SOME PROBLEMS OF THE LEGISLATION ON TERMINATION OF LEGAL ENTITIES IN RUSSIA

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Abstract. The offered article is devoted to some problems arising at application of the legislation on an exception of the Unified State Register of Legal Entities (further - the USRLE) invalid legal entities. The purpose of the present article is identification of the factors reducing efficiency of the mechanism of protection of the rights of creditors at the termination of the organizations. Authors pay attention that the exception of the invalid legal entity of the USRLE is a special way of the termination of the organizations.

During the research a number of the problems connected with protection of the rights of creditors at an exception of the invalid organization of the register were revealed:
- a problem of use of the norms devoted to an exception of invalid legal entities of the USRLE to non-profit organizations;
- a problem of the competition of norms at an exception of the register of the legal entity having signs of invalid;
- problem of giving by the creditor or other interested person of the statement for disagreement with the decision of registering body on the forthcoming exception of the legal entity of the register;
- a problem of impossibility of presentation by creditors of the action for damages to heads and participants of the legal entity after an exception of the register.

Keywords: legal entity, invalid legal entity, termination, elimination, unified state register, protection of the rights of creditors.

1. INTRODUCTION
In recent years the number of the organizations which stopped the activity significantly increased in the Russian Federation. According to Federal Tax Service of the Russian Federation for December 1, 2015 (further - the USRLE) as invalid were excluded from the Unified State Register of Legal Entities 3 051 915, are liquidated 787 097 and are stopped as bankruptcy of 221 806 legal entities. And as of January 1, 2017 the number of the organizations which stopped activity in connection with an exception of the register on the decision of registering body made record 3 694 332 what confirm given on the website of FTS of the Russian Federation (state registration of legal entities, 2015).

The provided statistical data allow claiming that the negative tendency of a gain of number of the organizations which stopped the activity on the basis of the individual decision of public authority is observed. It testifies to inefficiency of legislative regulation of the termination of legal entities. Imperfection of the civil legislation in this sphere attracts serious consequences in the form of vulnerability of participants of civil circulation and instability in national economy in general.

Now there are more and more founders intentionally throw the firms (organizations) in which activity need disappeared or which had not executed debt. Such actions are motivated with the fact that at application of the procedure of an exception of invalid legal entities of the USRLE there is a considerable economy of means in comparison with the procedure of voluntary elimination, and also there is no responsibility for non-execution of obligations.

In this regard the need for the further deep analysis of the norms regulating questions of creation, activity and termination of legal entities is observed. At the same time improvement of the legislation on legal entities has to rely on balance of interests of the legal entities participating in economic activity and all other participants of this activity, including citizen consumers (Opykhtina, 2011).

2. METHODS
The main methods which were used during writing of the real work are: comparative and legal method, method of the complex analysis, interpretation method, right sociological method, method of the system analysis and method of inter-industry approach.

3. RESULTS
According to article 64.2 Civil Code of the Russian Federation, it is considered actually stopped the activity and subject to an exception of the USRLE in the order established by the law on the state registration of legal entities, the organization which within twelve months preceding its exception of the specified register did not submit the documents of the reporting provided by the legislation on taxes and fees and did not carry out transactions at least of one bank account.

Similar definition contains also in clause 1 of Art. 21.1 of the Law "About the State Registration of Legal Entities and Individual Entrepreneurs" of 08.08.2001 No. 122-FZ (further - the Law on the state registration of legal entities) (About the State Registration of Legal Entities and Individual Entrepreneurs, 2001).

It should be noted that the similar order of an exception of the legal entity of the USRLE is applied according to clause 5 of Art. 21.1 of the Law on the state registration of legal entities and in cases:

a) impossibility of liquidation of legal entity in view of lack of funds for the expenses necessary for its elimination, and impossibility to assign these expenses on his founders (participants) (situation is enshrined in clause 6 of Art. 62 of the Civil Code of the Russian Federation);

b) existence in the USRLE of data concerning which record about their inauthenticity, within more than six months is made from the moment of introduction of such record.

The analysis of the designated norms allows coming to a conclusion that the exception of the register of the invalid legal entity represents one of ways of the termination of the legal entity which main feature is that it is applied only to the invalid organizations and is carried out according to the individual decision of tax authority.

At the same time, the exception of the invalid legal entity of the USRLE has to provide balance of the rights and legitimate interests of participants of civil legal relationship including creditors whose losses can be prevented or reduced if the effective mechanism of protection of their rights is provided.

According to the existing norms along with the decision on the forthcoming exception data on an order and terms of the statement directions by the
invalid legal entity, creditors or other persons whose rights and legitimate interests are infringed in connection with an exception of the invalid legal entity of the USRLE (further - statements), with the indication of the address according to which applications can be directed have to be published. These applications can be directed within three months from the date of publication of the decision on the forthcoming exception. Statements have to be motivated and can be directed or submitted in the form approved by the authorized Government of the Russian Federation federal executive authority, in the certain ways.

In case of the statement directions the decision on an exception of the invalid legal entity of the USRLE is not made and such legal entity can be liquidated in the order established by the civil legislation.

One more way of protection of the rights of creditors is provided in clause 8 of Art. 22 of the Law on the state registration of legal entities: the exception of the invalid legal entity of the USRLE can be appealed by creditors or other persons whose rights and legitimate interests are infringed in connection with an exception of the invalid legal entity of the USRLE, within a year from the date of when they learned or had to learn about violation of the rights. At the same time it is important to consider that courts take into account when counting the corresponding term date of the publication in “The messenger of the state registration”.

In the course of the real research the following circumstances interfering effective use of measures for protection of the rights of creditors at the termination of legal entities by an exception of invalid legal entities of the USRLE were revealed:

1) A problem of application of Art. 21.1 of the Law on the state registration of legal entities to non-profit organizations and protection of creditors of non-profit organizations.

The designated problem was established after the appeal to the Constitutional Court of the Russian Federation of the citizen A. V. Fedichkin - heads of the religious organization "Lublin Local Church of Evangelical Christians" which the Office of the Federal Tax Service in the city of Moscow recognized actually stopped the activity as the legal entity. The Resolution of the Constitutional Court of the Russian Federation of 06.12.2011 to No. 26-P (The resolution of the Constitutional Court of the Russian Federation, 2011) accepted on the specified business contains an obligatory conclusion that established to Art. 21.1. The law on the state registration of legal entities "criteria of recognition of the person, actually stopped the activity, fully applicable concerning the commercial organizations, cannot with sufficient degree of probability confirm the actual termination of non-profit organization of the activity".

2) A problem of the competition of the law provisions about the state registration and the law "About Insolvency" at an exception of the USRLE.

The designated competition of norms was found during consideration of the complaint of Service department LLC by the Constitutional Court of the Russian Federation. No. 10-P (The resolution of the Constitutional Court of the Russian Federation, 2015) of clause 2 of Art. 21.1 of the Law on the state registration of legal entities is recognized by the resolution of the Constitutional Court of the Russian Federation of May 18, 2015 to not corresponding Constitutions of the Russian Federation, its articles 10,18, 35, 46 and 55, in that measure in what in system of the operating legal regulation the situation which is contained in it allows an exception administratively (according to the decision of registering body) of the USRLE of the legal entity having signs invalid, concerning which the court according to the statement of the creditor entered the procedure of bankruptcy that leads to loss of the right of the creditor in procedures of bankruptcy under control of court to resolve questions of satisfaction of the property requirements for obligations of the debtor at the expense of his property and (or) property of the persons bearing subsidiary responsibility according to its obligations in defiance of the constitutional guarantees of protection of the property right in a judicial proceeding and the principle of division of the authorities.

After pronouncement of the specified Resolution of the Constitutional Court of the Russian Federation, clause 7 of Art. 22 of the Law on the state registration of legal entities it was added with the paragraph of the following contents: "The registering body does not exclude the invalid legal entity from the Unified State Register of Legal Entities in the presence at registering body of the data on initiation of proceeding of bankruptcy of legal entity, about the procedures which are carried out concerning the legal entity applied in the case of bankruptcy".

3) A problem of similarity of the procedure of an exception of the USRLE of the invalid legal entity
with the simplified procedures of elimination in the course of bankruptcy (bankruptcy of the absent debtor).

Explanations on differentiation of forms of the termination of the legal entity, were given by the Supreme Arbitration Court of the Russian Federation in the Information letter of the Presidium of the Supreme Arbitration Court of the Russian Federation of January 17, 2006 to No. 100 "About some features connected with application of article 21.1 of the Federal law "About the State Registration of Legal Entities and Individual Entrepreneurs" (The information letter of the Presidium of the Supreme Arbitration Court of the Russian Federation, 2006) and in the Resolution of the Plenum YOU the Russian Federation of December 20, 2006 No. 67 "About some questions of practice of application of provisions of the legislation on bankruptcy of the absent debtors and the termination of invalid legal entities" (The resolution of the Plenum YOU the Russian Federation, 2006). In the above-stated documents it is emphasized that "the termination of the invalid legal entity is an independent form of the termination of the legal entity", and also the features of the termination of the invalid legal entity distinguishing it from compulsory elimination are noted.

4) Problem of giving by the creditor or other interested person of the statement for disagreement with the decision of registering body on the forthcoming exception of the legal entity of the register.

Only the publication in the Messenger is not enough, the notice of everyone individually is necessary, however this requirement is almost impracticable.

The analysis of jurisprudence shows that publication of the decision on the forthcoming exception in the Messenger of the state registration is not a sufficient guarantee of knowledge of persons who are given the right for filing of application about disagreement with the decision of registering body. No. F05-16124/2016 in the matter of No. F40-14050/16 testify to it the Resolution of Arbitration court of the Moscow district of 25.10.2016; Definition of Russian Armed Forces from 06. 02.2017 years No. 305-ES16-20389, etc.

For protection of the rights of interested persons it is necessary to define legislatively that each creditor and the participant of the legal entity by the registered mail with the assurance of receipt has to be informed on the decision of registering body on the forthcoming exception of the register, or by the direction of the SMS message, letter by e-mail as in case of not notice these persons lose the right for the direction of objections in registering body in the presence of which the decision on an exception of the legal entity of the USRLE is not made, and such legal entity can be liquidated in the order established by the civil legislation.

5) A problem of impossibility of presentation by creditors of the action for damages to heads and participants of the legal entity after an exception of the register.

The exception of the USRLE does not interfere with accountability of heads of the legal entity (clause 3 of Art. 53 of the Civil Code of the Russian Federation) in the claim of his founders. However creditors of the excluded legal entity have no right for indemnification under this article Civil Code of the Russian Federation though they can suffer more, than participants of the legal entity. Founders (participants) should not be protected more, than creditors.

4. DISCUSSION

Life cycle of any legal entity can be limited to a certain period after which it stops the existence. Investigating questions of the termination of the organizations, it is necessary to consider both the domestic, and passed long-term theoretical and practical tests foreign experience. For example, between the right of Russia and England there are certain similarities in the sphere of registration of legal entities.

It should be noted that there is no special legislation regulating questions of creation and termination of legal entities as independent legal entities per se in England. To some extent it is connected with the fact that norms of case law make essential additions to it though the legislation and provides regulation of single questions of activity of legal entities. From the point of view of the classical English right, a true legal entity is the natural person. Thus, rules of law can influence only people (Jenks, n. d).

At the same time, the considerable number of the norms devoted to institute of the legal entity contains in the legislation on the companies. The main statutory act regulating a legal status of the companies is the Law on the companies of 2006 (Companies Act, 2006).
The company in the English right is understood as a certain universal form of association of persons for implementation of business activity, this person created by registration of necessary documents. Document registration is carried out by the Registrar of the companies (Registrar of Companies) (Companies House, n. d) and is confirmed by the certificate of incorporation (certificate of incorporation).

In Meridian Global Funds Management Asia Ltd. v Securities Commission was noted that "the company exists until the rule of law says that it as legal entity (persona facta) has to exist" (Meridian Global Funds Management Asia Ltd, n. d).

As Hanna Ellis truly notices, the legislation on the companies in England develops more in a slowed-up way, keeping at the same time the century traditions existing in the country. National lines of the English legislation on the companies prevail in the general system of the right owing to conservatism inherent in it (Ellis, 2009).

The termination of the legal entity (differently, the termination of legal capacity of the organization) in the domestic right happens by introduction of entry in the USRLE about its exception as a result of various legal facts (bases). It is possible to carry such legal procedures to the bases of the termination as: elimination, reorganization (by accession, division, merge), an exception of actually invalid legal entity of the USRLE and bankruptcy.

The exception of the invalid organization of the register represents a striking example of interaction of private and public law owing to the emergence between legally unequal subjects of the power and submission for the purpose of the legal capacity termination. It is one of cases of the inter-industry relations in which the institute of civil law finds broad application in public law. The institute of an exception of the legal entity of the USRLE having signs of invalid was demanded in the public purposes. Such loan represents realization of inter-industry communications in civil law (Chelyshev, 2008). The exception of the USRLE is an institute of administrative law, which is public law which attracts the termination of civil law relations.

Also we believe that the exception of the invalid legal entity of the register is admissible to present in the form of the legal (legal) design (Serkova, 2005) intended for realization of an algorithm of consecutive actions of registering body and directed to achievement of an ultimate goal - the termination of the organization.

5. SUMMARY
Thus, as well as at elimination, consequences of an exception of the invalid organization of the USRLE are the termination of the legal entity and lack of universal succession. The main difference is that liquidation of the organization has to be applied to the acting legal entities and represents a difficult, long procedure. When holding this procedure the rights of creditors are protected by a number of standards of the Civil Code of the Russian Federation. At an elimination stage the organization remains the operating legal entity to which a complaint and claims can be made.

We believe that it is admissible to recognize an exception of the USRLE of invalid legal entities as one of ways of the termination of the organization which has much in common with liquidation of legal entity (Khabibulina, 2013).

For prevention of violations of the rights of creditors and the third parties at an administrative order of the termination of legal capacity of the legal entity it is necessary to define accurately the procedure of an exception of legal entities of the USRLE in the Law on the state registration of legal entities.

As protection of the rights of creditors at the termination of the legal entity is the main problem in legislative regulation of the relations connected with the termination of the legal entity, basic provisions about their protection would be logical to be formulated in general provisions on the termination of the legal entity and to fix in separate standard of the Civil Code of the Russian Federation. Special attention needs to be paid to an order of the notice of creditors on the carried-out procedures.

6. CONCLUSIONS
Generalizing the above, we will note that as the current legislation about the termination of legal entities, and practice of its application demand continuous studying and the analysis. Today need for judgment of the theoretical and practical problems arising at an exception of the USRLE of the organizations for protection of the rights of creditors of the thrown firms is sharply felt. It is represented that creation of the harmonious standard basis regulating process of an exception of the invalid organizations of the register without violating the existing rational generality of norms the law on legal entities, will promote unity of law enforcement.
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