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## SPECIFICITIES OF THE PROCEDURE FOR TERMINATION OF AN INDIVIDUAL ENTREPRENEUR'S BUSINESS ACTIVITY

**Abstract.** The *purpose of the article* is to clarify the specificities of the procedure for termination of business activity of an individual entrepreneur.

**Results.** The purpose of the state registration of termination of business activity of an individual entrepreneur is: 1) to deprive an individual of the status of an entrepreneur; 2) to check the legality of certain facts, actions; 3) to termination of rights and duties of the entrepreneur, and thus to protect the rights and legitimate interests of other private persons and the state; 4) to obtain information of the state statistical accounting for regulatory economic measures; 5) to provide all participants in economic processes, state authorities and local self-government with information about registered business entities.

**Conclusions.** It is determined that the procedure for state registration of an individual as an entrepreneur and the procedure for termination of business activity of an individual entrepreneur provides for the stages as follows: 1) to submit documents for state registration; 2) to check the submitted documents for the availability of grounds for termination of their consideration or refusal to state registration; 3) to adopt the administrative act on state registration and to perform the corresponding registration action; 4) to appeal the decision on registration (refusal to register). It is established that the mechanism for individual complaints review allowed the Ministry of Justice of Ukraine to respond promptly and give a decisive response to raider attacks that occur in the register. In case of establishing obvious violations of law in the decisions or actions of the state registrar, actors of state registration, the Ministry of Justice of Ukraine as an authorised public administrator in the field of state registration has the opportunity to settle the complaint in the shortest possible time (within a day), having restored the violated rights of natural or legal persons. Of course, such a review algorithm may not be applied to all complaints, because the main body of appeals received by the Anti-raiding Office requires a thorough collegial analysis. An important point, which does not directly concern the state registration of termination of business activity of an individual entrepreneur, but concerns the general procedure for annulment of the status of an individual entrepreneur, is the procedure for termination of registration of such business entity as a taxpayer of taxes on incomes from business activity (single tax or income tax, value added tax).

**Key words:** actors, property rights, corporate rights, control activity.

### 1. Introduction

An individual entrepreneur, having submitted to the state registrar the application on termination of business activity, receives the corresponding administrative act in 24 hours, and in the presence of electronic digital signature it is possible to stop being an entrepreneur in a few minutes. The “Diia” portal in the “IE termination” tab has a 2-minute term at all, but it is

noted that “the termination time in the tax service depends on your type of activity”.

According to O.S. Dnipro, today Ukraine demonstrates an active development primarily of the electronic government, in particular, introduction of more advanced electronic document management systems using electronic digital signature, rendering services to citizens and businesses through Centres of Adminis-

trative Services, “single window” system etc. the administrative reform has contributed to the intensification of these processes. However, the more powerful the pace of development of the electronic government, the more top officials of the state say about the importance and necessity of implementation of the electronic government, the greater the responsibility of those involved in these processes (Dniprov, 2019).

Consequently, the analysis of actions of the state registrar during the termination of business activity of an individual entrepreneur should be under focus, since his competence, impartiality and integrity contribute to the effectiveness of control measures at the stage of termination of business activity of such person.

## **2. The regulatory and legal framework for the state registration of the termination of business activity of an individual entrepreneur in Ukraine**

First, it should be emphasised that the modern science of administrative law and the Verkhovna Rada of Ukraine today have two groups of interrelated tasks: 1) to simplify administrative procedure for the termination of business activity as much as possible, to make appropriate administrative procedures transparent, understandable, consistent, effective, to reduce their term; 2) together with representatives of other sectors of law to develop a mechanism for prevention of fictitious enterprises (Kolomoiets, Halitsyna, 2010).

Secondly, it should be noted that an administrative and legal component in liquidation procedures is not questionable and is recognised by representatives of civil and economic legal sciences, since, according to O.M. Vinnyk, “ensuring the possibility of private initiative and choice of its form requires to exclude the possibility of abuse by dishonest and/or economically strong participants of economic life by establishing appropriate restrictions, duties, and prohibitions. Despite the critical attitude to the state regulatory mechanism, participants in economic life (at least, the overwhelming majority of them) are interested in acting under certain, pre-established rules, which provides them with the definite legal status, and legal opportunities to protect rights and legitimate interests in case of violation of the latter by other participants in market relations. The idea of the excessive state regulatory mechanism in Ukraine popular among entrepreneurs and some scientists is not true: as evidenced by <...> comparative analysis of the degree of validity of regulating corporate relations in Ukraine and countries with traditionally developed market relations. Therefore, the matter is not so much in the degree of state regula-

tory mechanism as in the stability, substantiation and expediency of the rules established in the field of economy. However, the effectiveness of such rules and, accordingly, the efficiency of the economy and its elements (including economic entities) depends on ensuring stability of these rules, their thoughtfulness and prudence, the clarity and unambiguity of their provisions by the state” (Vinnyk, 2003).

Thirdly, it should be noted that the state registration of establishment and termination of economic entities is the concept of administrative law, and thus can be considered by means of the algorithm of analysis of administrative procedures.

The legal provisions regulating the state registration of termination of IE business activity in Ukraine are composed of:

1. Substantial provisions of civil and economic law, which reinforce the obligatory state registration of IEs. Thus, in accordance with the Civil Code of Ukraine, business activity of natural persons is subject to the legal regulations governing business activity of legal entities, unless otherwise provided by law or unless otherwise follows from the essence of relations (Verkhovna Rada of Ukraine, 2003c), therefore, the business activity of IE is terminated from the moment of entering the corresponding record into the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Associations. A similar provision is contained in the Economic Code of Ukraine, according to Article 59 thereof, termination of a business entity is carried out in the manner prescribed by law (Verkhovna Rada of Ukraine, 2003a).

2. Administrative legal provisions establishing goals, tasks, functions, principles of the procedure for state registration, legal status of their participants.

3. Administrative procedural provisions, which directly determine the procedure for actions of the state registrar at the registration of termination of business activity of the individual entrepreneur (Ministry of Justice of Ukraine, 2016), which are the subject matter of our research.

The purpose of the state registration of termination of IE business activity is: 1) to deprive an individual of the status of an entrepreneur; 2) to check the legality of certain facts, actions; 3) to termination of rights and duties of the entrepreneur, and thus to protect the rights and legitimate interests of other private persons and the state; 4) to obtain information of the state statistical accounting for regulatory economic measures; 5) to provide all participants in economic processes, state authorities and local self-government with information about registered business entities.

### 3. Procedures for termination of business activity of an individual entrepreneur

The stages of the procedure for termination of business activity of an individual entrepreneur are: 1) to submit documents for state registration of termination; 2) to check the submitted documents for the availability of grounds for termination of their consideration or refusal to state registration; 3) to adopt the administrative act on state registration and to perform the corresponding registration action; 4) to appeal the decision on registration (refusal to register).

Consider stage 1. It should be noted at once that currently for the state registration of termination of business activity of an individual entrepreneur (compared with previous periods) the number of appellant is decreased: 1) it is the very individual entrepreneur – in case of the state registration of termination of business activity of an individual entrepreneur on his/her decision; 2) or the state body, relatives (spouse, parents, children, grandchildren, grandfather, grandmother, brothers, sisters) and heirs of a natural person – in case of submission of documents for state registration of termination of business activity of an individual entrepreneur in connection with his/her death, the recognition as missing or the declaration of death (Verkhovna Rada of Ukraine, 2003b).

The documents according to which the state registration of termination of business activity of an individual entrepreneur is carried out are:

1) an application on the state registration of termination of business activity of an individual entrepreneur by his/her decision – in case of state registration of termination of business activity of an individual entrepreneur by his/her decision;

2) a copy of the certificate of death of a natural person, a court decision on recognition of a natural person as missing without any question – in case of the state registration of termination of business activity of an individual entrepreneur in connection with his/her death, recognition as missing or declaration of death (Verkhovna Rada of Ukraine, 2003b).

In this connection several questions arise. First, should the procedure for termination of the business activity of IE on the ground of the court decision on recognition of a natural person as missing be considered interfering in administrative procedure? Secondly, and what shall be done with individual entrepreneurs, who actually correspond to the aggregate of features, in the presence of which it is possible to recognise such person as bankrupt on the ground of the new Code of Ukraine on Bankruptcy Procedures (Verkhovna Rada of Ukraine, 2018), which has come into force since October 2019,

but do not agree to the bankruptcy procedure applied to them, while this is possible only if the consent of such individual is given? Third, is forced liquidation of an individual entrepreneur on other grounds, except for non-solvency, now available in Ukraine at all? Fourth, how are the issues of public interest resolved in all of the above cases? Evidently, the answers to these questions are beyond our research, but still the questions should be raised.

Stages 2, 3, 4 are fully in line with the procedure for registration of an individual entrepreneur, and therefore we will stop on the analysis of the work of the Collegium of the Ministry of Justice of Ukraine on consideration of complaints in the field of the state registration for the period from January 16, 2020 (the moment of establishment) to December 29, 2020.

For example, during the whole period of existence, the Collegium has analysed 2 694 cases, of which: 1 104 – satisfied, 1 590 – refused on merits (as a result of collegial consideration), 0 – refused without admission to consideration (Onishchuk, 2021). According to Deputy Minister of Justice for the State Registration O.M. Onishchuk, in the majority of cases (about 58%) the Collegium did not establish the existence of obvious, gross violations of law in the decisions or actions of the state registrar. And even those 42% of complaints satisfied have been far from always justified to talk about “registration” raiding, because cases that contain obvious, gross violation of law, as a rule, are considered by the Ministry of Justice of Ukraine individually (Onishchuk, 2021).

The mechanism for individual complaints review allowed the Ministry of Justice of Ukraine to respond promptly and give a decisive response to raider attacks that occur in the register. In case of establishing obvious violations of law in the decisions or actions of the state registrar, actors of state registration, the Ministry of Justice of Ukraine as an authorised public administrator in the field of state registration can settle the complaint in the shortest possible time (within a day), having restored the violated rights of natural or legal persons. Of course, such a review algorithm may not be applied to all complaints, because the main body of appeals received by the Anti-raiding Office requires a thorough collegial analysis.

Cases, which contain obvious, gross violations of law, are recorded by the Ministry of Justice of Ukraine separately, because they are considered individually. During 2020, 49 complaints in the field of the state registration (41 for business and 8 for real estate) were resolved by this procedure, 19 of which were cases in which there were reports of so-called crimes of electronic keys of access to regis-

ters. The additional user identification tool has helped to solve the problem of electronic registry key crimes. This mechanism, which prevents any unauthorised interference in the work of the registrars, in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Associations (USR) was introduced in November 2020 and became mandatory for all specialists authorised in the field of the state registration of business as of December 12. It was due to the measures to strengthen the security of the data of the USR since November 2020 that no report of the criminal electronic key of the registrar has been received by the Ministry of Justice of Ukraine (Ministry of Justice of Ukraine, 2021).

It should be emphasised that there were no cases when the appellants were deprived of the opportunity to protect their property or corporate rights in the Ministry of Justice of Ukraine due to formal procedural guarantees. In other words, the appellants did not receive the decision of the Ministry of Justice of Ukraine on refusal because of, for example, “the absence of information about the existence or absence of a court dispute”. However, all orders on results of case analysis were published in the corresponding section on the official web portal of the Ministry of Justice of Ukraine.

According to the areas of the state registration, statistical proportions of the cases considered are as follows: 2 118 complaints concerning real estate and 576 complaints concerning business. This ratio is compared with the total number of registration actions performed. For example, in 2020, in the State Register of Property Rights to Immovable Property (SRR), 5 250 465 registration actions were carried out, in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Associations (USR) – 1 163 467. For comparison: in 2019, 5 347 956 registration actions were carried out in the SRR, and in the USR – 1 510 865 (Onishchuk, 2021).

Evidently, the absolute leader in the areas of the state registration is real estate. In addition, the general statistical picture of the state registration sector shows that despite all the challenges of 2020, the number of registration actions has not changed dramatically compared to 2019, unless the activity of the state registration of business has slightly decreased by about 23%. However, the number of registration violations in 2020 has considerably decreased. In 48% of the decisions of the Board on refusal to satisfy the complaint, it was stated that the actions (decisions) conducted by state registrars were in accordance with the legislation. For example: in 2019, there were three times less refusals for such reasons – only 17% (Ministry of Justice of Ukraine, 2021).

In 2020, the Ministry of Justice of Ukraine denied access to the registers of 101 actors: 83 state registrars and 18 notaries, who allowed gross violation of the legislation. In almost 80% of cases, such a strict sanction was applied due to the results of the registration cases consideration: 64 registrars and 15 notaries' access to the registers was denied. In other cases, the Ministry of Justice of Ukraine decided to deny access to the registers due to a check-up of state registrars or state registration actors. It is about 22 termination: this measure was applied to 19 registrars and 3 notaries. If we compare these figures with the total number of specialists working in the field of the state registration, we have the following percentage ratio: 0,3% denied access to the registers in respect of notaries and 5,1% – in respect of state registrars (Ministry of Justice of Ukraine, 2021).

An important point, which does not directly concern the state registration of termination of business activity of an individual entrepreneur, but concerns the general procedure for annulment of the status of an individual entrepreneur, is the procedure for termination of registration of such business entity as a taxpayer of taxes on incomes from business activity (single tax or income tax, value added tax (if IE has been registered as such), a single social contribution (for hired workers, etc.)).

An already former entrepreneur is under such duty after the state registration of termination of his/her business activity and he/she shall carry it out within 10 days by appeal to the State Tax Inspection at the place of registration of the taxpayer, submission of liquidation reports and implementation of other actions envisaged by the legislation.

Thus, it is this stage of termination is aimed at verification of the legality of certain facts, actions, termination of rights and duties of a certain entrepreneur, and thus protection of rights and legitimate interests of other private persons and the state, which allow control proceeding.

#### 4. Conclusions

Features of all control proceeding are: 1) actors exercising control powers (state bodies and their officials, citizens' associations, local self-government bodies) are diverse; 2) the overwhelming number of control bodies is granted with a wide range of control powers, including the right to intervene in the operational activities of the entity under control; 3) the activity of entities under control is a direct object of the controlling legal relations; 4) in control proceedings, legal facts alone do not have legal force and act only in the form of actual (legal) composition – the organic combination of several life circumstances; 5) control and procedural provisions do not contain a comprehensive list of means

of preservation and transfer of evidence-based information (in the control process, information about actual circumstances can be obtained from any legitimate source); 6) the results of control activity are officially documented in legal acts – documents which can be referred to both category of law application (as a result of exercising state powers by competent control bodies) and the category of law-enforcement acts (which contain legal evaluation of activity of the entity under control) (Kuzmenko, 2012).

As for the procedure for the removal of the former IE from the accounting as a taxpayer, it should be emphasised that after the state registration of termination of business activity, the individual continues to be registered in the controlling bodies as a natural person – the taxpayer, who received income from the conduct of business.

Individuals who were on the general system, in respect of whom since January 1, 2017 a record on termination of business activity has been entered into the USR, submit liquidation tax declarations on property status and incomes received on the general system of taxation the last time in the reporting period since the day following the day of the end of the previous basic tax (accounting) period until the last day of the calendar month, in which the state registration of termination of business activity was carried out, within 30 calendar days from the date of the state registration of termination of business activity. Individuals under the simplified tax system submit tax declarations the last time for the accounting (tax) quarter, in which the state registration of termination of business activity is carried out, the growing result from the beginning of the year in the terms defined by para. 49.18.2 of the Tax Code of Ukraine (Verkhovna Rada of Ukraine, 2010), within 40

calendar days, following the last calendar day of the accounting (tax) quarter.

A report on the SSC specifying the type of “liquidation” form, where the last reporting period is the period from the date of the end of the previous reporting period to the date of the state registration of termination of business activity, SSC IE payers, including IE – single taxpayers, it is submitted within 30 calendar days from the date of the state registration of termination of business activity. The last period for which a single contribution must be calculated and paid will be the period from the date of the end of the previous reporting period until the date of the state registration of termination. A single contribution is paid within 10 calendar days after the deadline for the submission of the SSC Report, specifying the type of the “liquidation” form (Verkhovna Rada of Ukraine, 2010).

The data on the withdrawal from the registration of IE as a taxpayer and as a taxpayer of the SSC are passed by the controlling body to the USR and published on the portal of electronic services of the USR and only after that it is possible to consider the procedure of termination of the business activity of an individual entrepreneur complete.

Both the procedure for state registration of an individual as an entrepreneur and the procedure for termination of business activity of an individual entrepreneur are determined to provide for the stages as follows: 1) to submit documents for state registration; 2) to check the submitted documents for the availability of grounds for termination of their consideration or refusal to state registration; 3) to adopt the administrative act on state registration and to perform the corresponding registration action; 4) to appeal the decision on registration (refusal to register).

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## **ОСОБЛИВОСТІ ПОРЯДКУ ПРИПИНЕННЯ ПІДПРИЄМНИЦЬКОЇ ДІЯЛЬНОСТІ ФІЗИЧНОЇ ОСОБИ – ПІДПРИЄМЦЯ**

**Анотація.** *Метою статті* є з'ясування особливостей порядку припинення підприємницької діяльності фізичної особи – підприємця.

**Результати.** Метою державної реєстрації припинення підприємницької діяльності фізичної особи – підприємця є: 1) позбавлення фізичної особи статусу підприємця; 2) перевірка законності певних фактів, дій; 3) припинення прав та обов'язків певного підприємця та захист у такий спосіб прав і законних інтересів інших приватних осіб та держави; 4) отримання відомостей державного статистичного обліку для здійснення заходів регулювання економіки; 5) надання всім учасникам господарського обігу, органам державної влади та місцевого самоврядування інформації про зареєстрованих суб'єктів підприємницької діяльності.

**Висновки.** Визначено, що і процедура державної реєстрації фізичної особи підприємцем, і процедура припинення підприємницької діяльності фізичної особи – підприємця передбачає такі стадії: 1) подання документів для державної реєстрації; 2) перевірку поданих документів на наявність підстав для зупинення їх розгляду або відмови в державній реєстрації; 3) прийняття адміністративного акта про проведення державної реєстрації та здійснення відповідної реєстраційної дії; 4) оскарження прийнятого рішення про реєстрацію (відмову в реєстрації). З'ясовано, що механізм одноособового розгляду скарг дав змогу Міністерству юстиції України оперативно реагувати та давати рішучу відсіч рейдерським атакам, які відбуваються в реєстрах. У разі встановлення наявності очевидних порушень закону в рішеннях чи діях державного реєстратора, суб'єктів державної реєстрації Міністерство юстиції України як уповноважений суб'єкт публічного адміністрування у сфері державної реєстрації має можливість у найкоротші терміни (протягом доби) задовольнити скаргу, відновивши порушені права фізичних або юридичних осіб. Звісно, такий алгоритм розгляду можна застосувати не для всіх скарг,

адже основний масив звернень, які надходять до Офісу протидії рейдерству, потребує ґрунтовного колеґіального аналізу. Важливим моментом, який безпосередньо не стосується державної реєстрації припинення підприємницької діяльності фізичної особи – підприємця, проте стосується загального порядку анулювання статусу фізичної особи – підприємця, є процедура припинення реєстрації такого суб'єкта господарювання як платника податків із доходів, отриманих від підприємницької діяльності (єдиного податку або податку на прибуток, податку на додану вартість).

**Ключові слова:** суб'єкти, майнові права, корпоративні права, контрольна діяльність.

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