. To resolve the matter otherwise would not fit the purpose and substance of norms related to commercial (entrepreneurial) activity, or serve to balance mutual gains of actors in civil law relations, or, in the final count, correspond to the feeling of social fairness.

We shall try to visualize this situation through an example. Imagine a person who rents an ice-cream freezer and sells ice-cream in a public park. Let us presume that his/her annual net income (after deducting the cost of sale and the rent cost) is about the same as the annual wage of a public servant or an employee receiving an above-average salary. Shall we suppose that our ice-cream vendor shall comply with standard terms of contracts for goods delivery, banking operations, or any other area in line with provisions of Articles 418.2 and 420.1 of the Civil Code? If there is no higher economic value generated from ice-cream sales in the park, even the fact of hiring someone else to do vending would not make this activity entrepreneurial from the point of legal consequences.

We have looked at a case when the annual value of economic activity is about the same as the average annual wage. But we should not overlook the fact that in Azerbaijan the

annual value of economic activity can be lower than the average annual wage, whereas the current legal treatment of such activity is unchanged. From the current legal perspective, economic activities with the annual value lower, or even significantly lower, than the average annual wage are nevertheless considered commercial (entrepreneurial), and persons engaged in them are deemed as entrepreneurs.

This is clearly detached from economic realities and common logic. It is not clear which rational purpose is served by having this provision on the books in the way it is currently formulated. Activities referred to above are certainly economic, but recognizing them as legally commercial (entrepreneurial), and people engaged in them as entrepreneurs and business people does not serve legal expectations and purposes. Because, a status of commercial (entrepreneurial) activity is associated with special legal implications, including resolution of disputes arising in connection with such activity by special courts.[6] Legal provisions establishing special implications for commercial activity are supposed to regulate economic activities with a significant economic value.[7]

I think that after setting the threshold value requirement in law, determination of a specific revenue figure for the threshold can be left to executive authorities (i.e. the Cabinet of Ministers or the Ministry of Economic Development) to determine, because this allows to update the threshold in line with changing economic situation in the country without having to amend the law.

Even now, some activities that should be designated as commercial (entrepreneurial) in accordance with the current legal definition are not recognized as such under tax law. For example, a lessor of residential properties, or a farmer breeding cattle, is not required to apply for tax registration and obtain a Taxpayer Identification Number.

5. Investment-based activity

[6] Such courts would be truly special if their procedural rules for resolving disputes would be different from the courts of general jurisdiction. But, in fact, judicial review of cases related to commercial activities and other civil law disputes is governed by exactly the same procedural rules. For this reason, I believe that having separate courts (so called administrative-economic courts) to hear disputes arising in connection with commercial activities is not advisable, because it may create extra difficulties for parties as these special courts do not exist in many localities. Some may argue that the courts of general jurisdiction have large caseloads. But, this does not mean that we should create extra problems for resolving disputes related to commercial (entrepreneurial) activities. After all, the caseload can be reduced by increasing number of judges in the courts of general jurisdiction. We should never forget that promotion of commercial (entrepreneurial) activity is very important for the purpose of economic development, and, overall, for strategic interests of the country.

[7] As is known, one of the main reasons why disputes related to commercial (entrepreneurial) activity are resolved in a procedure separate from other civil law disputes has to do with creating transparency, trust and expediency in business, as this helps promote commercial (entrepreneurial) activities and serves the goals of national economic development.

The current legislation does not distinguish economic activity based on personal labor contribution from capital or investment based activity. I maintain that if a natural person earns an income from using his/her own labor and skills, this activity can never be categorized as commercial (entrepreneurial) as this runs against both economic logic and public perceptions.

How suitable is to designate a good language tutor, or a doctor with successful private practice, or a well-known private attorney as "entrepreneurs"? This list of professions can earn their practitioners a good living by providing quality services that are in good demand can be extended. It is clear that these people derive their income, however high it may be, from their personal efforts, knowledge and skills, and not from invested capital. The difference is fundamental. Therefore, it would be unfair and ill advised to treat these people as entrepreneurs and their activities as commercial (entrepreneurial), regardless of income they earn.

Otherwise, we create another paradox. Assume we have a writer who is loved and admired by a large number of readers. His/her books sell well and based on the revenue figures, we designate him/her as a commercial agent (entrepreneur). It follows, then, that book writing is a commercial (entrepreneurial) activity. This means that popular writers shall be recognized as entrepreneurs, and authors that do not sell many copies of their books shall be deemed non-commercial (non-entrepreneurial) authors.

Not only public perceptions in our society, but also the legal precepts of leading market-based systems oppose such interpretation of the terms "commercial (entrepreneurial) activity" and "commercial agent" (entrepreneur).

If, however, a tutor opens a private school where he/she and his/her colleagues would teach languages, if a doctor establishes a clinic where a staff of medical professionals provides diagnostic and treatment services, if a lawyer has a law office where legal services are rendered by a team of lawyers and paralegals, then these businesses can be designated as investment-based activities. The reason is that these activities are not performed based solely on personal labor or skills of an individual tutor, doctor or attorney; – they are based on investments made by the said professionals and operate using labor inputs of other employees.

In the final result, through exploring all elements and conditions necessary for proper identification and recognition of commercial (entrepreneurial) activity, we have arrived at the following, tested and true definition: **commercial activity is an investment-based activity performed independently with an intention of deriving a sustained profit, which yields a revenue above a certain prudently established threshold value**.