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GENERAL PRINCIPLES OF STATE REGISTRATION OF INDIVIDUAL ENTREPRENEURS AS AN OBJECT OF THE ADMINISTRATIVE PROCEDURE REGULATORY MECHANISM

Abstract. Purpose. The purpose of the article is to determine general principles of state registration of individual entrepreneurs as an object of the administrative procedure regulatory mechanism. **Results.** It can be emphasised that state registration of business entities is an important element of administrative-legal regulatory mechanism for entrepreneurial activity, which combines interdependent features of legal method, legal form and administrative procedure. As a legal method of public administration, state registration of business entities is the recognition by the state of the fact of the initiation of a business entity, termination of its activities or change of legal status with the simultaneous written recording of such fact in the Unified State Register. In this regard, state registration is based on a certain restriction of the freedom of enjoying the right to entrepreneurial activity by citizens and their associations through its application within the framework of the administrative procedure established by law. State registrars as public administrators, performing preliminary control at the stage of formation of business entities and ongoing one in the process of their functioning, objectively contribute to greater transparency of the internal market of Ukraine. **Conclusions.** Specific features of administrative procedures for state registration of individual entrepreneurs can be identified, as follows: a) They are applied in the public regulatory mechanism for the economy; b) They regulate law application activities of the state registrar as a public administrator; c) They have, as a rule, a non-jurisdictional character; d) They result in an administrative act, that is, a corresponding entry in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Associations.

It is proposed that administrative procedures for state registration of individual entrepreneurs should be understood as the procedure, established by law, for considering by the state registrar as a public administrator of an individual administrative case related to the certification of the fact of acquisition or deprivation of the status of an entrepreneur by a natural person, based on the results of the consideration thereof an administrative act is adopted in the form of a corresponding entry in the Unified State Register.

Key words: legal relations, legal status, actors, legal regulatory mechanism, legal influence.

1. Introduction

The transformation processes in all sectors of public life of our country over the past thirty years have been inextricably linked to making an enabling environment for the realisation and protection of the rights, freedoms and legitimate interests of natural persons and legal entities, contributing to the rapid development

of legal institutions, which require the systematic legal regulatory mechanism and clearly defined implementation through the regulated activities of public administrators.

The institution of state registration of business entities has passed a long way of its formation and transformation, due not only to the rapid development of entrepre-

neurship, which has become the driving force of the domestic economy, but also to the European integration choice of Ukraine, which resulted in a large-scale adaptation of national legislation to EU law.

An effective mechanism for economic relations, from the perspective of legislative and managerial support for the implementation of the state-guaranteed right to entrepreneurial activity provided for by the Constitution of Ukraine, requires to clearly understand the peculiarities of the object of state power, and therefore to reveal the content of the concept of 'state registration' is of importance for the analysis of the state of the art of the administrative and legal regulatory mechanism in this field.

2. State registration of business entities

In the legal doctrine, the concept of 'registration' is not characterised by stable views, however, when defining this concept, scientists usually identify the official recognition of the legality of certain facts, the rise or termination of rights and obligations, the consolidation of the legal status of a natural or legal person as its main feature, applying along with the term 'registration' the concepts of 'registration proceedings', 'registration procedure'.

For example, Yu.M. Kozlov, D.M. Ovsianko, L.L. Popov define state registration as an act of official recognition of the legality of relevant actions and legal regulations, the task of which in most cases is entrusted to the bodies of justice and internal affairs (Kozlov, Ovsianko, Popov, 2004), P.I. Kononov considers it as a activity of competent administrative (registration) bodies, regulated by administrative and procedural provisions, on recognition and confirmation by the state of the legal status, certain property or non-property rights and obligations of natural persons and legal entities, their rise, change or termination, the facts of these persons' ownership of certain types of property (items) and the possibility of their intended use, the legality of actions and decisions taken by these persons, other legal facts (Kononov, 2001), while M.Yu. Tikhomirov argues that it is a legal act of recognition and confirmation by an authorised entity of facts, events or phenomena subject to accounting and registration, which give the object of registration legality, make it legally significant (Tikhomirova, Tikhomirov, 2006).

According to D.M. Bakhrakh, the essence of registration is to verify the legality of facts, their official recognition and subsequent accounting (Bakhrakh, 2000). In A. I. Riabko's opinion, registration is a controlling legal means to register a controlled entity that has fulfilled all the requirements of the law regarding the per-

formance of actions, management of documents, payment of duties, while the registrar has no right to refuse it. Registration, that is, entering special lists, registers, cadastres of various facts of legal significance, material objects, real estate, legal acts, enterprises, is carried out for the purpose of accounting (Riabko, 1999).

With regard to state registration of business entities, scientists also focus on the official recognition and certification by the state of a fact related to a certain business entity. For example, T. O. Kolomoiets and N. V. Halitsyna define LLC state registration as the procedure established by law for legalisation, change of legal status or termination of a company by adopting an administrative act by the registration authority (public administrator), on the basis of which the relevant entry is made in the Unified State Register (Kolomoiets, Halitsyna, 2010). I.M. Hrushchynskiy defines the registration procedure '... as a procedure, stipulated by law, performed by state registration authority in order to record legal facts...' (Hrushchynskiy, Kravchuk, Pohranychnyi, 2000). Similarly, S.V. Lykhachov defines the procedure of registration of business entities as a procedure provided by law for actions performed by state registration authority, as a record of legal facts that reflect the start, change or termination of the status of a business entity (Lykhachov, 2001). However, L. P. Kotiash is convinced that state registration of legal entities as an object of the administrative and legal regulatory mechanism for registration of legal entities is a public welfare, which allows citizens to receive goods and services from 'eternal' persons for a long time, which do not cease with the death of a natural person, as well as the performance by special public administrators of legally significant administrative actions in the field of legalisation or termination of a legal entity, changes in the information contained in the Unified State Register of Legal Entities, as well as other registration actions provided for by law in order to exercise various entrepreneurial, political, professional, sports and other rights to provide useful benefits to society (Kotiash, 2017).

The Law of Ukraine 'On State Registration of Legal Entities, Individual Entrepreneurs and Public Associations' in the very definition of state registration focuses on the content of certain registration procedures, stating: 'state registration of legal entities, public associations that do not have the status of a legal entity, and individual entrepreneurs is an official recognition by the state of the fact of formation or termination of a legal entity, a public association that does not have the status of a legal entity, certification of the fact of the relevant status of a public association, trade union,

its organisation or association, political party, employers' organisation, associations of employers' organisations and their symbols, certification of the fact of acquisition or deprivation of the status of an entrepreneur by a natural person, changes in the information contained in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Associations, about a legal entity and an individual entrepreneur, as well as other registration actions provided for by this Law' (Law of Ukraine On State Registration of Legal Entities, Individual Entrepreneurs and Public Associations, 2003), but also at the legislative level regarding state registration the emphasis is on an official recognition by the state through certification of a certain fact.

Therefore, it can be emphasised that state registration of business entities is an important element of administrative-legal regulatory mechanism for entrepreneurial activity, which combines interdependent features of legal method, legal form and administrative procedure. As a legal method of public administration, state registration of business entities is the recognition by the state of the fact of the initiation of a business entity, termination of its activities or change of legal status with the simultaneous written recording of such fact in the Unified State Register. In this regard, state registration is based on a certain restriction of the freedom of enjoying the right to entrepreneurial activity by citizens and their associations through its application within the framework of the administrative procedure established by law. As a legal form, state registration of business entities is manifested in an administrative act of the registration authority, by which the relevant entry about a natural or legal person is made in the State Register. As an administrative procedure, state registration of business entities is the procedure, established by law, of successive actions by public administrators and natural persons aimed at recognition by the state of the fact of the initiation of a business entity, termination of its activities or change of legal status with the simultaneous written recording of such fact in the Unified State Register (Kolo-moiets, Halitsyna, 2010).

3. Features of state registration

The next issue to be resolved is the question of the sectoral affiliation of the institution of state registration of business entities, since, according to M.P. Hurkovskyi, the implementation of state registration is intended to ensure the public interest and involves balancing public and private interests in a certain way (Hurkovskyi, 2012). We advocate those scholars who refer state registration to the institutions of administrative law and argue our position as follows.

First, the category of 'public interest' is the criterion for dividing legal sciences into public and private. Moreover, interests as a legal category can correlate the legal regulatory mechanism, be a factor in the start, change, termination of legal relations, change of the legal status of their parties. It is interests that program legal regulatory mechanism and find (select) the necessary effective legal means (Malko, Subochev, 2004). The essence of the understanding of the public interest, according to L.O. Zolotukhina, should be covered by establishing the range of existing objective needs, meeting which should be ensured by public power means (Zolotukhina, 2019).

We advocate E.V. Petrov's perspective that economic activity is one of those spheres in which the public interest is manifested, called to life by the economic needs of the whole society. In other words, in the legal system of the state there arise and develop provisions aimed at ensuring the realisation of the said public interest. Their main developer, as well as the applicant, is the state represented by the relevant public institutions. Therefore, these interests lay the foundation for the implementation of the economic function by the state (Petrov, 2012). What is more, by state registration of business entities, the state primarily realises the public interest, which is to purify the economic sphere from fictitious entrepreneurs, since, according to criminologists, more than 50% of business entities in Ukraine are created for the purpose of 'optimisation' of taxation. State registrars as public administrators, performing preliminary control at the stage of formation of business entities and ongoing one in the process of their functioning, objectively contribute to greater transparency of the internal market of Ukraine.

Secondly, state registration has the following features:

- 1) it is a system of public-legal relations, the content of which is to regulate public relations in those areas where strict compliance with the requirements of certain legal conduct is necessary. Deviation from the registration procedure leads not only to individual offenses, but also entails negative managerial consequences;

- 2) the implementation of state registration has its own principles of organisation of managerial influence, which include: limitation of state interference in the activities of social institutions, interest of citizens in fulfilling the administrative conditions of state registration, coordination of the state and citizens in the implementation of management programs, specialisation of managerial influence, professional competence;

3) state registration is a form of control over the actual compliance with mandatory conditions related to the activities of parties to registration legal relations (Alekseev, 1989);

4) it is a special administrative and legal procedure, which is expressed in a set of legal means that characterise the special interaction between permits, prohibitions, positive obligations that create a certain direction of legal regulatory mechanism (Alekseev, 1989). Registration in this case is associated with obtaining by the actor of certain rights or legal status, without which further legally significant actions are impossible;

5) the provisions regulating the registration procedure cover homogeneous, closely related relations within the same field, that is, they constitute an independent legal institution, which by criteria, target and methods are administrative and legal; imperative prescriptions and prohibitions for registration legal relations are established not in private manner and not for the sake of ensuring the interests of the person to whom the legal provision is addressed, but for the sake of someone else's interest, that is, for a public purpose (Gorshenev, 1972);

6) these substantive features are dialectically united with their legal form, that is, a certificate (extract) of state registration, which is a legal document of a public administration body confirming the relevant rights or legal status of citizens and legal entities (Dobrov, 2005).

Thirdly, the procedural form, the concept of 'state registration' and 'registration procedures' correlate as content and form. State registration should be understood as accounting, recording of certain facts, giving them legitimacy, legal significance; and registration procedures are the procedure established by law for the implementation of such actions by the authorised bodies.

Registration procedures, including procedures for state registration of individual entrepreneurs, are a specific type of administrative procedures, as they have all the general features of administrative procedures, namely 1) application in the public sphere; 2) regulated order of law enforcement activities; 3) coverage of positive managerial activities; 4) establishment of a certain procedure for the implementation of certain actions, since the task of administrative procedures is to streamline the activities

of authorised bodies and all stakeholders, resulting in increased efficiency and quality of public administration in general; 5) specific parties (one of the parties is always a public administrator, endowed with state powers); 6) consolidation in administrative and procedural provisions, which, in turn, regulate the application of substantive provisions of administrative and other branches of law, and at the same time regulate the activities of authorised bodies and officials (Halitsyna, 2010).

We support V. M. Bevzenko's perspective that administrative procedures are: a) an external manifestation of the exercise of public administrator's powers granted to these entities to ensure (facilitate) the exercise of rights, freedoms, interests of individuals, fulfilment of subjective duties and tasks of the state; b) a manifestation of organisational, administrative and executive activities of public authorities, local self-government bodies, their officials and officers; c) an institution of administrative law, inseparable from it and objectively interconnected with it, which is characterised by stages and the presence of special proceedings (Kolomoiets, Halitsyna, 2010).

4. Conclusions

On the basis of general features of administrative procedures, specific features of administrative procedures for state registration of individual entrepreneurs can be identified, as follows: a) They are applied in the public regulatory mechanism for the economy; b) They regulate law application activities of the state registrar as a public administrator; c) They have, as a rule, a non-jurisdictional character; d) They result in an administrative act, that is, a corresponding entry in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Associations.

We propose that administrative procedures for state registration of individual entrepreneurs be understood as the procedure, established by law, for considering by the state registrar as a public administrator of an individual administrative case related to the certification of the fact of acquisition or deprivation of the status of an entrepreneur by a natural person, based on the results of the consideration thereof an administrative act is adopted in the form of a corresponding entry in the Unified State Register.

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ЗАГАЛЬНІ ЗАСАДИ ДЕРЖАВНОЇ РЕЄСТРАЦІЇ ФІЗИЧНИХ ОСІБ – ПІДПРИЄМЦІВ ЯК ОБ'ЄКТ АДМІНІСТРАТИВНО-ПРОЦЕДУРНОГО РЕГУЛЮВАННЯ

Анотація. Метою статті є визначення загальних засади державної реєстрації фізичних осіб – підприємців як об'єкт адміністративно-процедурного регулювання. **Наголошено, що** державна реєстрація суб'єктів господарювання є важливим елементом адміністративно-правового регулювання підприємницької діяльності, що поєднує у собі взаємозалежні ознаки правового методу, правової форми й адміністративної процедури. Як правовий метод діяльності публічної адміністрації державна реєстрація суб'єктів підприємницької діяльності полягає у визнанні державою факту виник-

нення суб'єкта підприємницької діяльності, припинення його діяльності або зміни правового статусу з одночасною письмовою фіксацією такого факту у Єдиному державному реєстрі. У зв'язку з цим державна реєстрація заснована на певному обмеженні свободи реалізації громадянами та їх об'єднаннями права на підприємницьку діяльність за допомогою його застосування в рамках встановленої законом адміністративної процедури. З'ясовано, що державні реєстратори як суб'єкти публічної адміністрації, здійснюючи попередній контроль на стадії створення суб'єктів господарювання та поточний – в процесі їх функціонування, об'єктивно сприяють більшій прозорості внутрішнього ринку України. **Висновки.** Специфічними ознаками адміністративних процедур у сфері державної реєстрації фізичних осіб-підприємців є такі: а) застосовуються у сфері публічного регулювання економіки; б) регулюють правозастосувальну діяльність державного реєстратора як суб'єкта публічного адміністрування; в) мають, як правило, неюрисдикційний характер; г) результатом є адміністративний акт – відповідний запис у Єдиному державному реєстрі юридичних осіб, фізичних осіб-підприємців і громадських формувань. Запропоновано, під адміністративними процедурами у сфері державної реєстрації фізичних осіб-підприємців розуміти нормативно закріплені порядок вирішення державним реєстратором як суб'єктом публічного адміністрування індивідуальної адміністративної справи, пов'язаної із засвідченням факту набуття або позбавлення статусу підприємця фізичною особою, за результатами розгляду якої приймається адміністративний акт у вигляді відповідного запису до Єдиного державного реєстру.

Ключові слова: правовідносини, правовий статус, суб'єкти, правове регулювання, правовий вплив.

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