

STATE REGISTRATION IN THE MECHANISM OF ADMINISTRATIVE AND LEGAL REGULATION

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Abstract. The *subject* of the study is administrative and legal relations in the field of state registration. *Methodology.* The methodological basis of the study are methods of induction and deduction, dialectical-materialistic method, the method of analysis and synthesis, the historical method, which allowed to objectively understand the content and essence of the issues under study. The *purpose* of the article is the development of theoretical and methodological provisions, as well as the development of practical recommendations to improve the process of providing state registration services. The *results* of the study showed that the current state of the public services sector is characterized by uneven development and use of modern forms and methods of their management. Administrative-procedural legal relations in the field of state registration are social relations regulated by administrative-procedural law, which develop in connection with the realization of a subjective right to material or non-material goods (objects) and the participants of which are, on the one hand, a legal or physical person, on the other hand – a state subject of registration. *Conclusion.* It should be noted that the legislation regulating the procedure for registration of legal entities is largely imperfect and makes the regulation of the relations in question ineffective. This also applies to other normative legal acts regulating other types of state registration. Improvement of legislation will improve the level of legal protection of constitutional rights and obligations of citizens and organizations. Thus, the ways and methods of solving problems that have developed in the sphere of state registration should become an integral part of the whole, based on the priority directions of modern administrative reform. Such directions, in our opinion, are: limitation of state interference in economic activities of business entities, including termination of excessive state regulation; elimination of duplication of functions and powers of state executive authorities; development of self-regulatory organizations in the sphere of economy; organizational separation of functions related to the regulation of economic activity, supervision and control, management of state property and the provision of state organizations of services to citizens and legal entities; completion of the process of separation of powers between state executive bodies of Ukraine, optimization of territorial bodies of executive power.

Key words: administrative law, administrative legislation, state registration, legal institution, public administration, legal entities, entrepreneurs, legal mechanism, administrative procedures, registration authority, registration acts.

JEL Classification: M31, I20, H82, G21, P51

1. Introduction

The implementation of the priority of individual rights and freedoms proclaimed in the Constitution required the creation of an effective mechanism for their realization and protection, which determined the most important directions of state-legal transformations. With the proclamation of the welfare state in society, a decisive step is being taken toward the transition from the principle of "equality of opportunity" to the principle of "equality of results". The creation of conditions for the implementation of the

rights and freedoms of the individual proclaimed by the Constitution requires its active participation in social and economic processes, which calls for a radical systemic update of the legal forms mediating the influence of state power on the institutions of civil society. Administrative and legal reform carried out in the context of the transformation of economic and political systems cannot be reduced to the optimization and adaptation of existing legal mechanisms of public administration in relation to the new conditions, because it is based on fundamentally different

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approaches to building a new system of relationship between the executive power and the individual, based on the idea of ensuring a reasonable balance of public and private interests. A sharp reduction in the spheres that allowed the use of direct administrative methods with a significant enrichment of the functional role of the state led to the emergence of new legal forms of public administration. Against the background of the structural and functional reform of the system of executive power, one of the forms of its implementation – state registration, which found its application in all spheres of public administration (economy, social and administrative and political spheres) became especially relevant. Despite this, the essence and legal nature of state registration as a form of implementation of executive power has not yet been the subject of a detailed study in the legal literature.

Under the conditions of socio-economic reforms taking place in Ukraine, the institute of state registration has developed greatly: in the 90s of the twentieth century – the registration of acts of civil status, vehicles, registration (registration) of citizens at the place of residence, the end of last and beginning of this century – registration of real estate and transactions with it, registration of public and religious associations, legal persons and natural persons – entrepreneurs, registration of property pledge, etc. However, legal regulation of this institution is carried out, as a rule, at the level of various normative acts, including subordinate legislation, which are characterized by fragmentation and inconsistency.

Registration is a complex socio-legal phenomenon, which is considered in the legal literature from different sides, with no unified understanding of it. In the literature, attempts are made to clarify the essence and legal nature of the institution in question, designed to protect the rights of individuals and legal entities.

2. Scientific approaches to the definition of the phenomenon of "state registration"

Registration legal relations are part of administrative and procedural relations, since they are associated with the implementation of substantive norms of various branches of law (for example, constitutional law, which determines the status of public associations; civil law, which establishes the legal regime of immovable property; administrative law – providing administrative registration services, etc.). As D. Stewart rightly points out, state registration is aimed at the protection by authorized executive authorities of one of the most important objects of state importance, namely, the protection of the rights and freedoms of citizens (Stewart, 2004). These include the right of citizens to freedom of movement and choice of residence, the right to private property, including real estate, the right to form public associations and

political parties. State registration expresses the public interest of the state, which seeks to protect the rights of citizens and legal entities for any benefit.

D. Forsythe, examining the concept and features of administrative and procedural legal relations, noted the features of administrative and procedural legal relations, which are the legal relations provided for by a legal norm between specific subjects, endowed with certain powers and responsibilities. These legal relations always arise based on legal norms, and the implementation of administrative and legal relations is ensured by measures of state influence. However, these are common signs of any legal relationship, so D. Forsythe notes special features of administrative-procedural legal relations (Forsythe, 2011).

The first feature is that administrative-procedural legal relations arise in the field of public administration. Consequently, administrative-procedural legal relations, as well as substantive administrative-law relations, are of managerial nature.

The second feature is that these relations are procedural. If the first feature allows separating administrative-procedural legal relations from all other, except for material administrative-legal relations arising in the field of public administration, then the second feature allows drawing a boundary between material and procedural administrative-legal relations. Managerial nature of substantive and procedural relations turns out to be a factor that brings them closer. On the one hand, it allows separating both types of administrative-legal relations, on the other hand – determining the scope of administrative-procedural legal relations.

The concept of "registration" comes from the Latin "registrum" (list) and means a record of facts, documents of legal significance. Administrative scientists speak differently about the essence of registration. Thus, T. Brown believes that through registration, public authorities, as a rule, executive authorities recognize a person's right to a certain social good (place of residence, real estate, entrepreneurial activity, etc.) and legalize the use of it (Brown, 2016). According to R. Draft, registration is a verification of official facts and their accounting (Draft, 2012). In many ways, I. Ferreira (Ferreira, 2009) and D. Monro (Monro, 2003) express a similar point of view.

According to S. Martin, registration is the activity of executive authorities, regulated by the rules of administrative-procedural law, in the course of which issues of official recognition of the legality of the existence of certain material objects and legal facts are resolved (Martin, 2015).

T. Poister takes an even broader view of registration, who believes that state registration should include not only the activities of registration authorities in reviewing specific documents, but also the state in organizing the system of state registration, establishing

the principles of its implementation, methods of protection and reflection of information, as well as procedures for providing information on registered rights (Poister, 2003).

C. Needham rightly pointed out "that state registration is one of the elements of public legal regulation of property relations, a form of designation, ensuring and protecting public interests in the sphere of civil law" (Needham, 2011).

Unfortunately, Ukrainian legislation does not contain a legal definition of the term "registration proceedings". The legislation operates with the concepts of "state registration of legal entities, Entrepreneurs", "state registration of rights to immovable property", "state cadastral registration", "registration of a place of residence", etc. or terms such as "state registration of a normative legal act", while defining its components and establishing rules for implementation (Kotylko, 2022).

The analysis of these points of view shows that the essence of registration is considered from different positions:

- as a fundamental method of administrative-legal regulation; a certain way of impact on social relations arising during the implementation of various rights by citizens and organizations;
- as an independent administrative procedure regulating the procedure of implementation;
- as a specific type of activity of executive authorities vested with special powers, that is, in fact, as one of the management functions performed by public authorities.

It appears that registration is, firstly, a method of administrative-legal regulation, through which the state officially recognizes certain rights belonging to individuals and legal entities, as well as legal facts relevant to the development of social relations related to the implementation of the rights and obligations imposed on them by these subjects.

3. Registration as a method of administrative and legal regulation

Registration, like any activity, has a form of external expression. Such is the established by the norms of administrative-procedural law order of actions, which determine its essence.

State registration, as M. Spendolini rightly points out, is aimed at solving two tasks – legal and law enforcement. The first one implies that by officially recording certain facts, state bodies create conditions that provide citizens with the opportunity to realize their rights. The second means the implementation of administrative oversight over the legality of recorded actions and facts (Spendolini, 2013).

Thus, through registration the constitutional rights of citizens of Ukraine to freedom of movement and choice of residence, to form public associations,

to private property, including tools and means of production, etc. are ensured.

Registration of motor vehicles allows not only their registration, but also the supervision of compliance of design, technical condition and equipment with the established safety requirements. Thanks to this, there is a counteraction to offenses related to the use of vehicles.

Consequently, registration, as a method of administrative-legal regulation, allows for a balance of private and public interests.

State registration is often considered among the special methods of administrative authorization, along with licensing, since it is also aimed at legitimizing certain legal relations arising in the process of exercising subjective rights. Thus, according to R. Nyhan, both registration and licensing refer to licensing procedures aimed at granting special powers to individual entities (Nyhan, 2009). However, despite some similarity of tasks, they also have significant differences.

Indeed, licensing is a state confirmation of the ability to engage in certain types of activities and is closely related to the emergence of legal capacity of subjects in terms of entrepreneurship on the basis of a special permit (license) issued by the executive authorities. State registration is aimed at the establishment, recognition of certain legal facts or recognition of a certain right and the possibility of its implementation for the subjects. At the same time legal facts themselves may entail certain consequences, but may not entail, but only create conditions for their occurrence.

Registration is carried out in various spheres of public life. In particular, state registration of public associations, normative-legal acts issued by state executive authorities, motor vehicles, foreign citizens staying on the territory of Ukraine, real estate, etc. is carried out. Licensing applies only to certain types of entrepreneurial activity, the uncontrolled implementation of which could harm the interests of individuals, society and the state. Their list is contained mainly in the Law of Ukraine "On Licensing of Types of Economic Activity" dated March 2, 2015 No. 222-VIII.

Registration and licensing have their own legal regulation. Licensing implies compulsory control not only when considering the issue of a license, but also in the process of doing business. At the same time, the licensing authorities have broad powers to apply administrative coercive measures to entities that violate licensing requirements. The bodies performing state registration have no such authority. If the documents submitted for registration do not meet the requirements, they have the right to refuse registration.

Thus, registration and licensing should be considered as independent methods of state regulation used

by public authorities; each of these methods has its own nature.

At state registration, an appropriate entry is made in a specialized register (of objects, rights, states), which is maintained by the relevant executive authority.

Based on this, we can say that registration is one of the methods of state regulation, which is aimed at creating conditions for the implementation of certain rights and obligations of the subjects of administrative and legal relations.

J. Calhoun names the purposes of state registration:

- recording of legally significant facts and their accounting;
- control in the industry in which state registration is carried out;
- certificate of registered facts (Calhoun, 2014).

The tasks of registration proceedings are as follows:

- observance of the rights, freedoms and legitimate interests of individuals and legal entities;
- unity and unification of accounting of subjects and objects of state registration;
- ensuring and protecting the property and personal non-property rights of citizens and legal entities;
- authorization of persons as subjects of civil legal relations;
- the assignment of the right of ownership of an object of civil rights to property to a certain person;
- legalization of business activities;
- establishment of grounds for the emergence, modification or termination of legal relations regarding real estate;
- implementation of measures to prevent legal torts (Kotylko, 2022).

Along with the constitutional principles of the rule of law, legality, priority of the individual and its interests, publicity, national language, mutual responsibility, the general principles of state registration are the principles of unity of state registration (general provisions of registration of subjects of civil legal relations and property rights, the same for different objects), verification of legality of grounds for registration, publicity of the register, presumption of reliability of the declared and registered information.

Among the new fundamental provisions of registration proceedings, dictated by modern realities, are the following:

- organizational principle of the possibility of filing applications for state registration and providing information to applicants in the "Single Window" mode and according to the rules of electronic document flow;
- Maintaining state registers on electronic media in accordance with unified organizational, methodological, software and technical principles that ensure compatibility and interaction of state registers with other information systems and networks.

4. Some aspects of the administrative and legal regulation of state registration in Ukraine

In this article, the authors will dwell only on some issues of legal regulation and practice of such a type as the registration of legal entities and individual entrepreneurs, determining the limits of their constitutional right to use their abilities and property for entrepreneurial activity.

The legal basis of this type of registration is the Law of Ukraine "On State Registration of Real Rights to Immovable Property and their Encumbrances" dated July 1, 2004 No. 1952-IV; the Law of Ukraine "On State Registration of Legal Entities, Individual Entrepreneurs and Public Formations" dated May 15, 2003 No. 755-IV, as well as departmental legal acts of the State Fiscal Service issued on their basis. From their analysis it follows that registration is a fact of recognition and confirmation by the state of the legal personality of organizations or individuals who have expressed their desire to engage in entrepreneurial activities. Only after registration they are recognized as existing and have the right to exercise civil rights and obligations on their own behalf. In addition, state registration gives constituent documents and other information about a person legal significance, that is, it makes them publicly credible to third parties (Kotylko, 2022).

Both commercial and non-commercial legal entities, as well as citizens carrying out entrepreneurial activities without forming a legal entity, are subject to state registration. In some cases, the legislation may provide conditions for citizens to carry out such activities without state registration as an individual entrepreneur.

The registration procedure involves entering information provided for by law into the Unified State Register of Legal Entities (Individual Entrepreneurs).

For legal entities:

- full and (if any) abbreviated name, corporate name for commercial organizations in the Ukrainian language. If in the constituent documents of the legal entity the name of the legal entity is indicated in a foreign language, the Unified State Register of Legal Entities shall also indicate the name of the legal entity in these languages;
- organizational and legal form;
- address of the legal entity within the location of the legal entity;
- e-mail address of the legal entity (if such information is specified in the application for state registration);
- the method of formation of a legal entity (creation or reorganization);
- information on founders (participants) of the legal entity, in relation to joint stock companies also information on holders of registers of their shareholders, in relation to limited liability companies – information on size and nominal value of shares in

the authorized capital of the company owned by the company and its participants, on transfer of shares or parts of shares in pledge or under other encumbrance, information on the person managing the share transferred by way of inheritance;

- original or notarized copy of the constituent document of the legal entity or information that the legal entity operates on the basis of the model statute, approved in accordance with the legislation of Ukraine;
- surname, first name, patronymic and position of the person who has the right to act on behalf of the legal entity without power of attorney, as well as passport data of such person or data of other identity documents in accordance with the legislation of Ukraine, and taxpayer identification number, if any;
- information about licenses obtained by a legal entity;
- information about branches and representative offices of a legal entity, etc.

Much the same information is provided when registering individual entrepreneurs.

These registers are information resources open to the public, which are maintained on paper and/or electronic media. Responsibility for the accuracy and correctness of the information entered is borne by the officials of the registering body who made the relevant entries. On this basis, persons relying in good faith on the information contained in such a registry are entitled to believe that it corresponds to the actual circumstances.

As a rule, the registration authority does not check the documents submitted by the applicant for their compliance with the current legislation, but this provision does not apply to the application for state registration, which has rather strict requirements for compliance with the established form, as evidenced by court practice.

Thus, by a decision of the tax inspectorate of one of their cities, citizen B. was denied registration of a legal entity on the grounds that his application for registration did not include a zip code. In this connection, the registering body declared the application invalid. Citizen B.'s arguments that the indicator is specified in an additional document (letter of guarantee) and the tax authority could have independently entered the missing information were found to be unfounded. The decision of the district administrative court, which considered the case by way of administrative proceedings, recognized the decision of the tax inspectorate as lawful, and the decisions of lower courts on B.'s complaints were left unchanged.

Verification of authenticity of other documents submitted to the registering authority may be carried out only in cases expressly provided for by law, for example, if there are objections from interested

parties regarding the upcoming registration of changes made to the charter of the legal entity.

In terms of ensuring the reliability of information submitted during the state registration of legal entities and individual entrepreneurs, the law defined methods of verification, which can be used by the registering authority to determine the degree of reliability of the submitted documents and the information contained in them.

This can be done by:

- examining the documents and information available to the registering authority, as well as documents and explanations submitted by the applicant;
- obtaining the necessary explanations from persons who may be aware of any circumstances relevant to the audit;
- obtaining certificates and information on issues arising during the audit;
- conducting an inspection of real estate objects;
- involvement of a specialist or expert to participate in the audit.

In this case, on behalf of the Cabinet of Ministers of Ukraine, the authorized body was to determine the grounds and procedure for the use of the results. However, to date, this procedure has not been defined.

The state registration of legal entities in connection with their liquidation, which entails the termination of the legal capacity of legal entities, has its own significance.

Liquidation of a legal entity is a rather lengthy procedure, which consists of two stages and ends with the making of an appropriate entry in the state register. At the first stage, the founders of the legal entity or the body that made the decision on liquidation must immediately (within three days) notify the registering body in writing. On this basis, the state body makes a record in the register that the legal entity is in the process of liquidation. This entry indicates a change in the scope of civil legal capacity of the legal entity; in particular, the legal entity cannot participate as a founder of another legal entity, make changes to its own constituent documents, etc. At this stage, a liquidation commission is created by the legal entity (Kotylko, 2022).

At the second stage, at the end of the Commission, the legal entity submits to the registering authority an application for state registration, which confirms compliance with the procedure of liquidation of a legal entity, the fact of settlements with creditors and coordination of the liquidation with the relevant state bodies and local authorities. Together with the application, the liquidation balance sheet and other documents stipulated by law are submitted.

On the basis of the submitted documents, the registering authority makes an appropriate entry in the Unified State Register of Legal Entities and publishes information on the liquidation of the legal entity.

The same procedure applies to the registration of individual entrepreneurs.

Given that the forms of many documents submitted to the registration authority are not legally defined, it would be advisable to legislate the obligation of the registration authority to conduct mandatory verification of the authenticity of all submitted documents for compliance with current legislation. This approach will avoid disputes between the founders of legal entities and increase the effectiveness of preliminary control over the activities of business entities. The information technologies used in public administration make this possible.

State bodies perform registration not only at creation of a legal entity, but also at its reorganization, as well as in case of introduction of changes into constituent documents of a legal entity or information about it. In all cases, the applicant must submit a document confirming the payment of the state duty. However, if registration is denied, even on formal grounds, the amount of the fee paid is not refundable, and the fee must be paid again if corrected documents are submitted. That is, the fee is charged for something that is not done. Therefore, it is necessary to introduce a rule in the Tax Code of Ukraine providing for the refund of the amount of the state fee to its payer in case of refusal of registration.

The rights registrar can terminate the registration relationship:

- to clarify the circumstances preventing the implementation of state registration, within the time and in the cases prescribed by law;
- at the request of the copyright holder or a person authorized by him to do so.

The registration relationship may also be terminated by order or court decision, which the applicant or other interested person has the right to challenge.

At that, it should be noted that in registration legal relations the registration body is endowed with power powers, but they are not absolute, as certain duties are assigned to executive bodies. When participants of legal relations are endowed with subjective rights and legal duties, it characterizes such a notion as the content of legal relations. In this case, the following should be noted: subjective rights and legal duties arise in accordance with the rules of law, which define the range and scope of subjective rights and duties. If a rule of law gives one subject of law a certain subjective right, it imposes on the other subject a legal duty corresponding to the subjective right, and, conversely, the subjective right of the other subject corresponds to each legal duty of one subject.

5. Conclusions

Administrative-procedural registration relations, having in common with substantive administrative-legal relations managerial nature, differ from them by

a number of features expressing the corresponding specificity. The classification criteria of registration-legal relations are three criteria: object; legal status of a normative act; status and legal status of participants of relations. Administrative-procedural legal relations in the field of state registration are social relations regulated by administrative-procedural law, which develop in connection with the realization of a subjective right to material or non-material goods (objects) and the participants of which are, on the one hand, a legal or physical person, on the other hand – a state subject of registration.

Today, the rules of state registration are widespread, in particular concerning: the inclusion in the subject of regulation of relations between persons engaged in entrepreneurial activities, or with their participation, persons registered in this capacity in the manner prescribed by law, including the right of a citizen to engage in entrepreneurial activities without forming a legal entity from the moment of state registration as an entrepreneur; state registration of property rights; registration of acts of civil status; state registration of legal entities; state registration of real estate; state registration of easements (the right of limited use of another's land plot); state registration of transactions (in cases prescribed by law), as well as the consequences of evasion from notarization or state registration of such transactions; state registration of contracts; state registration and accounting of pledge; state registration of issue or issue of securities in cases prescribed by law; state registration of results of intellectual activity and means of individualization, etc.

It should be noted that the legislation regulating the procedure for registration of legal entities is largely imperfect and makes the regulation of the relations in question ineffective. This also applies to other normative legal acts regulating other types of state registration. Improvement of legislation will improve the level of legal protection of constitutional rights and obligations of citizens and organizations.

Thus, the ways and methods of solving the problems that have developed in the field of state registration should become an integral part of the whole, based on the priority areas of modern administrative reform. Such directions, in our opinion, are: limitation of state interference in economic activities of business entities, including termination of excessive state regulation; elimination of duplication of functions and powers of state executive authorities; development of self-regulatory organizations in the sphere of economy; organizational separation of functions related to the regulation of economic activity, supervision and control, management of state property and the provision of state organizations of services to citizens and legal entities; completion of the process of separation of powers between state executive bodies of Ukraine, optimization of territorial bodies of executive power.

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