DOI 10.52468/2542-1514.2022.6(2).204-230

EXCLUSION OF A LEGAL ENTITY FROM THE UNIFIED STATE REGISTER OF LEGAL ENTITIES: CASES OF USE, PROCEDURE AND CONSEQUENCES

Andrey V. Gabov[1,2]
[1] *Institute of State and Law of the Russian Academy of Sciences, Moscow, Russia*
[2] *Belgorod State National Research University, Belgorod, Russia*

Article info
Received –
2022 February 07
Accepted –
2022 April 11
Available online –
2022 June 20

Keywords
Corporation, legal entity, state registration, Unified State Register of Legal Entities, termination of a legal entity, exclusion from the Unified State Register of Legal Entities, liquidation, inactive legal entity, one-day firm, unreliability of information, responsibility, subsidiary liability

The subject of research. In 2005, a new institution for exclusion of a legal entity from the Unified State Register of Legal Entities by decision of the registering authority (or, as it is also called "administrative termination of a legal entity"). Subsequently, as a result of a number of changes, including the Civil Code of the Russian Federation, introduced by federal laws in 2014, 2015, 2016 and 2019, this institution was formed in the form in which it currently exists Its importance, at first more technical, has increased significantly after the changes in 2015, when this institution began to be used to conduct a large-scale "cleaning" of the Unified State Register of Legal Entities from inactive legal entities. As a result, millions of legal entities have been excluded from the Unified State Register of Legal Entities in recent years. In addition, the range of situations in which this institution began to be applied has expanded. Accordingly, the increase in the number of disputes is due to the fact that such exclusion affects the rights and interests of many persons (creditors, participants of excluded legal entities, members of their governing bodies). These disputes have often been the subject of close attention of the Russian Constitutional Court (the latest example is the decision of the Russian Constitutional Court of May 21, 2021 No. 20-P). The article examines the goals of this institution, its development, shows the most problematic situations related to the application of the institution of exclusion of a legal entity from the Unified State Register of Legal Entities.

The purpose of the article is to identify the main problems of the institution of exclusion of a legal entity from the Unified State Register of Legal Entities, as well as formulate the main directions for changing this institution. The author's main scientific hypothesis is that during the development of the institution of exclusion of a legal entity from the Unified State Register of Legal Entities, its original goals were lost. New goals and meanings were also formulated (in the legal positions of the Constitutional Court of the Russian Federation), which eventually (taking into account the significant shortcomings of the exclusion procedure itself) lead to violation of the rights of a significant number of interested persons. The author believes that in the development of this institution there is clearly a disproportion in terms of its application in relation to limited liability companies and persons controlling such a company. The author also notes the lack of a unified concept of the institution of exclusion from the Unified State Register of Legal Entities, since along with the administrative procedure for the termination of legal personality, the legislation also recognizes the judicial procedure.

Description of research methods and methodology. The research is based on a systematic analysis, as well as the use of methods of interpretation developed in the doctrine.

The main results, scope of application. The goals of creating the institution of exclusion of a legal entity from the Unified State Register of Legal Entities are established, the development of this institution is shown taking into account the legal positions of the Russian Constitutional Court, judicial practice, conceptual provisions on reforming civil legislation.

Conclusions. There is a need for a complete renovation of the institution of exclusion of a legal entity from the Unified State Register of Legal Entities. The main directions for improving the institution of exclusion of a legal entity from the Unified State Register of Legal Entities are formulated.

1. Introduction. The institution of exclusion of a legal entity that has ceased its activities from the Unified State Register of Legal Entities by the decision of the registering authority: goals and meanings.

The institute of "exclusion of a legal entity that has ceased its activities from the Unified State Register of Legal Entities by the decision of the registering authority" appeared in Russia in 2005, when Federal Law No. 83-FZ of July 2, 2005 "On Amendments to the Federal Law "On State Registration of Legal Entities and Individual Entrepreneurs" and Article 49 of the Civil Code were adopted the Code of the Russian Federation" (hereinafter – Federal Law No. 83-FZ of July 2, 2005). The provisions on the exclusion of a legal entity that has ceased its activities from the Unified State Register of Legal Entities were included in the Law on State Registration of Legal Entities (new Article 21.1 and corresponding amendments to Article 22).

In accordance with these changes, new signs of "a legal entity that has actually ceased its activities" were fixed in Russian law (its synonym – "an inactive legal entity" was also introduced). They are "new" because before Federal Law No. 83-FZ of July 2, 2005, the insolvency (bankruptcy) legislation not only knew the concept of "a legal entity that has actually ceased its activities" (Articles 177, 178 of Federal Law No. 6-FZ of January 8, 1998 "On Insolvency (Bankruptcy)", Article 227 of the Federal Law of October 26 , 2002 No. 127-FZ "On Insolvency (Bankruptcy)" (hereinafter – the Bankruptcy Law), but also gave the criterion of such a person (not quite clear – duly noted): the head of the legal entity is absent and it is not possible to establish his location.

Prior to the adoption of Federal Law No. 83-FZ of July 2, 2005, the qualification of a legal entity as having actually ceased its activities led to the recognition of such a person as an "absent debtor" for the purposes of bankruptcy legislation. And this, in turn, meant the possibility of applying simplified bankruptcy procedures – "bankruptcy of an absent debtor". In 2005 other signs of the legal entity that actually ceased its activities were identified (and they had to be present at the same time): 1) failure to submit tax reporting documents within a specified period of time; 2) failure to carry out transactions on at least one bank account during the same period. The identification of such signs gave the authorized state body the right to initiate a special procedure, the result of which could be the exclusion of such a legal entity from the Unified State Register, i.e., its termination.

Analysis of materials of legislative work (explanatory note to the draft Federal Law No. 147600-4 "On Amendments to the Federal Law "On State Registration of Legal Entities and Individual Entrepreneurs" and to Article 49 of the Civil Code of the Russian Federation" (hereinafter - the draft Federal Law No. 147600-4) shows the purpose of the new institute – the "cleaning" of the Unified State Register of Non-functioning legal entities (they are also referred to in it as "dead" legal entities that do not carry out any activity, do not have property, management bodies and employees"; they are also referred to as "legal entities that do not carry out any activity (in fact, they have been already self-liquidated)"). In the explanatory note, this problem is clearly outlined: "according to the assessment of the tax authorities and taking into account the real capabilities of the judicial system, the liquidation of such legal entities in court will take at least 15 years and will require significant budgetary funds, including due to the need to increase the number of judges. The introduction of the amendments proposed by the bill ... will allow to quickly and at minimal cost solve the problem of excluding inactive legal entities from the unified state register of legal entities with the provision of necessary guarantees for the protection of the rights and interests of such legal entities, founders (participants), creditors and other interested parties." Partly, the problem was of a historical nature, many legal entities were qualified as inactive in this explanatory note due to non-compliance with the requirements (in terms of transitional provisions) of the Law on State Registration of Legal Entities (Article 26) on the

ISSN 2542-1514 (Print)

provision of certain information to the authorized registration authority by legal entities established before entry into force the specified law (July 1, 2002). Failure to comply with this requirement was recognized by Art. 26 of the Law on the State Registration of Legal Entities as the basis for the compulsory adoption by the court of a decision on the liquidation of such a legal entity on the basis of an application of the registering authority. Meanwhile, according to the explanatory note, the data on the number of such legal entities that did not comply with the requirement was significant: as of February 20, 2003, approximately 1.6 million previously registered legal entities. The liquidation of all these persons in the usual manner would require significant funds (there was also the question of the expediency of spending such funds).

The brevity of the new legal provisions, in general, the language in which they were set out, the absence of changes to other federal laws, which at that time (in fact, as at present) regulated the specifics of state registration, the clearly "technical" nature of the comments given in the explanatory note to the relevant bill (these comments were not laid some other ideas), created the basis for the subsequent numerous disputes around the relevant norms. To these problems were added questions about the application of the new legislation to those legal entities whose state registration was carried out in a special order (non-profit organizations, credit organizations). There was a basis for such issues: firstly, this is the place where the relevant regulations were placed - the Law on State Registration, and the chapter of it that regulates the specifics of state registration (before making changes regarding the liquidation of a legal entity); secondly, by the time of its adoption, for certain types of legal entities, from among those that fell under the special procedures of state registration, there already existed their own institutions of exclusion from the Unified State Register (see Article 29 of Federal Law No. 82-FZ of May 19, 1995 "On Public Associations" (hereinafter – the Law on Public Associations), Article 15 of Federal Law No. 95-FZ of July 11, 2001 "On Political Parties" (hereinafter – the Law on Political Parties).

The provisions on the specifics of the bankruptcy of an absent debtor regarding the criteria for determining a legal entity that has actually ceased its activities have not been canceled. Thus, there is a situation (it exists to this day) when the qualification of a legal entity that has actually ceased operations is carried out by two laws (the Law on Bankruptcy and the Law on State Registration of Legal Entities) by two different criteria, and such qualification has two different consequences: 1) the application of simplified bankruptcy procedures in one case and 2) the "launch" of a simplified – out–of-court procedure for the exclusion of a legal entity from the Unified State Register of Legal Entities (the procedure for the administrative termination of a legal entity) - in the other.

Accordingly, one of the first problematic issues in the application of the new rules was their relationship with the provisions of the bankruptcy legislation regarding the bankruptcy of an absent debtor. V.V. Vitryansky notes that new rules practically did not work until the adoption of special clarifications by the Supreme Arbitration Court of the Russian Federation (hereinafter referred to as the Supreme Arbitration Court of the Russian Federation) in 2006, as the tax authorities continued to transfer cases bankruptcy of absent debtors to the court instead of using a new institution to "clean up" the Unified State Register of Legal Entities [7, p. 70 – 8370 – 83 ; 8, p. 105].

In 2006, the Supreme Arbitration Court of the Russian Federation formulated the relationship between these institutions in the information letter of the Presidium of the Supreme Arbitration Court of the Russian Federation dated January 17, 2006 No. 100 "On Some Features Related to the Application of Article 21.1 of the Federal Law "On State Registration of Legal Entities and Individual Entrepreneurs" and the Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation dated December 20, 2006 No. 67 "On some issues of the practice of applying the provisions of the legislation on bankruptcy of absent debtors and termination of inactive legal entities." In these documents, the Supreme Arbitration Court of the Russian Federation indicated the priority of applying the institution of exclusion of a legal entity

ISSN 2658-4050 (Online)

from the Unified State Register of Legal Entities over the bankruptcy rules of an absent debtor, noting that: 1) when considering the issue of accepting a tax authority's application for compulsory liquidation of a legal entity in court or for declaring a legal entity bankrupt, the courts need to check whether the legal entity is invalid and whether the procedure for excluding it from the register of legal entities was carried out by the decision of the registering authority; 2) upon receipt of an application by the tax authority for compulsory liquidation or for declaring bankrupt of a legal entity that meets the criteria of an invalid legal entity in accordance with Article 21.1 of the Law on State Registration of a Legal Entity, this application is subject to return to the applicant, except in cases when the decision to exclude the legal entity from the Unified State Register is not taken due to the receipt of objections or is invalidated in court all right; 3) if the grounds for the application of administrative termination of a legal entity are clarified during the proceedings initiated at the request of the tax authority in the case of compulsory liquidation (bankruptcy) of a legal entity, the proceedings in the case are subject to termination; 4) when submitting an application for declaring an absent debtor bankrupt, the authorized body was obliged to provide evidence substantiating the probability of finding a sufficient amount of property at the expense of which the costs of the bankruptcy case can be covered, as well as the debt on mandatory payments and monetary obligations to a public legal entity can be fully or partially repaid, on behalf of which is performed by the authorized body; 5) the very fact that there is a debt to the budget is not an obstacle to the application of the procedure for excluding a legal entity from the Unified State Register of Legal Entities, in cases where the amount of expenses that must be spent on the bankruptcy procedure of an absent debtor at the expense of the federal budget exceeds the size of the claims of the authorized body to the debtor and there is no possibility of its reimbursement at the expense of the debtor's property. Important is the output of the RF concerning the ratio of the exclusion of the legal entity from the register in the resolution of the Plenum of the Russian Federation of December 20, 2006 No. 67: this procedure was recognized as a special reason for the termination of a legal entity, unrelated to its liquidation (this position was also justified in a number of studies [9, p. 15].

Evaluating these provisions, it should be noted that for the Russian Federation, the exclusion of a legal entity that ceased its activities from the Unified State Register was the institution, the purpose of which was to refuse unnecessary expenses for the bankruptcy procedures of a legal entity, in particular, in cases where the legal entity itself did not have the necessary financial resources and other property, at the expense of which could cover the costs of carrying out the necessary liquidation procedures during bankruptcy.

Thus, the goals of the new institution were mainly "technical"; they were based on economic arguments. This is quite clearly reflected in the explanatory note to the draft Federal Law No. 147600-4: "the introduction of the amendments proposed by the bill ... will quickly and at minimal cost solve the problem of excluding inactive legal entities from the unified state register of legal entities with the provision of the necessary guarantees of protection"); no other goals were set.

However, such new goals and meanings were formulated soon, which is partly due to a change in the situation: during the discussion of civil law reform projects (since 2009), considerable attention was paid to ensuring the reliability of information contained in the Unified State Register of Legal Entities, including in connection with the need to consolidate in legislation and implement the principle of public reliability information (data) of the Unified State Register of Legal Entities. As a result, when considering repeated appeals of citizens and legal entities to the Constitutional Court of the Russian Federation, the specified body began to give such assessments to the goals of this institution, which were not officially formulated at its creation. If we summarize the legal positions of the Constitutional Court of the Russian Federation (resolutions of the Constitutional Court of the Russian Federation: dated December 6, 2011 No. 26-P, dated May 18, 2015 No. 10-P, dated May 21, 2021 No. 20-P, dated December 2, 2021 No. 51-P; rulings of the Constitutional Court of the Russian Federation: dated 17 January 2012 No. 143-O-O,

ISSN 2542-1514 (Print)

dated September 24, 2013 No. 1346-O, dated February 25, 2016 No. 356-O, dated May 26, 2016 No. 1033-O, dated December 19, 2017 No. 2981-O, dated December 19, 2019 No. 3415-O) concerning the provisions of Article 21.1 and/or art. 22 of the Law on State Registration of Legal Entities, then the goals and meanings of the institution of exclusion of a legal entity from the Unified State Register of Legal Entities (administrative termination of a legal entity) look like this (the phrase "regulation is aimed at" is used): ensuring the reliability of the information contained in the Unified State Register of Legal Entities (including the termination of the activity of a legal entity), trust in this information from the outside third parties, prevention of unfair use of actually inactive legal entities and thereby - to ensure the stability of civil turnover.

This externally beautiful formula requires some explanation. Giving the existing institution a new meaning (ensuring the reliability of the data of the Unified State Register of Legal Entities), if it is dictated by new life circumstances, can hardly cause serious objections, especially if such a social value of public order as the stability of civil turnover is proclaimed as the main goal. However, in addition to the formulation of the main goal, the remaining parts of the above legal position raise serious objections. In the specified position is not disclosed:

- what is meant by the reliability of the data of the Unified State Register and

- what violates this reliability of the presence in this register of information about a legal entity that does not carry out its activities in the narrow meaning as it is understood in Article 21.1 of the Law on State Registration of Legal Entities?

There is no definition of the concept of "reliability" in relation to information in general (any), as well as to the criterion of information (data) of the Unified State Register of Legal Entities, in the legislation. Attempts to derive this definition can be made from the analysis of a number of regulations .

For example, if we try to deduce the definition of the reliability of the data of the Unified State Register of Legal Entities from Article 51 of the Civil Code of the Russian Federation (from the definition of the principle of public reliability ("a person relying in good faith on the data of the unified state register of legal entities has the right to assume that they correspond to the actual circumstances")), then we will get that the reliability of the information (data) of the Unified State Register of Legal Entities is the correspondence of the information of the Unified State Register of Legal Entities to the actual circumstances. But what are actual circumstances? After all, there are a lot of them in the "life" of a legal entity, and they are in constant change – contracts are concluded, money is spent / received, etc. If you just stop at this correspondence formula, then it is impossible to get the desired answer – to determine the reliability.

If we look at the definition of the principle of public reliability in the system of other provisions on the Unified State Register of Legal Entities (registration as a whole), then we can see that the Unified State Register is a federal information resource containing a certain set (specific list) of information (Article 5 of the Law on State Registration of Legal Entities). In this list, never (!) – neither at the time of the adoption of the Law on State Registration of Legal Entities in 2001, nor at the time of the adoption of the Federal Law of July 2, 2005. No. 83-FZ, neither at present – there has been and there is no such type of information as the termination of the activity of a legal entity (this formula is used by the Constitutional Court of the Russian Federation) or the actual termination of activity, etc. Art. 5 of the Law on State Registration of Legal Entities states only that the Unified State Register of Legal Entities should reflect "the method of termination of a legal entity (by reorganization, liquidation or by exclusion from the unified state register of legal entities by decision of the registering authority, in connection with the sale or incorporation of the property complex of a unitary enterprise or the property of an institution in the authorized capital of a joint-stock company in cases stipulated by the legislation of the Russian Federation)". That is, the Unified State Register records only the way in which, of those provided for by law, a legal entity has ceased, and not what kind of activity it conducts (and whether it conducts it at all) at any given time. And this is understandable:

ISSN 2658-4050 (Online)

The Unified State Register of Legal Entities is rather a "photograph" of a legal entity, but not an interactive service reflecting the changes that occur with a legal entity in real time. From where the Constitutional Court of the Russian Federation, in the above-mentioned legal position, repeatedly reproduced by it in its rulings and definitions, concluded that the Unified State Register of Legal Entities should contain information about the "termination of the activity of a legal entity" – information that should not be there by law - one can only guess. But the entire legal position of the Constitutional Court of the Russian Federation is based on this goal. The same question can be put to those authors who expressed a similar point of view. S.V. Sarbash wrote that the presence of invalid legal entities in the Unified State Register of Legal Entities "entails the actual unreliability of the data" of the Unified State Register of Legal Entities, and "turns it into a set of non-actualized data" [6, pp. 8-13]. A.A. Chukreev noted that "since the beginning of the construction of market relations in our country, a critical mass of organizations registered as legal entities has accumulated persons who, for one reason or another, have not actually carried out their activities for a long time or at all – since their creation. Such non-functioning legal entities have been listed in various registries for years ...", and in order to "make the Russian legal system clear of such legal entities more quickly", the institute of exclusion of an inactive legal entity from the Unified State Register of Legal Entities is necessary [10, p. 136]. In some works, we agreed on the qualification of such legal entities as "suspicious" [11, p. 107]. What, however, the "suspicion" is expressed in is unclear, since no one has canceled the principle of good faith of participants in civil relations, and the law does not explicitly formulate the presumption of the need for mandatory implementation of the activities of a legal entity

What violates the reliability of the presence in the Unified State Register of information about a legal entity that does not carry out its activities in general, and in the narrow meaning as it is understood in Article 21.1 of the Law on State Registration of Legal Entities? What exactly is the problem here, especially the "critical" one? A legal entity is registered, it exists, the fact of this is reflected in the Unified State Register of Legal Entities, there is no presumption that it should carry out activities. It is interesting to note that in the Unified State Register of Legal Entities (even after the adoption of the Federal Law of July 2, 2005 No. 83-FZ) there are no indications that the presence of signs of an inactive person, which are reflected in Article 21.1 of the Law on State Registration of Legal Entities, is reflected as information. In addition, it is one thing not to carry out activities, but to submit reports, and another thing is to fall under the signs (presumption) of an inactive legal entity.

From our point of view, there are no rational explanations that the availability of information about both persons who have ceased any activity and inactive legal entities in the narrow meaning as they are understood by Article 21.1 of the Law on State Registration of Legal Entities violates (discredits) the principle of reliability of the data of the Unified State Register of Legal Entities. But even if this is so from the point of view of some approach, theory, concept, etc., then in any case, in relation to the domestic legal system, it would be possible to raise the question in this way if the law unequivocally and definitely indicated the need to reflect information about the termination of activity in the Unified State Register of Legal Entities (indicating that is understood by "termination"). In such a case (and only in such a case) it could be argued: a legal entity has an obligation to publicly inform all other (unlimited circle) participants in civil turnover and the state that it is ceasing its activities (becomes an inactive person); if it ceases its activities, but does not fulfill the obligation to report it, that's only then you can to talk about the unreliability of the information of the Unified State Register of Legal Entities. If there is no such obligation (and there is none at the moment), but at the same time someone is talking about the unreliability of the information of the Unified State Register of Legal Entities in relation to a particular legal entity, since, allegedly, it is invalid, then we have nothing but a substitution of concepts, the "imposition" of a fictitious obligation on such a legal entity, and then there are the negative consequences of its non-fulfillment, i.e., we are faced with such a substitution that "forms" the basis

ISSN 2542-1514 (Print)

of legal decisions that create unjustified restrictions for participants in economic activity.

Speaking of "termination of activity", one important circumstance should be noted: in those cases that concerned the enforcement of Article 21.1 of the Law on State Registration of Legal Entities for Non-Profit Organizations (Resolutions No. 26-P of December 6, 2011 and December 2, 2021 No. 51-P), the Constitutional Court of the Russian Federation was forced to move away from the strict signs of termination of activity specified in this article, "softening" them with references to the peculiarity of the legal status of certain non-profit organizations, in particular, stating that the non-conduct of transactions on bank accounts does not have the same determining (dominant) significance for legal entities persons – non-profit organizations, as for commercial organizations. And it's hard to argue with that. However, if this is the case, and for non-profit organizations, the signs of actual termination of activity may be different, then what is the termination of activity from the point of view of the current legislation? Is there any criterion for such termination at all today: there are no conditional transactions on accounts, reporting is not handed over, and employees come to their workplaces ? Is this a termination of activity?

Questions multiply if we begin to analyze court decisions regarding the exercise of the right of the registering authority to decide on the exclusion of a legal entity from the Unified State Register of Legal Entities. One of the trends that is becoming more and more obvious is the departure from the automatic application of the two existing features in Article 21.1 of the Law on State Registration of Legal Entities (this trend is noted by many researchers [12, p. 81; 13, p. 119; 14, p. 46-51], especially in a situation where the basis for making a decision on an exception is a note about the unreliability of information. The courts point out that "the exclusion of these persons from the register is not aimed at terminating the activities of those legal entities that actually carry out their activities, are located at the legal address ... exclusion from the register of organizations in respect of which there is a record of unreliability of information, but which actually carry out activities and with which it is possible to maintain communication (obtaining the necessary correspondence, communication of the executive body, submission of necessary reports) is not allowed" (para. 3.3 of the Review of Judicial Practice on Disputes involving Registration authorities No. 1 (2020), sent by letter of the Federal Tax Service of Russia dated April 9, 2020. No. KV-4-14/6053@).

It should be noted that in addition to interpreting the provisions of Article 51 of the Civil Code of the Russian Federation, there are other legal norms that allow us to formulate the concept of reliability of the information of the Unified State Register of Legal Entities.

Thus, Article 5 of the Law on State Registration of Legal Entities initially contains a rule according to which, if the information contained in this article that makes up the Unified State Register does not correspond to the information contained in the documents submitted during state registration, the information that makes up the Unified State Register is considered reliable before there are corresponding changes in them. Thus, the reliability of the data of the Unified State Register of Legal Entities, based on this rule, can be formulated as follows: everything that is in the Unified State Register at a certain moment is reliable. With this understanding, the noted legal position of the Constitutional Court of the Russian Federation loses its grounds altogether.

The concept of reliability of the data of the Unified State Register of Legal Entities can also be considered as a result of the interpretation of other provisions of Article 5 of the Law on State Registration of Legal Entities, requiring their updating in due time. Then the reliability will look like this: reliability is the correspondence of information about a legal entity contained in the Unified State Register of Legal Entities (of those that should be contained there) to the actual (valid) circumstances of the "life" of a legal entity at any given time, except for the periods of time necessary (and provided by law) to the legal entity and other bodies (persons) to enter new information. But globally, such clarification of our conclusions about the uncertainty of the concept of reliability does not change.

The practice that has developed in recent

years in the implementation of state registration has added questions due to the recognition of various kinds of presumptions of unreliability associated with the so-called "mass" founders, directors and addresses, one-day firms, etc.

Thus, there is no single and understandable definition of the reliability of the data of the Unified State Register of Legal Entities in the legislation. In such a situation, to formulate a goal – to ensure the reliability of the information of the Unified State Register of Legal Entities – to evaluate a particular legal decision, it means to say nothing.

It is impossible not to point out the inconsistency of such an element (goal) specified in the legal position of the Constitutional Court of the Russian Federation as "prevention of unfair use of actually inactive legal entities". The fact is that here again the question arises about the criteria (signs) of termination of activity (already "blurred" by legal positions regarding the application of Article 21.1 of the Law on State Registration of Legal Entities of Non-Profit Organizations): if someone allegedly "uses" a legal entity that has ceased its activity, then it is the activity of something it hasn't stopped!

It seems that, taking into account the expansion of the use of the institution of exclusion of a legal entity from the Unified State Register of Legal Entities (Federal Law No. 488-FZ of December 28, 2016 "On Amendments to Certain Legislative Acts of the Russian Federation" (hereinafter - Federal Law No. 488-FZ of December 28, 2016)), the available explanations of the Supreme Arbitration Court of the Russian Federation, the judicial practice, as well as taking into account the legal positions of the Constitutional Court of the Russian Federation, formulated in Resolutions No. 20-P of May 21, 2021 and December 2, 2021. No. 51-P in terms of the specifics of the use of this institution for non-profit organizations, it is becoming increasingly obvious that it is no longer possible to justify its existence with a universal, as well as an obscure argument about ensuring reliability.

A rather significant "reformatting" of the institution of exclusion from the Unified State Register of Legal Entities is necessary, including with the formulation of its goals; moreover, at the same time, the problem of defining the concepts of reliability / unreliability will have to be solved, which in general has long been overdue. Theoretically, it is possible to imagine the use of this institution to ensure the reliability of the data of the Unified State Register of Legal Entities – for example, if we are talking about the termination of a legal entity created by figureheads, etc. However, the ideal option is to return to the original goals of the appearance of this institution, which have nothing to do with ensuring reliability. The main goal here is to terminate a legal entity quickly and without incurring unnecessary expenses, especially in cases when neither such a person nor its main beneficiaries have sufficient funds and property with the establishment of understandable guarantees for various interested parties (creditors, participants), as well as reasonable liability for those persons who they caused damage to creditors, including by creating a situation that required the use of the institution of administrative termination of a legal entity.

2. Development of regulation from 2005 to the present: from "exclusion of a legal entity that has ceased its activities" from the Unified State Register of Legal Entities to "exclusion of a legal entity" from the Unified State Register of Legal Entities.

There are several important stages in the development of the institution of exclusion from the Unified State Register of Legal Entities that have ceased their activities.

As already noted, in the first years of its existence, explanations of the Supreme Arbitration Court of the Russian Federation played a significant role, which often not only clarified new legal provisions in the exact meaning of the word, but also created new (in fact) norms. In its depths, provisions were subsequently formulated that became part of the documents on the basis of which civil legislation was reformed – the Concept of the Development of Legislation on Legal Entities (the draft recommended by the Presidential Council for the Codification and Improvement of Civil Legislation for publication for discussion (Protocol No. 68 of March 16, 2009).

This concept contains many provisions on

ISSN 2542-1514 (Print)

the so-called "formal" legal entities (as can be understood from the document, they were understood as formally existing, but discontinued legal entities). At the same time, it was supposed to establish legislative criteria for classifying a legal entity as "formal"; such criteria included: 1) failure to submit tax reports to the tax authorities for more than a year and the absence of property sufficient to cover the costs of judicial liquidation; 2) the absence of transactions on bank accounts for more than a year; 3) absence of an appointed (elected) executive body for more than a year; 4) absence of participants in the organization; 5) establishment by the court in a case unrelated to the liquidation of the defendant that in reality the participants of the relevant organization did not establish it; 6) termination of the insolvency case of a legal entity due to lack of funds for bankruptcy procedures. As noted in the Concept, in the presence of any of these circumstances, the authorized state body conducts an audit of the economic activity of the relevant legal entity and, if confirmed, makes a decision on the liquidation of the legal entity, imposing the obligation to implement it on the participants of the legal entity. The decision on liquidation is subject to publication, and the participants of the legal entity are notified in the manner prescribed by law. The participants of the legal entity must be granted the right to appeal the said decision to the arbitration court. If the legal entity is not liquidated within the prescribed period, the state body decides to exclude the legal entity from the register at the expense of the participants of the legal entity, while the executive body of such a legal entity and its participants are fined accordingly.

However, most of these provisions were not included in the final Concept of the Development of Civil Legislation approved by the Presidential Council for the Codification and Improvement of Civil Legislation on October 7, 2009. And in the draft amendments to the Civil Code, introduced in April 2012 to the State Duma (Draft Federal Law No. 47538-6 "On Amendments to Parts One, Two, Three and Four of the Civil Code of the Russian Federation, as well as to Certain Legislative Acts of the Russian Federation") from all the arguments about "formal" legal entities, only proposals remained to supplement a separate part of Article 62 of the Civil Code of the Russian Federation. However, in the document that implemented the amendments to the Civil Code of the Russian Federation regarding the provisions on legal entities – the Federal Law of May 5, 2014. No. 99-FZ "On Amendments to Chapter 4 of Part One of the Civil Code of the Russian Federation and on the Invalidation of Certain Provisions of Legislative Acts of the Russian Federation" (hereinafter referred to as Federal Law No. 99–FZ of May 5, 2014) - regulation regarding the exclusion from the Unified State Register of Legal Entities that have ceased their activities, it turned out completely otherwise. Amendments to Article 62 of the Civil Code of the Russian Federation were adopted, but a separate article appeared in the Civil Code of the Russian Federation – 64.2, which reproduced the provisions of the Law on State Registration of Legal Entities in force at that time. The article consisted of three paragraphs: the first of them introduced signs of the actual termination of a legal entity (signs of an invalid legal entity), and also made a reference to the exclusion procedure, which should be established by a special law, the second paragraph determined the consequences of exclusion from the Unified State Register of Legal Entities (in conjunction with the provisions on liquidation), in the third – it was pointed out the possibility of bringing to justice the persons who controlled the person excluded from the Unified State Register of Legal Entities. Thus, the Federal Law of May 5, 2014 No. 99-FZ formally did not make any radical changes in the issue of exclusion from the Unified State Register of a legal entity that has ceased its activities (excluding amendments to Article 62 of the Civil Code of the Russian Federation, which, however, remained for some time without corresponding changes to the Law on State Registration of Legal Entities, as well as novelties regarding liability (paragraph 3 of Article 64.2 of the Civil Code of the Russian Federation)). In essence, the institute itself was simply "raised" to the Civil Code of the Russian Federation (which, of course, is correct in itself), "linking" the Civil Code of the Russian Federation and the Law on State Registration of Legal Entities. At the same time, it should be noted that art. 21.1 of the Law on State Registration of Legal Entities and

ISSN 2658-4050 (Online)

Article 64.2 of the Civil Code of the Russian Federation began to differ somewhat in terms of the name of the institute: the first spoke about "the exclusion of a legal entity that has ceased its activities from the Unified State Register by decision of the registering authority", and the second – about "the exclusion of an inactive legal entity from the Unified State Register". It would seem that the question is purely technical, but we note that in the future these discrepancies in the name will lead to a situation (this is the current state of affairs) when the provisions of Article 64.2 of the Civil Code of the Russian Federation will not cover all cases of administrative termination of a legal entity. Unfortunately, the provisions of Article 64.2 of the Civil Code of the Russian Federation have not changed to date, although later legislative changes (see below) have made both the title and the content of this article obsolete.

After 2014, the changes that took place regarding the institution of exclusion from the Unified State Register of legal entities that ceased their activities mainly concerned the Law on State Registration of Legal Entities (Articles 21.1, 22, 23). Three laws should be distinguished here:

- Federal Law No. 67-FZ of March 30, 2015 "On Amendments to Certain Legislative Acts of the Russian Federation in Terms of Ensuring the Reliability of Information Provided during State Registration of Legal Entities and Individual Entrepreneurs" (hereinafter - Federal Law No. 67-FZ of March 30, 2015);

- Federal Law No. 488-FZ of December 28, 2016;

- Federal Law No. 377-FZ of November 12, 2019 "On Amendments to Certain Legislative Acts of the Russian Federation" (hereinafter - Federal Law No. 377-FZ of November 12, 2019).

Federal Law No. 67-FZ of March 30, 2015 formally did not change the provisions of Articles 21.1 and 22 of the Law on State Registration of Legal Entities, but they made changes to the Law on State Registration of Legal Entities (sub-clause "f" in clause 1 of Article 23), which established the consequences of exclusion from the Unified State Register of legal entities, which has ceased its activities, in the form of actual restrictions on participation for a certain period of time in the establishment of legal entities and acting in them as a person performing the functions of the sole executive body. In particular, the exclusion from the Unified State Register of Legal Entities that ceased their activities after the adoption of Federal Law No. 67-FZ of March 30, 2015 was supplemented with negative consequences for participants of "abandoned" limited liability companies and general directors of any "abandoned" legal entities, if they were excluded from the Unified State Register, but after such exclusion there are outstanding obligations to the budget. Such persons were officially placed on a kind of "black list" for three years, the early termination of their stay in which was not provided for by law (the relevant provisions of sub-clause "f" of clause 1 of Article 23 of the Law on State Registration of Legal Entities subsequently repeatedly served as the subject of consideration by the Constitutional Court of the Russian Federation, but in all cases the applicants were refused (decisions of March 13, 2018 No. 580-O; of March 13, 2018 No. 581-O; of March 13, 2018 No. 582-O; of October 25, 2018 No. 2616-O; of February 28, 2019 No. 377-O; of November 28, 2019 No. 3045-O; of December 19, 2019 No. 3435-O; of December 19, 2019 No. 3441-O). As a result, the rejection of the official liquidation procedure and its replacement by the "freezing" of the legal entity (as a result of which "abandoned" or "dead" legal entities appeared), which previously allowed the beneficiaries of the legal entity to avoid the costs of liquidation, became less attractive (although this phenomenon has not been completely eradicated).

The significance of Federal Law No. 67-FZ for the institute of exclusion from the Unified State Register of a legal entity that has ceased its activities is much more significant: it was this law that "launched" a large-scale "purge" of the Unified State Register of Legal entities, due to amendments made to Articles 9, 11 of the Law on State Registration of Legal Entities, which it continues to the present; its ("purge") conduct has logically led to the following legal decisions implemented in Federal Law No. 488-FZ of December 28, 2016.

The latter, formally, according to the explanatory note to the draft Federal Law No. 1001592-6, was intended to implement the resolution of the Constitutional Court of the Russian

ISSN 2542-1514 (Print)

Federation No. 10-P of May 18, 2015, but in reality the significance of the norms of this law is more significant:

- firstly, the procedure for excluding a legal entity from the Unified State Register of Legal Entities, established by Article 21.1 of the Law on State Registration of Legal Entities, was extended to two more cases: 1) the impossibility of liquidation of a legal entity due to the lack of funds for the expenses necessary for its liquidation, and the inability to impose these costs on its founders (participants); 2) the presence in the Unified State Register of Information in respect of which an entry has been made about their unreliability, for more than six months from the date of making such an entry;

- secondly, Article 3 of Federal Law No. 14-FZ of February 8, 1998 "On Limited Liability Companies" (hereinafter referred to as the LLC Law) was supplemented with a new clause 3.1, which the exclusion of a limited liability company from the Unified State Register of Legal Entities could lead to the occurrence of subsidiary liability for certain persons;

- thirdly, it was found that even if there are all the signs of an invalid legal entity specified in Article 21.1 of the Law on State Registration of a Legal Entity, a decision on its impending exclusion from the Unified State Register of Legal Entities cannot be made (literally: "not accepted") if the registering authority has information about the initiation of proceedings on the case of bankruptcy of a legal entity, on the procedures applied to a legal entity in a bankruptcy case (this part of the changes was the implementation of the Resolution of the Constitutional Court of the Russian Federation No. 10-P of May 18, 2015). Thus, in essence, some clarifications previously given by the Supreme Arbitration Court of the Russian Federation (see above) regarding the ratio of institutions of administrative exclusion of a legal entity from the Unified State Register of Legal Entities and bankruptcy of an inactive debtor have become invalid.

Finally, Federal Law No. 377-FZ of November 12, 2019 introduced a number of technical changes to Articles 21.1 and 22 of the Law on State Registration of Legal Entities regarding the exclusion procedure.

Thus, at present, the legislative basis for the application of the institution of exclusion of a legal entity from the Unified State Register of Legal Entities is (in terms of the signs of an invalid legal entity, the procedure for exclusion and consequences): Article 64.2 of the Civil Code of the Russian Federation, Articles 9, 11, 21.1, 22, 23 of the Law on State Registration of Legal Entities, Article 3 of the LLC Law.

When analyzing legislative norms, it is necessary to note their incompleteness. It is premature to talk at present about the full-fledged formation of the system of legal regulation of the institution of exclusion of a legal entity from the Unified State Register of Legal Entities.

Firstly, by the Resolution of the Constitutional Court of the Russian Federation No. 20-P dated May 21, 2021, although clause 3.1 of art. 3 of the Law on LLC and was recognized as conforming to the Constitution of the Russian Federation, nevertheless, the legislator and law enforcement officer face questions: about taking into account the specifics of the legal situation of various creditors when bringing controlling persons to subsidiary liability, about the rational distribution of the burden of proof, about the actual grounds of responsibility and the impact of proven facts of individuals bringing their inaction to the application of this institution by an authorized state body on their responsibility to creditors of a legal entity that has ceased to exist .

Secondly, by the Resolution of the Constitutional Court of the Russian Federation No. 51-P dated December 2, 2021, the interrelated provisions of paragraphs 1-4 of Article 21.1 and Paragraph 7 of Article 22 Laws on State registration of Legal Entities were found to be inconsistent with the Constitution of the Russian Federation, to the extent that - in the sense given to them by judicial interpretation, including in decisions on a specific case, - when they are applied to the recognition of a garage (garage-construction) cooperative as actually invalid and to its exclusion from the Unified State Register of Legal Entities on the basis of the mere statement of such formal features as the absence of bank account transactions and failure to submit reports provided for by the legislation on taxes and

ISSN 2658-4050 (Online)

fees, these norms do not allow to take into account the specifics of this type of legal entity as an association of citizens, specially designed to provide them with the opportunity to use property for personal purposes, as a rule, without active participation in civil turnover, without carrying out income-generating activities and without professional management of the organization. Accordingly, the federal legislator is obliged to make appropriate changes to the current legal regulation arising from the said resolution. Obviously, the question raised will concern not only garage (garage-building cooperatives) – there is a common problem of excluding non-profit organizations from the Unified State Register of Legal Entities and the legislator will have to solve it.

Thirdly, there is no clarity with the application of the institution of exclusion of a legal entity from the Unified State Register of Legal Entities in respect of those legal entities whose decision to create was made on the basis of a separate federal law or a Decree of the President of the Russian Federation.

Fourth, although Federal Law No. 488-FZ of December 28, 2016 resolved the issue of the impossibility of making a decision on the exclusion of a legal entity from the Unified State Register of Legal Entities, if the registering authority has information on the initiation of proceedings on the bankruptcy of a legal entity, on the procedures carried out in relation to the legal entity, applied in the bankruptcy case, then there is no similar rule in relation to the liquidation of a legal entity.

When assessing the structure of legal regulation, certain issues arise in relation to by-laws. Firstly, Article 21.1 of the Law on State Registration of Legal Entities omits the question of how the authorized state body establishes the signs of an invalid legal entity. In 2006, a special order of the Ministry of Finance of the Russian Federation dated February 28 , 2006 . No. 32n "On approval of the form of a certificate of Non-Submission by a Legal Entity within the last 12 Months of reporting documents Provided for by the Legislation of the Russian Federation on Taxes and Fees, and the form of a certificate of the absence of Cash Flow on Bank Accounts during the last 12 Months or the Absence of Open Bank Accounts by a legal entity". It is formally valid at the present time, although the act of a higher level (decree of the Government of the Russian Federation), on the basis of which it was adopted, is no longer valid, and no other act has been adopted. Thus, the question arises of filling this gap. Secondly, as will be shown below, there is still no clarity regarding the distribution of powers of registration authorities to make decisions on the exclusion of a legal entity from the Unified State Register of Legal Entities.

Another important observation. As we have already noted above, when the institute of exclusion of an inactive legal entity from the Unified State Register of Legal Entities was introduced in 2005, a number of federal laws had their own procedures for exclusion from the Unified State Register of Legal Entities (moreover, it is "exceptions", not liquidation); they still exist today. In particular:

- Article 15 of the Law on Political Parties provides that if a political party fails to fulfill its obligations to submit copies of documents on state registration of its regional branches in at least half of the subjects of the Russian Federation within a month from the expiration of the six-month period from the date of its state registration, the document on state registration is recognized by the federal authorized body as invalid, and the political party and its regional branches , by decision of the federal authorized body, are excluded from the Unified State Register by making appropriate entries in it;

- Article 29 of the Law on Public Associations provides as a sanction for the repeated failure by a public association to submit the information specified in the law within the prescribed period, an appeal to the court of the body that made the decision on state registration, with an application for recognition of this association as having ceased its activities as a legal entity and for its exclusion from the unified state register of legal entities;

- Article 8 of Federal Law No. 125-FZ of September 26, 1997 "On Freedom of Conscience and Religious Associations" indicates that repeated failure by a religious organization to submit updated information necessary for making changes to the Unified State Register of Legal Entities within the prescribed period is grounds for applying to the court the body authorized to make a decision on the

ISSN 2542-1514 (Print)

state registration of a religious organization, with a requirement to recognize this organization as having ceased its activities as a legal entity and to exclude it from the Unified State Register of Legal Entities.

Based on this, the changes made to the title of Article 21 of the Law on State Registration of Legal Entities by Federal Law No. 488-FZ of December 28, 2016 do not seem exclusively technical: if earlier the institution of exclusion from the Unified State Register of an inactive legal entity as a separate ground for termination had all the grounds for existence, then the current name of art. 21.1 of the Law on State Registration of Legal Entities absolutely does not reflect the real state of affairs: this article claims that it covers all cases of exclusion of legal entities from the Unified State Register of Legal Entities by the decision of the registering authority in Russian law, but this is not the case.

These conclusions raise the question of the need for a systematic review of all the set of norms created in different years and for different types of legal entities aimed at excluding a legal entity from the Unified State Register of Legal Entities in a judicial or administrative manner. In essence, we should be talking about a complete renovation of the institution of exclusion of a legal entity from the Unified State Register of Legal Entities.

3. The circle of persons who can be excluded from the Unified State Register of Legal Entities, in accordance with Articles 21.1 and 22 of the Law on State Registration of Legal Entities. When introducing the exclusion of a legal entity that has ceased its activities from the Unified State Register of Legal Entities by the decision of the registering authority, the question of which legal entities it applies to was not specifically raised (we do not find these provisions in the explanatory note to the draft Federal Law No. 147600-4), although in separate comments immediately after the adoption of the Federal Law of July 2, 2005 G. No. 83-FZ emphasized that its provisions "are subject to application to any legal entities, regardless of when and on the basis of what legislation they were registered" [6, pp. 8-13].

If we consider the norms of Articles 21.1 and 22 of the Law on State Registration of Legal Entities from the point of view of the terminology used in them, then we were talking about the possibility of their application to all legal entities. Moreover, no other law, except the Law on State Registration of Legal Entities, regulated the specifics of the application of the procedure for excluding a legal entity from the Unified State Register of Legal Entities. Some laws contained only an indication of the specifics of the creation, or state registration, or liquidation and reorganization of legal entities subject to their operation (for example, see: art. 12, 23 of Federal Law No. 395-1 of December 2, 1990 "On Banks and Banking Activities", Articles 1, 21, 25, 26 of the Law on Public Associations, Article 1 of Federal Law No. 7-FZ of January 12, 1996 "On Non-Profit Organizations", Articles 8, 10 of Federal Law of 12 January 1996, No. 10-FZ "On Trade Unions, their Rights and Guarantees of Activity", Articles 11, 14 of the Law on Freedom of Conscience and Religious Associations, Articles 15, 41 of the Law on Political Parties), but they did not indicate the specifics of the exclusion from the Unified State Register.

Doubts regarding the possibility of using the institution of exclusion of a legal entity that has ceased its activities from the Unified State Register of Legal Entities by the decision of the registering authority, in relation to legal entities whose state registration was carried out in a special manner, nevertheless arose due to the fact that the new norms became part of Chapter VII of the Law on State Registration of Legal Entities, i.e., they have become part of the general procedure for state registration of legal entities. Here a general defect of the Law on State Registration of Legal Entities has manifested itself – the lack of a clear understanding of what a special procedure for state registration is, which is only mentioned in Article 10 of the Law on State Registration of Legal Entities. Traditionally, however, it has developed that one of the elements of such a special order is most often (but not always) the separation of the functions of the registering authority and the body conducting the Unified State Register of Legal Entities. In such a situation, the question arose: which of the bodies should decide on exclusion from the Unified State Register?

At the time of the adoption of Federal Law No. 83-FZ of July 2, 2005, this problem was not

ISSN 2658-4050 (Online)

discussed. The corresponding problem was not regulated in the acts of the Federal Tax Service of Russia adopted for the organization of work on the implementation of this law. On this issue, the Federal Tax Service of Russia issued a number of letters already in 2006. If the first of these letters (dated April 13, 2006, No. SHT-6-09/393@) assumed the division of powers between the registering authorities, the procedure for their interaction was determined, then in the second letter (dated August 7, 2006 No. SHT-6-09/770@) The Federal Tax Service of Russia, based on the interpretation of the provisions of the Law on State Registration of Legal Entities, declared itself the authorized body to make a decision on the exclusion from the Unified State Register of all inactive legal entities: "The Federal Tax Service of Russia is the registering body for the purpose of applying the provisions of Federal Law No. 129-FZ and the procedures provided for in Article 21.1 Federal Law No. 129-FZ, including the adoption of decisions on the upcoming exclusion from the Register of public associations, political parties, religious organizations, non-profit organizations, those who have actually ceased their activities, as well as those who have not fulfilled the obligation established by paragraph 3 of Article of Federal Law No. 129-FZ, the publication in the press of these decisions and the adoption of decisions on the exclusion of these legal entities from the Unified State Register of Legal Entities, must be carried out by the tax authorities."

However, the decision on which of the bodies in the state registration system decides on exclusion did not mean at all that the answer to the question was found: is the institute itself applicable to those organizations to which a special procedure for state registration will be applied. The relevance of this issue was given by the conclusions made by the Constitutional Court of the Russian Federation in Resolution No. 26-P of December 6, 2011 regarding the application of the provisions of Article 21.1 of the Law on State Registration of Legal Entities in relation to religious organizations. The Constitutional Court of the Russian Federation made it very clear that its provisions "are designed to be applied to those participants in civil turnover whose activities are mostly localized in the field of property relations and for whom conducting (or not conducting) operations on bank accounts, as a general rule, can serve as a determining sign when deciding whether an organization is operating". By and large, this conclusion meant that such regulation is more relevant for commercial organizations. In relation to religious organizations, according to the Constitutional Court of the Russian Federation, the sign of the absence of transactions on accounts "does not have the same determining value", due to the fact that such organizations "have a special public-legal status and carry out entrepreneurial activity only insofar as it serves to achieve the goals for which they were created, namely for joint confession and dissemination of faith".

In principle, after the said resolution, the norms of Articles 21.1, 22 of the Law on State Registration of Legal Entities must be completely changed in terms of both non-profit organizations as a whole and in relation to other cases when a special procedure for state registration (credit organizations) is used, since the said resolution showed all the artificiality of the approach to the definition of the so-called "invalid a legal entity". However, considering that the conclusions of the Constitutional Court of the Russian Federation did not indicate (unfortunately) the unconstitutionality of the contested provisions of art. 21.1 and 22 of the Law on State Registration of Legal Entities, they did not do this.

However, the Constitutional Court of the Russian Federation took (finally) a more principled position regarding Articles 21.1 and 22 of the Law on State Registration of Legal Entities in Resolution No. 51-P of December 2, 2021; this document not only indicates the inconsistency of the contested norms of the Constitution of the Russian Federation (the subject of consideration was the possibility of excluding garage and garage-building cooperatives) and instructed the federal legislator to ensure the creation of a new regulation, but also noted that "for any non-profit organization ... regular banking operations are not an indispensable manifestation of its statutory activities, and therefore, the failure to carry out operations on one bank account during the last twelve months cannot be regarded as irrefutable evidence of the termination of its

ISSN 2542-1514 (Print)

activities. Accordingly, the failure to submit tax reporting documents during this time, although it may indicate violations of the law and serve as a basis for bringing the cooperative to tax liability, but it should not be considered sufficient to exclude it from the unified state register of legal entities."

These conclusions of the Constitutional Court of the Russian Federation "bring down" almost all elements of the institution of exclusion of a legal entity from the Unified State Register of Legal Entities in its current form; taking into account other problems of this institution (noted above), it is clear that it is currently inapplicable not only for non–profit organizations - its application to commercial organizations is questionable.

Another problem that determines the narrowing of the circle of persons to whom the provisions of Article 21.1 of the Law on State Registration of Legal Entities can be applied is the existence of legal entities created on the basis of a special law or Decree of the President of the Russian Federation. There are a lot of such cases at the moment. Article 49 of the Civil Code of the Russian Federation (since 2016) establishes a special rule: to legal entities created by the Russian Federation on the basis of special federal laws, the provisions of the Civil Code of the Russian Federation a on legal entities apply insofar as otherwise is not provided for by a special federal law on the relevant legal entity. But even without this rule (and before the appearance of public law companies), it was difficult to imagine that the provisions of art. 21.1 of the Law on State Registration of Legal Entities were applied to a state corporation, a state company, a foundation, an autonomous non-profit organization and even a joint-stock company if they were created on the basis of a separate federal law.

In principle, as it seems, when updating this institution, it should:

- firstly, to determine the circle of legal entities that cannot be excluded from the Unified State Register of Legal Entities administratively. Apparently, these will be such persons who are created on the basis of a separate law or decree; most likely, banks will be included in this list, because the specifics of their termination are already such that it is very problematic to present the application to the bank of the rules of Article 21.1 of the Law on State Registration of Legal Entities; it may be necessary to immediately determine the circle of non-profit organizations that do not fall under the application of this procedure (the same religious organizations, political parties); other cases require a separate discussion. However, the issue of the circle of persons can be resolved in another way – by changing the grounds for applying the institute of exclusion from the Unified State Register of Legal Entities;

- secondly, to determine the circle of bodies that make decisions on exclusion. The logic of regulation here, I think, is clear: it depends on how the special procedure for state registration will be regulated, what its elements will be. If the plurality of registering bodies is preserved as its element, then the decision-making on exclusion from the Unified State Register also needs to be divided between different registering bodies, defining the procedure for interaction with the body that maintains the Unified State Register.

4. The procedure for excluding a legal entity from the Unified State Register of Legal Entities in accordance with Articles 21.1 and 22 of the Law on State Registration of Legal Entities.

The procedure for excluding a legal entity from the Unified State Register of Legal Entities in accordance with Articles 21.1 and 22 of the Law on State Registration of Legal Entities is currently not quite clear.

Prior to the entry into force of Federal Law No. 488-FZ of December 28, 2016, this procedure concerned only the exclusion of inactive legal entities. Moreover, part of this procedure was absent in the law, namely, there were no provisions on what (and who) confirms for the registering authority the presence of two signs of an invalid legal entity. This part of the order began to be formed at the level of by–laws - first it was the order of the Federal Tax Service of Russia dated November 16, 2005, No. SAE-3-09/591@, and then the order of the Ministry of Finance of the Russian Federation dated February 28, 2006, No. 32n (still in force). The establishment of the presence of two signs of an inactive person at the same time and the absence of

ISSN 2658-4050 (Online)

a formal restriction (bankruptcy proceedings have been initiated against a legal entity, procedures applied in a bankruptcy case are being carried out) in accordance with paragraph 2 of Article 21.1 of the Law on State Registration of Legal Entities are the grounds for the registration authority to make a decision on the upcoming exclusion of a legal entity from the Unified State Register of Legal Entities.

After the entry into force of Federal Law No. 488-FZ of December 28, 2016, the situation has changed: the procedure provided for in Articles 21.1 and 22 of the Law on State Registration of Legal Entities has also been applied for the case of the impossibility of liquidation of a legal entity due to the lack of funds for the expenses necessary for its liquidation, and the inability to assign these costs to its founders (participants), and for the case of the presence in the Unified State Register of Information in respect of which an entry has been made about their unreliability, for more than six months from the date of making such an entry. At the same time, no special procedure of actions of the registering authority is provided for any of the new cases:

- it is unclear who, when, by what document states the facts of the impossibility of liquidation of a legal entity due to the lack of funds for the expenses necessary for its liquidation, and the inability to impose these costs on its founders (participants). There is no corresponding regulation in Articles 61-63 of the Civil Code of the Russian Federation regulating liquidation issues.;

- it is unclear when the registering authority is obliged to make a decision on the upcoming exclusion of a legal entity from the Unified State Register of Legal Entities in case of a mark of unreliability.

Moreover, the situation in the second case looks even more critical, because making the appropriate decision is the right of the registering authority, and it is unclear when (and why) it will use this right. This gave rise to a well–known problem - the courts began to cancel the relevant decisions, pointing out that in many cases they are taken against actual legal entities, which is unacceptable. At the same time, it should be noted that some courts even in these cases (the presence of a mark of unreliability) are trying to qualify a legal entity as invalid. For example, in one of the reviews of judicial practice, there is a case when the court stated that "in case of non-elimination of the circumstances that served as the basis for making an entry in the Unified State Register, it is presumed that the organization is invalid, and therefore the entry about it is subject to exclusion from the register" (paragraph 3.3 of the Review of Judicial Practice on disputes with with the participation of registration authorities No. 1 (2020), sent by letter of the Federal Tax Service of Russia dated April 9, 2020. No. KV-4-14/6053@). It is impossible to agree with this logic, since to date the list of grounds for recognizing a legal entity as invalid, established by Article 64.2 of the Civil Code of the Russian Federation and Article 21.1 of the Law on State Registration of Legal Entities has not been changed and the law only indicated the possibility of applying the procedure for excluding an invalid person from the Unified State Register to a situation when the Unified State Register contains a record of unreliability for more than six months information. And this (the extension of the procedure to the specified case) does not at all mean the appearance of a new sign of an inactive legal entity.

Accordingly, as the relevant procedure is established today by Articles 21.1 and 22 of the Law on State Registration of Legal Entities, it can be initiated after the decision on the upcoming exclusion is made; such an order looks like this

1) the decision on the impending exclusion must be published in the press bodies, in which the data on the state registration of a legal entity are published, within three days from the date of making such a decision. Simultaneously with the decision on the impending exclusion, information on the procedure and timing of sending applications by the legal entity in respect of which such a decision was made, creditors or other persons whose rights and legitimate interests are affected in connection with the exclusion of the legal entity from the Unified State Register of Legal Entities should be published, indicating the address to which applications can be sent. In addition, in accordance with clause 7 of Articles 7.1, 8.3 of the Law on State Registration of Legal Entities, the decision on the upcoming exclusion of a legal entity from the

ISSN 2542-1514 (Print)

Unified State Register of Legal Entities is subject to mandatory entry by the registering authority itself into the Unified Federal Register of Information on the Facts of the Activities of Legal Entities. According to clause 9 of Article 7.1, the specified information is subject to entry into the Register no later than within five working days after entering this information into the Unified State Register. After entering the specified information, they are subject to placement in the information and telecommunications network "Internet";

2) applications from these persons may be sent or submitted to the registration authority in the ways specified in paragraph 6 of Article 9 of the Law on State Registration of Legal Entities, no later than three months from the date of publication of the decision on the upcoming exclusion, and namely:

- submitted to the registration authority directly. In this case, an application on behalf of a legal entity may be signed by the head of its permanent executive body or another person entitled to act on behalf of this legal entity without a power of attorney; if it is signed by an official representative, then a notarized power of attorney or a copy thereof must be attached to the application, the fidelity of which is notarized. Regarding the certification (witnessing) of the signature of an ordinary individual (citizen), the law does not contain any instructions; regarding the presentation of evidence that a person is the head of his permanent executive body or another person who has the right to act on behalf of this legal entity without a power of attorney, the law also does not contain any instructions, apparently the law proceeds here from the fact that the registering authority itself can check the credentials based on the available records in the Unified State Register of Legal Entities;

- sent by mail (in this case, the authenticity of the signature of the interested individual or the authorized representative of the interested legal entity must be notarized);

- sent in the form of an electronic document signed with an electronic signature, using information and telecommunication networks, including the Internet.

According to clause 4 of Article 21.1 of the Law on State Registration of Legal Entities, applications must be motivated. What is meant by such motivation, and whether it can be regarded as insufficient, as well as what confirms the sufficiency of such motivation, the law of regulatory provisions does not determine;

3) if applications are sent within the specified period (no later than three months from the date of publication of the decision on the upcoming exclusion), then the decision to exclude a legal entity from the Unified State Register of Legal Entities is not taken. According to the conclusions of judicial practice, a repeated procedure for excluding a legal entity from the Unified State Register of Legal Entities cannot be initiated by the registering authority before the expiration of 12 months from the date of termination of the previous procedure (paragraph 3.2 of the Review of Judicial Practice on Disputes involving Registering Authorities No. 2 (2018), sent by letter of the Federal Tax Service of Russia of July 9, 2018 No. GD-4-14/13083);

4) if no applications have been sent or submitted within the specified period (no later than three months from the date of publication of the decision on the upcoming exclusion), the registering authority excludes the invalid legal entity from the Unified State Register of Legal Entities by making a corresponding entry in it. At the same time, we note that the analyzed rules do not take into account the situation when the mail arrives later than making an entry in the Unified State Register of Legal Entities on the exclusion of a legal entity. Obviously, in this case, the decision taken should be canceled, and the record of exclusion from the Unified State Register within the meaning of paragraph 4 of art. 21.1 of the Law on State Registration of Legal Entities. This rule should be explicitly established by law in order to avoid possible contradictory situations. Otherwise, the registering authority has an element of discretion: either to cancel the record or not to do so, indicating to the person who sent the application about the possibility of appealing the actions of the registering authority, which means additional costs and time for the interested person;

5) the exclusion of a legal entity from the Unified State Register of Legal Entities may be appealed by creditors or other persons whose rights and legitimate interests are affected in connection

with the exclusion of a legal entity from the Unified State Register of Legal Entities. Based on Article 25.2 of the Law on State Registration of Legal Entities, an interested person may appeal the decision of the territorial registration authority to a higher registration authority, as well as to the federal executive authority by filing a complaint in accordance with the procedure established by Chapter VIII.1 of the Law on State Registration of Legal Entities, and (or) appealed in court. A deadline has been set for interested persons to appeal against the exclusion of a legal entity from the Unified State Register of Legal Entities – within a year from the day when they learned or should have learned about the violation of their rights. The established beginning of such a period is not optimal from our point of view. Here, it seems, the law could more accurately determine from what specific moment this period is counted.

Assessing the stated procedure for the exclusion of a legal entity from the Unified State Register of Legal Entities, including taking into account a significant number of cases when the courts indicate the infidelity of the actions of the registering authority for exclusion, motivating it with the exclusion of actually operating (and not inactive) legal entities, we can safely say that there is currently no clear and definite procedure for the administrative exclusion of legal entities from the Unified State Register of Legal Entities.

5. Consequences of exclusion of a legal entity from the Unified State Register of Legal Entities in accordance with Articles 21.1 and 22 of the Law on State Registration of Legal Entities.

Exclusion of a legal entity from the Unified State Register of Legal Entities in accordance with Articles 21.1 and 22 of the Law on State Registration of Legal Entities has many interesting consequences. Moreover, some of these consequences arise from the exclusion of any legal entity, and some only of a legal entity of a certain organizational and legal form.

The general norm is established by Article 64.2 of the Civil Code of the Russian Federation: the exclusion of an inactive legal entity from the Unified State Register of Legal Entities entails legal consequences provided for by the Civil Code of the Russian Federation and other laws in relation to liquidated legal entities. When analyzing this rule, attention should be paid to the fact that formally it will apply only to the case of exclusion of an invalid legal entity from the Unified State Register of Legal Entities, whereas Article 21.1 of the Law on State Registration of Legal Entities now covers other cases of exclusion of legal entities that are not classified as invalid. Here, on the one hand, it was possible to consider this situation as a basis for differentiated regulation of consequences. On the other hand, this situation in reality arose only due to the inconsistency of the provisions of Article 64.2 of the Civil Code of the Russian Federation and Article 21.1 of the Law on State Registration of Legal Entities: if the latter was changed (in terms of coverage of cases), the first remained unchanged. Therefore, it should be assumed that the exclusion of a legal entity from the Unified State Register of Legal Entities in all cases specified in art. 21.1 of the Law on State Registration of Legal Entities, as well as in all other cases not covered by this article, entails the same consequences as defined in Article 64.2 of the Civil Code of the Russian Federation: legal consequences that the completed liquidation of a legal entity has.

The main consequence here is the termination of the obligations of a legal entity: in accordance with Article 419 of the Civil Code of the Russian Federation, the obligation is terminated by the liquidation of a legal entity (debtor or creditor), except in cases when by law or other legal acts the fulfillment of the obligation of a liquidated legal entity is assigned to another person (for claims for compensation for damage caused to life or health, etc.). In case of exclusion of a legal entity from the Unified State Register of Legal Entities, the corresponding exceptions practically do not "work".

Formally, duties of various public nature are also terminated, although the legal technique of some legal provisions is not very clear here.

Thus, according to Article 44 of the Tax Code of the Russian Federation, the obligation to pay taxes and (or) fees ceases with the liquidation of the taxpayer organization after all settlements with the budget system of the Russian Federation in accordance with Article 49 of the Tax Code of the Russian Federation. Article 49 of the Tax Code of the Russian Federation provides for two rules in case of

ISSN 2542-1514 (Print)

liquidation: the obligation to pay taxes, fees, insurance premiums (penalties, fines) of the liquidated organization is performed by the liquidation commission at the expense of the funds of the specified organization, including those received from the sale of its property; if the funds of the liquidated organization, including those received from the sale of its property, are not sufficient to fulfill in full the obligation to pay taxes, fees, insurance premiums, penalties and fines due, the remaining debt must be repaid by the founders (participants) of the specified organization within the limits and in accordance with the procedure established by the legislation of the Russian Federation. Thus, these norms are designed for the usual (and, mainly, voluntary) liquidation of a legal entity, although from them there is a basis for the subsequent possible presentation of claims to the main beneficiaries of an organization excluded from the Unified State Register of Legal Entities (if any).

For the case of exclusion of a legal entity from the Unified State Register of Legal Entities, another article of the Tax Code of the Russian Federation – 59 is of greater importance, which determines the procedure for recognizing arrears and arrears on penalties and fines as uncollectible and their write-off. In accordance with this article, arrears, arrears on penalties and fines, which are registered for individual taxpayers, payers of fees, payers of insurance premiums and tax agents, the payment and (or) recovery of which proved impossible in case of exclusion of a legal entity from the Unified State Register of Legal Entities by the decision of the registering authority in the case of a court bailiff-executor of the resolution, are considered hopeless for recovery. on the termination of enforcement proceedings in connection with the return of the enforcement document to the recoverer on the grounds provided for in paragraph 3 or 4 of Part 1 of art. 46 of Federal Law No. 229-FZ of October 2, 2007 "On Enforcement Proceedings" (hereinafter referred to as the Law on Enforcement Proceedings), – in terms of arrears, arrears on penalties and fines not repaid due to insufficient assets of the organization and (or) the impossibility of their repayment by the founders (participants) of the specified organization within and in accordance with the procedure established by the legislation of the Russian Federation.

In accordance with the Law on Enforcement Proceedings (Articles 47, 96), taking into account the explanations given in paragraph 39 of the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 50 dated November 17, 2015 "On the application of Legislation by courts when Considering Certain Issues arising during enforcement proceedings", as a general rule, exclusion from the Unified State Register means termination enforcement proceedings.

If property is found in a legal entity excluded from the Unified State Register of Legal Entities, then interested persons have the right to initiate a procedure for distributing the discovered property among persons entitled to it, in accordance with Clause 5.2 of Article 64 of the Civil Code of the Russian Federation (for problems with the application of this institution, see: [16, pp. 34-39; 17, pp. 31-34]. This right also applies to recoverers - as noted in paragraph 39 of the resolution of the Plenum of the Supreme Court of the Russian Federation dated November 17, 2015 . No. 50 "On the Application of Legislation by Courts when Considering certain issues arising during enforcement proceedings" if the debtor legal entity that has ceased to exist has unrealized property at the expense of which creditors' claims can be satisfied, then the recoverer who has not received execution under the enforcement document, another interested person or an authorized state body has the right to apply to the court with a statement on the appointment of the procedure for the distribution of the discovered property among persons entitled to it, in accordance with paragraph 5.2 of Article 64 of the Civil Code of the Russian Federation.

Special legal consequences are provided for by sub-clause "f" of clause 1 of Article 23 of the Law on State Registration of Legal Entities. On the basis of this rule, the registering authority has the opportunity to refuse state registration (and in all cases) if documents are submitted to include information about the founder (participant) of a legal entity or about a person who has the right to act on behalf of a legal entity without a power of

ISSN 2658-4050 (Online)

attorney in respect of one of the following persons:

- a person owned at least fifty percent of the votes of the total number of votes of the participants of a limited liability company excluded from the Unified State Register of Legal Entities as invalid, provided that at the time of exclusion from the Unified State Register of Legal Entities such a company had debts to the budget or the specified debt was declared uncollectible due to the presence of signs of an invalid legal entity, as well as when provided that at the time of submission of documents for state registration, three years have not expired since the exclusion of the organization from the Unified State Register of Legal Entities;

- a person had the right to act on behalf of a legal entity without a power of attorney (note that this refers to any legal entity, not just a limited liability company as in the previous case), at the time of exclusion of the legal entity from the Unified State Register of Legal Entities as invalid; at the same time, as in the first case, the legal entity at the time of exclusion from the Unified State Register of Legal Entities had debts to the budget or the specified debt was recognized as uncollectible due to the presence of signs of an inactive legal entity, provided that at the time of submission of documents to the registering authority, three years had not expired since the exclusion of the legal entity from the Unified State Register of Legal Entities.

In accordance with Article 64.2 of the Civil Code of the Russian Federation, the exclusion of a legal entity from the Unified State Register of Legal Entities does not prevent the prosecution of persons specified in Article 53.1 of the Civil Code of the Russian Federation. It should be noted that Article 53.1 of the Civil Code of the Russian Federation is aimed at protecting the interests of only one group of persons – participants of a legal entity. This is quite definitely said by P. 1 of this article: "a person who, by virtue of a law, other legal act or constituent document of a legal entity, is authorized to act on its behalf (paragraph 3 of Article 53), is obliged to compensate, at the request of the legal entity, its founders (participants) acting in the interests of the legal entity, losses caused by his fault to the legal entity".

Meanwhile, there is another group of persons – creditors, who may suffer no less (if not more) than the participants, but they are deprived of the right to file a corresponding claim by the provisions of Article 64.2 of the Civil Code of the Russian Federation. However, the situation is different for creditors of limited liability companies. After the amendments introduced by Federal Law No. 488-FZ of December 28, 2016 in art. 3 of the Law on LLC, a rule has been established according to which the exclusion of a company from the Unified State Register of Legal Entities in accordance with the procedure established by the Law on State Registration of Legal Entities entails the consequences provided for by the Civil Code of the Russian Federation for the refusal of the principal debtor to fulfill the obligation. In this case, if the non-fulfillment of the company's obligations (including as a result of causing harm) is due to the fact that the persons specified in paragraphs 1-3 of Article 53.1 of the Civil Code of the Russian Federation acted in bad faith or unreasonably, at the request of the creditor, such persons may be held vicariously liable for the obligations of this company.

This norm caused significant difficulties in its application. It has been the subject of consideration by the Constitutional Court of the Russian Federation more than once (see: Resolution of the Constitutional Court of the Russian Federation No. 20-P of May 21, 2021; rulings of the Constitutional Court of the Russian Federation: No. 630-O of March 26, 2020; No. 2358-O of November 11, 2021). A significant amount of practice on the application of this norm was before the adoption of the last two acts, and therefore their analysis is not indicative for our study (besides, there is a sufficient amount of research that analyzes specific examples and approaches (for example, see: [18, pp. 27-73])), therefore it is advisable, First of all, consider the legal positions of the Constitutional Court of the Russian Federation.

Justifying the compliance of this norm with the Constitution of the Russian Federation, the Constitutional Court of the Russian Federation notes that the reason for its appearance is the widespread practice of evading the liquidation of limited liability companies if such companies have debts, which leads to violation of creditors' rights; accordingly,

ISSN 2542-1514 (Print)

this norm is an attempt by the legislator "to provide a legal mechanism compensating for the negative consequences of the termination of a limited liability company without preliminary liquidation procedures, expressed in the possibility of creditors to bring persons controlling the company to subsidiary liability if their unfair or unreasonable actions caused the non-fulfillment of the company's obligations" (resolution of the Constitutional Court of the Russian Federation No. 20 of May 21, 2021-P; ruling of the Constitutional Court of the Russian Federation No. 2358-O dated November 11, 2021). In these acts, the Constitutional Court of the Russian Federation also noted that subsidiary liability of persons controlling the company is a measure of civil liability, the function of which is to protect the violated rights of creditors of a limited liability company, restore their property status, while the debt arising from subsidiary liability is subject to the same legal regime as other debts, related to the compensation of damage to the property of the turnover participants. Accordingly, when implementing this responsibility, the effect of the general grounds of civil liability is not canceled - in order to bring to responsibility, it is necessary to have all the elements of the composition of a civil offense: unlawful behavior, harm, causal relationship between them and the guilt of the offender. Proceeding from this, the Constitutional Court of the Russian Federation stated that bringing to subsidiary liability is possible only if the court found that the exclusion of the debtor from the Unified State Register of Legal Entities in an administrative manner and the resulting inability to repay the debt arose due to the actions of persons controlling the company and through their fault as a result of their unfair and (or) unreasonable actions (inaction).

The Constitutional Court of the Russian Federation noted that the exclusion of a limited liability company from the Unified State Register of Legal Entities in itself is taking into account the various grounds on which it can be carried out, the possibility of judicial appeal against the actions of the registering authority and the restoration of the legal capacity of a legal entity, as well as taking into account the principles of limited liability, protection of a business decision and the risks invariably associated with entrepreneurial activity - It cannot serve as irrefutable proof of the commission by controlling persons of unfair actions that resulted in non-fulfillment of obligations to creditors, and a sufficient basis for bringing to responsibility in accordance with the provisions of Clause 3.1 of Article 3 of the LLC Law (resolution of the Constitutional Court of the Russian Federation No. 20-P of May 21, 2021). At the same time, based on the position of the consumer creditor in legal relations, according to the Constitutional Court of the Russian Federation, the burden of proof should be distributed in a certain way: if the plaintiff has provided evidence of the existence of losses caused by non–fulfillment of obligations to him, as well as evidence of the exclusion of a limited liability company from the Unified State Register, the controlling person can provide explanations regarding the reasons for exclusion from the REGISTER and provide evidence of the legality of their behavior; in case of refusal to give explanations (including in case of failure to appear in court) or their apparent incompleteness, the defendant's failure to provide the court with appropriate documentation, the burden of proving the legality of the actions of the controlling persons and the absence of a causal relationship between these actions and the inability to fulfill obligations to creditors is imposed by the court on the defendant (resolution of the Constitutional Court of the Russian Federation dated May 21, 2021 No. 20-P). And in the definition of November 11 , 2021 No. 2358-O The Constitutional Court of the Russian Federation noted that the conclusion it had previously made in the said resolution, "related to the subject matter of the case (when the creditor plaintiff is a consumer individual whose rights are also guaranteed by special legislation on consumer protection), does not in itself exclude the application of the same approach to distribution the burden of proof in cases where the creditor is an entity other than an individual, the company's obligation to which arose not in connection with the creditor's business activities." This conclusion is extremely important, the fact is that after the adoption of the resolution of the Constitutional Court of the Russian Federation No. 20-P dated May

21, 2021, practitioners and scientists had fair questions about whether the conclusions of the Constitutional Court of the Russian Federation would be applied in cases where obligations were not fulfilled before exclusion from the Unified State Register, to other (except for consumer citizens) by creditors (see: [19, pp. 95-99]).

Analyzing the provisions of clause 3.1 of Article 3 of the LLC Law, we note:

- in the form of this rule, we are not responsible for bringing a legal entity to a situation where the registering authority was forced to apply a mechanism for excluding a legal entity from the Unified State Register of Legal Entities;

- by itself, the fact of exclusion from the Unified State Register of Legal Entities, the circumstances that led to such exclusion, can and will be considered by the court when bringing to subsidiary liability the persons specified in Article 53.1 of the Civil Code of the Russian Federation. The persons being held liable may submit their explanations, and depending on their assessment by the court, either the grounds for their liability to the creditor may be established, or they are not;

- the establishment of responsibility in these cases should be recognized as correct, however, a wide range of persons (through a link to paragraphs 1-3 of Article 53.1 of the Civil Code of the Russian Federation) involved in it looks somewhat strange. If we are talking about responsibility not for bringing to the situation of exclusion from the Unified State Register, then what does most of the persons specified in the specified norm have to do with it? The main person responsible (in a positive sense) for fulfilling obligations to creditors is one person who, by virtue of a law, other legal act or constituent document of a legal entity, is authorized to act on its behalf; he is also the person whose behavior should be evaluated from the point of view of actual responsibility (as sanctions for illegal behavior). Members of collegial bodies are, most often, persons who have no relation to the fulfillment of obligations to creditors (the exception is members of collegial executive bodies). Persons who have the actual ability to determine the actions of a legal entity, including the ability to give instructions to the above-mentioned persons, is a category in our legislation as a whole not very defined; Theoretically, this can include large (majority) participants and shadow beneficiaries, but proving their participation in harming creditors is extremely difficult. Thus, the main subject of bringing to subsidiary responsibility will be precisely the person who, by virtue of a law, other legal act or constituent document of a legal entity, is authorized to act on its behalf, excluding the situation when this person performed his functions nominally, including the situation when such a person is determined from the point of view of the Criminal Code of the Russian Federation (art. 173.1) as a substitute, but also only in certain cases;

- it is surprising that only the controlling persons of limited liability companies were chosen as the "victim", while creditors of other legal entities excluded from the Unified State Register of Legal Entities are deprived of this right. From our point of view, this circumstance alone should have led the Constitutional Court of the Russian Federation to completely opposite conclusions – the unconstitutionality of Clause 3.1 of Article 3 of the Law on LLC, since creditors of limited liability companies receive advantages over creditors of other legal entities excluded from the Unified State Register of Legal Entities;

- the conclusion in the previous paragraph reinforces another circumstance, which for some reason the Constitutional Court of the Russian Federation did not pay attention to at all: as we have already noted, exclusion from the Unified State Register of Legal Entities (administrative and judicial) is used in other cases, however, subsidiary liability is established only for cases of exclusion from the Unified State Register of limited liability companies.

In general, assessing the provisions of the current legislation on the consequences of excluding a legal entity from the Unified State Register of Legal Entities, it is impossible not to state the absence of a system. This requires, as it seems, a serious change in the current regulation.

6. Results of the Institute's application. Conclusions.

The use of the institution of exclusion of a legal entity from the Unified State Register of Legal Entities in accordance with the procedure provided

ISSN 2542-1514 (Print)

for in Articles 21.1 and 22 of the Law on State Registration of Legal Entities, taking into account those changes that were adopted in 2013-2016 (first of all, Federal Laws No. 67–FZ of March 30, 2015 and No. 488 of December 28, 2016-Federal Law) led to a significant reduction in the number of legal entities, but what is most interesting is that (and the statistics given in the Table "The number of excluded legal entities (by year) in the period from January 1, 2015 until January 1, 2022"), that the main type of legal entity to which this institution was applied was a limited liability company. This goal is obvious if we analyze the changes in Article 3 of the Law on LLC in terms of subsidiary liability of controlling persons to creditors.

Returning to statistics, it is necessary to cite some more figures for the results of 2021, the benefit is that the information resources of the Federal Tax Service of Russia at the present time (and we must pay tribute to the Federal Tax Service of Russia in the development of relevant resources) are very indicative: out of 330,368 legal entities excluded from the Unified State Register of Legal Entities: 98,414 are excluded as inactive (89,951 of them are commercial, in turn, from among them - limited liability companies – 88 108); 231,946 – excluded due to the presence in the Unified State Register of more than 6 months of records of unreliability of information (of which commercial – 229,836, in turn, of which limited liability companies – 226,991); 8 - due to the impossibility of liquidation (all – limited liability companies). And these figures, taking into account the above comments on the existing regulation, make you think: the exception is mainly carried out on the basis of the presence of a record of the unreliability of a number of information in the Unified State Register of Legal Entities. With. - not all the information specified in art. 5 of the Law on State Registration of Legal Entities, we emphasize this, but only some, because from the analysis of Articles 11 and 21.1 of the Law on State Registration of Legal Entities, it is clear that a mark of unreliability is made only when establishing the reliability of three types of information: a) the address of the legal entity (sub-clause "b" of clause 1 of Article 5 of the Law on state registration of legal entities); b) information about the founders (subclause "d" of clause 1 of Article 5 of the Law on State Registration of Legal Entities); c) information about the sole executive body (subclause "l" of clause 1 of Article 5 of the Law on State Registration of Legal Entities). Establishing the unreliability of other information in the Unified State Register of Legal Entities does not lead to making a mark of unreliability of information in the Unified State Register of Legal Entities! Obviously, the state authorities want to know where the legal entity is located and who makes the key decisions in this legal entity. And how correct is this at all? After all, in this way, the goal of ensuring the reliability of information in the Unified State Register is actually achieved. In fact, we are witnessing a substitution of goals – not to ensure the reliability of the data of the Unified State Register of Legal Entities (of which there are more than two dozen), which was stated in the Concept of the Development of Civil Legislation, but to solve fiscal goals. These are questions about the politics of law, but they obviously need to be raised.

The same issue of a political and legal nature is the multiplicity of cases of exclusion of legal entities from the Unified State Register of Legal Entities, some of which are administrative termination, and some judicial, and with different consequences. Question: why, if some documents are not submitted by individual legal entities, there is an administrative procedure for excluding an invalid legal entity, while the failure of other documents by other legal entities is the basis for applying to the court with a demand for recognition of the organization that has ceased its activities as a legal entity and for its exclusion from the Unified State Register? The current law and doctrine have no answer to it .

An important issue is the ratio of institutions of compulsory liquidation and exclusion of a legal entity from the Unified State Register of Legal Entities. In some studies, the point of view is expressed that the institution of exclusion from the Unified State Register of Legal Entities is just a type of compulsory liquidation [20, p. 15]; however, the logic may be directly opposite. In the process of potential reform of the institution of exclusion from the Unified State Register of Legal Entities, this issue

ISSN 2658-4050 (Online)

requires special discussion.

The next issue of a political and legal nature is the circle of legal entities to which the relevant procedures and grounds for their application are applied, and, especially, the procedure provided for in Articles 21.1 and 22 of the Law on State Registration of Legal Entities. After the above legal positions of the Constitutional Court of the Russian Federation, it should be stated that there is complete uncertainty in these issues. And this means that it is no longer just a change in the existing legal norms that is required here, but the creation of a new regulation.

ISSN 2542-1514 (Print)

REFERENCES

1. Gabov A.V. *Reorganization and liquidation of legal entities*, scientific and practical commentary on articles 57-65 of the Civil Code of the Russian Federation. Moscow, Institute of Legislation and Comparative Law under the Government of the Russian Federation Publ., INFRA-M Publ., 2014. 203 p. (In Russ.).

2. Gabov A.V. Evolution of the registration system for creating legal entities in Russia: main stages and trends. *Uchenye zapiski Kazanskogo universiteta. Seriya Gumanitarnye nauki = Scientific notes of Kazan University: Humanities Science*, 2019, vol. 161, bk. 4, pp. 77–126. (In Russ.).

3. Gabov A.V. Reliability and unreliability of information (data) included or included in the Unified State Register of Legal Entities: history, theory and practice, in: Karelina S.A., Lakhno P.G., Shitkina I.S. (eds.). *Predprinimatel'skoe pravo: sovrenennyi vzglyad*, Moscow, Yustitsinform Publ., 2019, pp. 364–407. (In Russ.).

4. Gabov A.V. Errors in the information (data) that make up the Unified State Register of Legal Entities: types and methods of elimination. *Pravoprimenenie = Law Enforcement Review*, 2021, vol. 5, no. 2, pp. 209–230. DOI: 10.52468/2542-1514,2021.5(1).209-230. (In Russ.).

5. Shitkina I.S. (ed.). *Scientific and practical commentary on the Federal Law "On Limited Liability Companies"*, in 2 volumes. Moscow, Statut Publ., 2021. Vol. 1. 621 p. (In Russ.).

6. Sarbash S.V. Exclusion from the register of inactive legal entities. *Khozyaistvo i pravo = Economy and law*, 2005, no. 11, pp. 8–13. (In Russ.).

7. Vitryansky V.V. Reform of the first part of the Civil Code of the Russian Federation. *Arbitrazhnye spory = Arbitration disputes*, 2016, no. 1, pp. 70–83. (In Russ.).

8. Vitryanskii V.V. *Reform of the Russian civil legislation: intermediate results*, 2nd ed. Moscow, Statut Publ., 2018. 528 p. (In Russ.).

9. Miftakhutdinov R.T. *Problems of optimizing the termination of legal entities without succession*, Cand. Diss. Thesis. Moscow, 2011. 31 p. (In Russ.).

10. Chukreev A.A. Exclusion of a legal entity from the Unified State Register of Legal Entities by decision of the registering authority, in: *Pravovye sredstva stimulirovaniya aktivnoi zanyatosti i povysheniya konkurentosposobnosti na rynke truda*, Collection of scientific articles, Tyumen, 2019, pp. 134–145. (In Russ.).

11. Spesivtseva E.V. Administrative procedure for the liquidation of a legal entity. *Vestnik Chelyabinskogo gosudarstvennogo universiteta. Seriya: Pravo = Bulletin of the Chelyabinsk State University. Series: Law*, 2017, vol. 2, no. 4, pp. 105–109. (In Russ.).

12. Chinchevich E.V. Termination of an inactive legal entity in the light of recent changes in civil legislation. *Vestnik SGYuA = Bulletin of the SGUA*, 2015, no. 4 (105), pp. 80–83. (In Russ.).

13. Gordeeva E.V. State registration of legal entities in the draft Civil Code of the Russian Federation. *Zhurnal rossiiskogo prava = Journal of Russian Law,* 2013, no. 2, pp. 117–121. (In Russ.).

14. Cherepanova Yu.P. Exclusion of a legal entity from the Unified State Register of Legal Entities. *Vestnik arbitrazhnoi praktiki = Bulletin of Arbitration Practice*, 2021, no. 4, pp. 46–51 (In Russ.).

15. Shashkin D. The fate of "abandoned" companies. *Administrativnoe pravo = Administrative law*, 2016, no. 3, pp. 66–69. (In Russ.).

16. Laptev V.A. The procedure for the distribution of the discovered property of a liquidated legal entity (legal aspects). *Yurist = Lawyer,* 2020, no. 12, pp. 34–39. (In Russ.).

17. Mavrina Yu.F. Distribution of Corporation Property as One of the Consequences of Excluding a Legal Entity from the Unified State Register of Legal Entities: Issues of Theory and Practice. *Grazhdanskoe pravo = Civil Law*, 2021, no. 4, pp. 31–34. (In Russ.).

18. Sobolev S.I. Preparation of the institution of subsidiary liability in the administrative liquidation of the debtor. *Vestnik ekonomicheskogo pravosudiya Rossiiskoi Federatsii = Bulletin of economic justice of the Russian Federation*, 2021, no. 6, pp. 27–73. (In Russ.).

19. Olevinsky E., Solomatina D., Ulezko A. Debts must be repaid. The Constitutional Court of the Russian Federation obliged the heads of liquidated companies to answer to creditors. *Administrativnoe pravo = Administrative law*, 2021, no. 3, pp. 95–99. (In Russ.).

20. Emshanov I.S. Exclusion of an inactive public association from the Unified State Register of Legal Entities. *Yurist = Lawyer*, 2010, no. 3, pp. 59–63. (In Russ.).

21. Baranova A.N. *Administrative-legal activity of tax authorities on the forced liquidation of commercial organizations*, Cand. Diss. Thesis. Voronezh, 2010. 24 p. (In Russ.).

INFORMATION ABOUT AUTHOR

Andrey V. Gabov – Doctor of Law, Corresponding member of the Russian Academy of Sciences, full member of the Academy of Military Sciences; [1] Acting Head, Civil and Business Law Sector, Chief researcher; [2] Scientific Director, Law Institute

[1] *Institute of State and Law of the Russian Academy of Sciences*

[2] *Belgorod State National Research University*

[1] 10, Znamenka ul., Moscow, 119019, Russia

[2] 85, Pobedy ul., Belgorod, 308015, Russia E-mail: andrey.gabov.00@mail.ru

RSCI AuthorID: 292511

IstinaResearcherID (IRID): 1224554

ORCID: 0000-0003-3661-9174

ResearcherID: Q-9357-2017

BIBLIOGRAPHIC DESCRIPTION

Gabov A.V. Exclusion of a legal entity from the Unified State Register of Legal Entities: cases of use, procedure and consequences. *Pravoprimenenie = Law Enforcement Review*, 2022, vol. 6, no. 2, pp. 204–230. DOI: 10.52468/2542-1514.2022.6(2).204-230. (In Russ.).