

Restrictions in Business Activities



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Abstract. *The general conditions of business activity (the limits of freedom of entrepreneurship), which apply to all subjects of business activity and all types of entrepreneurship, are considered, and special conditions that in a certain way restrict freedom of entrepreneurship are highlighted. particular attention is paid to such a special condition as licensing, since this institution is implemented in order to safeguard public interests, the rights of other participants in business activities, as well as consumers. It is determined*

which types of business activity the state imposes on restrictions. It is proved that state intervention in the regulation of business activity is permissible only in exceptional cases and is aimed at ensuring the freedom of entrepreneurship.

Keywords: *business activity; boundaries (conditions) of business activity; limitation; general conditions; special conditions; licensing; legitimization of entrepreneurship.*

Problem statement

Freedom of entrepreneurship – one of the most important constitutional rights of citizens. Article 42 of the Constitution of Ukraine [1] establishes the provision according to which everyone has the right to conduct business activity, which is not prohibited by law. This provision is specified in sectoral legislation, in particular in civil and commercial law, where freedom of business is enshrined as a basic principle. Consequently, the principle of freedom of entrepreneurship is interdisciplinary, which defines the principles of legal regulation of legal relationships with the participation of entrepreneurs.

Of course, any freedom cannot be unlimited. The category of freedom in the field of entrepreneurship is not abstract, independent of any influence, it is limited by the state through the establishment of certain conditions for the conduct of business activity. Therefore, it is extremely important to define the limits of freedom in the field of business activity.

Analysis of recent research and publications.

The questions of freedom of entrepreneurship, as well as the limits of its implementation, are highlighted in the scientific works of S. Aleksieiev, O. Belianevych, D. Diedov, H. Hadzhiiev, V. Hribanov, M. Khavroniuk, O. Kibenko, A. Kolodii, M. Kulahin, V. Laptev, V. Mamutov, Ye. Michurin, O. Podtserkovnyi, S. Pohrebniak, P. Rabinovych, V. Radziviluik, S. Shevchuk, V. Shcherbyna, O. Vinnyk, A. Yankova, H. Znamenskyi and others.

The purpose of the article is to determine the scope of business, the consideration of general

and special conditions for its conduct, as well as the establishment of legal instruments through which the state regulation of individual business activity is implemented.

Presentation of the main research material.

Freedom of entrepreneurship is one of the general principles of civil law, enshrined in art. 3 of the Civil Code of Ukraine [2]. At the same time, the principle of freedom of business is enshrined in art. 43 of the Commercial Code of Ukraine [3]. It should be noted that the main legislative act that regulates the state and development of entrepreneurship in Ukraine and gives its

legal definition is the Civil Code of Ukraine. In accordance with the Constitution of Ukraine, it establishes the legal basis for economic activity (management) based on the diversity of economic entities of different forms of ownership, defines the general legal, economic and social bases of business activity by citizens and legal entities on the territory of Ukraine, establishes guarantees of entrepreneurship freedom and its state support.

The theoretical definition of the concept of freedom in the sphere of entrepreneurship is important. Indeed, as T. Kashanin correctly notes [4, p. 75], as no absolute freedom exists in the economy, the entrepreneur has complete independence only in the sense that there is no authority that would establish what to do and in what way.

By proclaiming the freedom of entrepreneurship, the law also establishes certain limitations (limits) for its implementation. Thus, Article 42 of the Constitution of Ukraine establishes the freedom to conduct business activity, as well as certain restrictions on the rights of entrepreneurs. These restrictions relate to: firstly, entities that have the right to conduct business activities; and secondly, they are connected with ensuring equal conditions of business activity. Thus, the law sets restrictions on the business activity of deputies, officials and public servants of state authorities and local self-government bodies, as well as the prohibition of abuse of a monopoly position on the market, unjustified restriction of competition and unfair competition. In addition, given the provisions of art. 42 of the Constitution of Ukraine it can be concluded that business activity is limited in a certain way, if this requires the protection of consumers' rights, ensuring the quality and safety of products, services and works. Consequently, restrictions on freedom of business are established with the aim of protecting the interests of individuals and society as a whole.

Thus, the general rule in determining the limits of freedom of entrepreneurship is the need to comply with the requirements of morality, ensuring general justice. Interaction of participants in economic activity, in particular entrepreneurial, is carried out on the basis of competition. In order to ensure that their

conduct is consistent with the criteria of good faith, the state's economic interests, in view of preserving its monopoly on the most important objects of property and activities, as well as the property interests of other participants in economic relations, determine certain rules of conduct for entrepreneurs.

Restrictions on the activities of the subjects of economic relations are aimed at preventing deterioration of the natural environment, preventing the conspiracy of entrepreneurs against consumers, etc. Thus, taking into account the risk nature of any economic (in particular, entrepreneurial) activity, its ability to cause harm to entrepreneurs, other members of society, the security of society and the state, as well as to stimulate socio-economic growth, should reasonably combine the state, on the one hand, targeted impact on the economy and, on the other hand, providing entrepreneurs with independence. Such a policy should include a legislative definition of the grounds and limits of public interference in business, its adequate legal regulation, and the establishment of proper control over its implementation [5].

Today, state regulation of business is expressed in the regulation of the production of products (works) and the provision of services through the establishment of certain rules (norms), which should be guided by business entities, and in the control of compliance with these rules. At the same time in the state regulation of business an important role is played by the administrative-legal regimes: licensing, accreditation, registration, permits, quotas, etc.

The boundaries of freedom of business are also called the conditions of business. By subject and area of distribution, all business conditions are divided into general and special ones.

The general conditions for entrepreneurship, which are applied to all business entities and all types of entrepreneurship. Such conditions include:

- 1) entrepreneurs are obliged to register in accordance with the procedure established by law;
- 2) entrepreneurs who use hired labor are obliged to ensure compliance with the requirements of Ukrainian legislation in this area;

3) entrepreneurs are obliged not to harm the environment;

4) entrepreneurs are obliged not to violate the rights and legitimate interests of citizens and their associations, other economic entities, institutions, organizations, local self-government and state.

Special – these are the conditions for entrepreneurship, which apply either to individual (not all) entrepreneurs, or to separate (not all) types of entrepreneurial activity. There is no systematized list of special conditions for conducting business that would be contained in one act of the legislation. Special considerations are all those conditions of entrepreneurship, which are not general. Examples of special conditions for business can be licensing, patenting, quotations, etc. of entrepreneurship.

It should be noted that the feature of state interference in business is that its intensity depends on its sphere. Thus, the largest intervention by the state is founding activity.

The main condition for business activity is the state registration of a legal entity or an individual entrepreneur in accordance with the procedure established by law. According to the Law of Ukraine “On the State Registration of Legal Entities, Individuals-Entrepreneurs and Public Associations” [6], state registration means official recognition by means of state certification of the fact of creation or termination of a legal entity, a public formation that does not have the status of a legal entity, acquiring or deprivation of the status of an entrepreneur by an individual, changes in the information contained in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Associations, on legal entity and individual entrepreneurs, as well as of other registration activities under this Law.

For violation of the registration law, individual entrepreneurs may be subject to administrative or criminal liability. However, if a citizen conducts business without registration, this will not be grounds for considering such activity illegal, in this case the individual will only be deprived of the protection provided for entrepreneurs. At the same time, according to art. 50 of the Civil Code of Ukraine, if a person commenced business without state registration, having entered into corresponding

agreements, he/she has no right to contest these contracts on the grounds that he/she is not an entrepreneur. These are some of the civil law consequences of doing business without registration.

Information about entrepreneurs is recorded in the Unified State Register of Legal Entities and Individual Entrepreneurs. The information in the specified register is publicly accessible. The procedure for state registration is of a formal nature. The registration authority has no right to consider the issue of the expediency of state registration, the observance of legal rules by a natural person (other than those directly related to registration), the readiness of a citizen for entrepreneurship, possession of needed property, education, professional skills, etc. The task of the said body is to check the completeness and correctness of the papers submitted for registration, as well as the fact that the applicant pays the state prescribed fee. Thus, state registration is necessary primarily for state control over economic activities of entrepreneurs, taxation, obtaining information of statistical accounting for regulation of the economy, providing all participants of civil turnover information about registered business entities [5].

The list of documents submitted for the state registration of a legal entity is defined in art. 24 of the Law of Ukraine “On State Registration of Legal Entities, Individuals-Entrepreneurs and Public Associations”. In the absence of grounds for refusal to carry out the state registration of a legal entity, the state registrar shall enter a record on the state registration of a legal entity in the Unified State Register. The term of state registration of a legal entity shall not exceed three working days from the date of receipt of documents for the state registration of a legal entity. The state registration bodies have no right to demand additional, besides the documents listed in the law.

The following condition for the conduct of business, which somewhat restricts its freedom, is the condition of the need for entrepreneurs who use hired labor, to provide appropriate and safe working conditions, remuneration not lower than the statutory limit and its timely receipt by employees as well as other social guarantees, including social and health

insurance and social security in accordance with the legislation of Ukraine. These issues are regulated by a large base of legislative acts. First of all, this is the Labor Code, the Convention on the equal remuneration of men and women for work of equal value, the Convention on the night work of adolescents in industry, etc., the Law of Ukraine "On Occupational Safety", the Law of Ukraine "On Vacations".

The obligations of entrepreneurs in carrying out their business are also enshrined in art. 49 of the Commercial Code of Ukraine and do not require harm to the environment. This provision corresponds to the one fixed in the article 293, 282 of the Civil Code of Ukraine on the right to a safe environment, the right to eliminate the danger that threatens the life and health of individuals, etc. Its position is also found in criminal and administrative legislation. Thus, Section VIII of the Criminal Code [7] provides for criminal liability for environmental crimes, namely, responsibility for: violation of the rules of environmental safety, failure to take measures to eliminate the consequences of environmental pollution, conceal or distort information about the ecological status or morbidity of the population, pollution or damage land, air pollution, etc. The Code of Ukraine on Administrative Offenses [8] provides for liability for violation of the requirements for the protection of mineral resources (article 57), violation of plant protection legislation (article 83-1), non-compliance with environmental safety requirements in the process of introducing discoveries, inventions, utility models, industrial samples, innovations, new technologies, technologies and systems, substances and materials (article 91-1), etc.

Article 49 of the Commercial Code of Ukraine also stipulates the duty of entrepreneurs not to violate the rights and legitimate interests of citizens and their associations, other economic entities, institutions, organizations, local self-government and state. This provision is consistent with the constitutional rules on the need to ensure equal conditions for entrepreneurship, the prohibition of unfair competition, etc. That is, this norm is also aimed at protecting the public interests and interests of individuals, which is due to the general requirements of justice.

But for the obligation to stop doing business, such violations must be substantial. This is evidenced by the judicial practice. For example, the court reviewed the case on the lawsuit of L., the Public Organization of the Scientific Society of Students and Postgraduates of Lawyers "YUSTIS" to A. Their claims were motivated by the fact that L., who is a member of the public organization "YUSTIS", is the co-owner of the apartment H. Defendant in the case owns apartment number 5, 6, 7 of the same building. A., who is the subject of entrepreneurial activity, without the consent of the plaintiff and against his will, the share of residential apartments was transferred to non-residential premises and arranged a public catering and trade object, thus creating the plaintiff's obstacles in the use of housing, since indoors, belonging to the defendant, and the presence of a significant number of people violates his usual way of life. The objects belonging to the defendant do not meet the requirements of the State Building Regulations, the Sanitary Epidemiological Station. In addition, the defendant in the entrance of the house arranged the storage of gas cylinders. Asked to remove obstacles in the use of residential space by stopping entrepreneurial activity, stopping the use of apartments for public catering and trade, removing the storage of gas cylinders at the entrance of the house.

Representative of the defendant A. requested the full rejection of the claim, referring to the fact that on the basis of decisions of the Executive Committee of the Yevpatoriia City Council A. the temporary use of the apartment X under the shop-cafeterias with re-planning and the arrangement of the additional entrance according to the technical conclusion is permitted. Use of the defendant's premises belonging to him as a cafeteria is carried out in compliance with the requirements of the legislation. The circumstances referred to by the plaintiff – the creation of the plaintiff of obstacles to the use of housing – are not supported by proper evidence. The statement of the utility company "Zhytlovyk2" on gas cylinders is executed.

According to art. 320 of the Civil Code of Ukraine, the owner has the right to use his property for business, except in cases

established in accordance with the law. The law may establish conditions for the use of the owner of his property for business.

There are no grounds for a court decision to terminate the entrepreneurial activity of an individual entrepreneur.

The court found that the non-residential premises owned by the property of A. have a separate entrance intended for temporary use at the shop-cafeterias with re-planning and installation of an additional entrance, in accordance with the requirements of the current legislation. Taking into account the foregoing, the court concludes that there are no legal grounds for satisfying the claims for removal of obstacles in the exercise of the plaintiff's property rights in this part [9].

Special conditions for the conduct of business, which in a certain way restrict its freedom, belongs primarily to licensing. In accordance with part 3 of art. 43 of the Civil Code of Ukraine, the list of types of economic activities that are subject to licensing, as well as the list of activities, the business of which is prohibited, is established exclusively by law.

Licensing is one of the most common market instruments of the state's actions on the economy, which has become widespread in our country. The license itself is the sole document permitting the nature of the right to engage in a particular type of economic activity, which, according to the law, is subject to restrictions, taking into account the basic principles of state policy in this area. Exercise of activities subject to licensing, without a license or in violation of licensing conditions is recognized as an offense (illegal business). Depending on the degree of social danger and the size of the damage, it entails administrative or criminal liability.

Activities subject to licensing, the exercise of which may result in damage to rights, legitimate interests, health of citizens, defense and security of the state, cultural heritage, etc., and regulation of which cannot be carried out by other methods, except for licensing.

In the original wording of art. 4 of the Law of Ukraine "On Entrepreneurship" of February 7, 1991 provided for only 11 types of activities that cannot be carried out without a special permit (license) issued by the Cabinet of Ministers of Ukraine or an authorized body. Subsequently,

by introducing amendments to the said Article of the Law of Ukraine "On Entrepreneurship", the number of activities requiring licensing reached more than 130 species, which indicates an increase in the administrative influence of the state on entrepreneurial activity. Subsequently, this list was significantly reduced (up to 60 species), but it is also quite broad. Currently, the list of types of business activities subject to licensing is established by the Law of Ukraine "On Licensing of Types of Economic Activity" [10].

In particular, the state restricts activities related to the circulation of narcotic drugs, psychotropic substances, their analogues and precursors, which is carried out in accordance with the Law of Ukraine "On the Circulation of Narcotic Drugs, Psychotropic Substances, their Analogues and Precursors in Ukraine". Also limited activities related to the sale of weapons and ammunition to it, amber extraction, the protection of certain particularly important objects of state property, the list of which is determined in the order established by the Cabinet of Ministers of Ukraine, as well as activities related to the conduct of forensic, forensic psychiatric examinations and the development, testing, production and operation of rocket carriers, including their space launches for any purpose.

The activities related to the maintenance and operation of primary networks and satellite telecommunication systems, payment and delivery of pensions, cash aid to low-income citizens, production of motor gas blends containing at least 5 percent of high-octane oxygen-containing additives of absolute technical alcohol are subject to limitation [11].

In legal literature, licensing is seen as a form of business legitimation along with a state registration. Therefore, having decided to engage in activities whose implementation requires a special permit issued by the authorized public authorities, the entrepreneur must obtain a license in accordance with the procedure established by law. This procedure is mandatory. At the same time, the entrepreneur undertakes to carry out such activities, adhering to special rules, and the state grants him /her the right to conduct it.

The Licensing Institute limits the freedom of entrepreneurship in a certain way, but it is a

conscious step by the state, made to ensure public interest, the rights of other business entities, as well as consumers. The value of licensing is that it combines numerous requirements designed to provide certain characteristics of the products (results) of the business, to streamline its functional characteristics, to localize the status of the lawful use of professional criteria of competence.

Direct state regulation of individual business activity, except for the licensing of its individual types, may be carried out by issuing permits for certain actions; issuing obligatory instructions for carrying out any actions; Prohibition of specific actions; registration of certain actions; setting quotas and other restrictions; application of measures of administrative coercion and material sanctions; issuing state orders; control and supervision, etc. Such forms of state action are: the establishment of mandatory requirements (technical regulations), accreditation, standardization, certification, and others. The main purpose of introducing this type of requirement is to establish a legal regime for the conduct of business by all actors [5].

State interference in the regulation of business activity also takes place in order to ensure the protection of competition. Abuse of a monopoly position on the market, unjustified restriction of competition and unfair competition are not allowed. This is explicitly stated in Clause 2 of art. 42 of the Constitution of Ukraine. The above provision is detailed in

the sectoral legislation, in particular, in the Civil Code of Ukraine and the Law of Ukraine "On the Protection of Economic Competition" of January 11, 2001.

According to art. 25 of the Civil Code of Ukraine, the state supports competition as a competition between economic entities, which ensures, through their own achievements, obtaining certain economic benefits, thereby causing consumers and business entities to choose the necessary commodity, and at the same time, individual economic entities do not determine the conditions sale of goods in the market. According to art. 26–32 of the Civil Code of Ukraine, the abuse of a monopoly position on the market is prohibited, unlawful agreements between economic entities, discrimination of economic entities, unfair competition. The Civil Code of Ukraine also defines cases where state interference is allowed in order to restrict competition and monopoly.

But with this in accordance with art. 6 of the Civil Code of Ukraine one of the principles of management is the restriction of state regulation of economic processes in connection with the need to ensure the social orientation of the economy, fair competition for entrepreneurship, environmental protection of the population, consumer protection and the security of society and the state. That is, government intervention in business regulation is permissible only in exceptional cases, which is also carried out to ensure freedom of business.

Conclusions

Consequently, as noted in the literature, the freedom of entrepreneurship, which is not prohibited by law, despite the known dualism in the legislative regulation of entrepreneurship, must nevertheless be subject to the principles of civil law regulation. In the structure of the mentioned general principle it is proposed to allocate three of its constituent elements: the freedom to choose business activities; freedom to choose the type of entrepreneurial activity; the freedom of contractual relations in the implementation of this activity (business agreements) [12, c. 17].

Thus, the freedom of entrepreneurship is not limitless. On the one hand, the set of opportunities provided to the specified entity allows the full implementation of business potential, and on the other hand, the state establishes certain limits for its implementation in order to ensure the observance of the rights and legitimate interests of other participants in public relations.

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