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PROBLEMS IN LEGAL REGULATION OF TERMINATION OF PRINT MEDIA

The article provides legal and scientific study of termination of print media in Ukraine. It performs complex analysis of information legislation and judicial practice in this area. The paper reveals peculiarities to invalidate the state registration certificate of print media. It analyzes liquidation of legal entity-founder of print media as a ground for termination of its activity and correlation between the concepts "decision on cessation of publication", "decision on termination of print media" and "decision on invalidation of the state registration certificate of print media". The author proposes own approach for classification of termination of print media activity based on legal grounds for such termination. The author proposes amendments to current legislation in the area of termination of print media.

Key words: termination of print media, information activities of print media, print media, invalidation of the certificate, cessation of publication, classification, amendments to legislation.

Formulation of the problem. Print media are one of the main means of formation and distribution of mass information. Establishment of print media and its information activity is implementation of right for freedom of thought and speech. Termination of activity is one of the stages in functioning of print media, but current legislation in this area contains a number of flaws, which complicate its interpretation and enforcement of information law.

Level of exploration. Specific issues about legal regulation of print media were studied by K.I. Beliakov, L.I. Bilovus, V.M. Bryzhko, Yu.P. Burylo, S.E. Demskyi, A.I. Maruschak, A.V. Oliynyk, E.V. Nesterenko, A.N. Novytskyi, T. Shevchenko, V.I. Shpak, T.V. Chubaruk, V.S. Tsymbaliuk and others. But nowadays comprehensive legal studies on state registration and termination of print media were not provided.

Relevance of the research is also supported by the fact that existing legislation in this area is obsolete and does not meet modern requirements; it contains a number of provisions which determine variable law enforcement and some terminological discrepancies. Therefore, **the purpose** of the article is to study legal regulation of termination of print media; and accomplishment of this purpose implies realization of the following **tasks**: to analyze legal framework on termination of print media; to research legal basis for recognizing state registration certificate invalid; to analyze correlation between concepts "decision on cessation of publication", "decision on termination of print media" and "decision on invalidation of the state registration certificate of print media"; to study termination of print media as a result of liquidation of a legal entity-founder; to provide suggestions for improving current legislation and the author's classification of termination of print media activity based on legal grounds for such termination.

Presentation of the basic material. Registering body (The Ministry of Justice of Ukraine) upon written notice of a founder (co-founders), agreed with editorial office, or a court decision on termination of print media decides to invalidate the certificate on state registration¹.

Imperfections in legal regulation concerning invalidation of the state registration certificate may be explained by the fact that a decision of a founder (co-founders) about termination of print media does not bind them to appeal to registering body to recognize the state registration certificate invalid. Thus, the Law of Ukraine "On Print Media (Press) in Ukraine"² (hereinafter - the Law) entitles the founder (co-founder) to decide on the appropriateness of such action. Considering that this requires, firstly, making a special written request to registering authority with a package of documents and wait for a month for a decision; and secondly, to return invalidated certificate of state registration back, within ten days from the date of

¹ Про затвердження Положення про державну реєстрацію друкованих засобів масової інформації в Україні та Положення про державну реєстрацію інформаційних агентств як суб'єктів інформаційної діяльності 2006 (Міністерство юстиції України). *Офіційний вісник України*, 9, 151.

² Закон про друковані засоби масової інформації (пресу) в Україні 1992 (Верховна Рада України). *Відомості Верховної Ради України*, 1, 1.

notification, it seems logical to assume that there is now a large number of decisions of founder (co-founders) on termination of print periodicals, which still have valid certificates of state registration.

But if this assumption is correct that begets a new problem, and it is not only about erroneous impressions of statistical data about the number of registered print media, what intrinsically is just fixation of the number of people who used the right to establish print media, but it is about reasons for refusal in registration of print media, one of which is the existence of print media with the same title. The exception is editions in different languages. In practice this may cause a problem for a founder (co-founders) to choose a title for print media, and also indefinitely prolong foundation of print media in case of repeated refusals on a such ground. There is a possibility to prevent the last situation by checking a title in the State Register of print media and news agencies as subjects of information activity (hereinafter - the State Register); but absence of legal tools for invalidation of registration certificate of print media without a court decision on cessation of publication of edition or without written notification of a founder (co-founders) about cessation of publication, may create completely objective constraints for registration of print media with a desirable, relevant, compelling title, since there is a previously issued certificate of state registration of print media with the same title.

Lviv Administrative Court of Appeal in its decision of 16 February in the case № 25279/10 stated¹ that laws and regulations governing activities of media in Ukraine do not provide abolishment of certificate on registration of print media. Therefore, as the plaintiff requested to cancel the certificate of state registration of print media, choosing by this protection not provided by law, in this case, the plaintiff's claims should be rejected.

Based on these conclusions, it seems reasonable to suggest the next amendments to legislation:

1) to fix an obligation of founders (co-founders) to submit to the registering body a written notice about a decision to cease publication of print media in order to acknowledge the state registration certificate of such print media invalid during a specific period, as, for example, one month from the date of that decision of founders (co-founders);

2) to establish administrative responsibility for violation of this obligation;

3) to entitle a founder (co-founders) to take decisions about temporary termination of print media up to 1 year with the right of one-time prolongation for the same period, and in the case of non-publication after expiration of such prolongation to oblige a founder (co-founders) to take decision about termination of print media with simultaneous notification of the registering body;

4) to simplify procedures for such notification, implementing e-government opportunities; as far as a founder (co-founders) only notify registering body about a decision, but not asks for permission to terminate releases, therefore it is inappropriate: a) to submit expanded package of documents; b) to wait a month from the date of notification of a founder (co-founders) for a decision, and then wait for some time to get this message; c) to return invalidated certificate of state registration back, within ten days from the date of notification. Simplified procedure should provide one-time submission of a copy of a decision to cease publication of print media approved by a founder (co-founders) and original of the state registration certificate of print media, and also duty of the registering body immediately to make appropriate changes to the State Register after obtaining such documents and to provide legal conclusions on recognition of the certificate invalid.

Implementation of these changes will help to ensure the right to establish print media.

Let's critically analyze article 19 of the Law, according to which a decision about cessation of publication may be appealed by a founder (co-founders) in a court. But a decision to cease publication is taken either by a founder (co-founders) or by a court when abuse of freedom of press or liquidation of a legal entity-founder of media takes place.

Hence, we conclude that according to legislative rule a founder (co-founders) should have been suing himself (to appeal against its own decision on cessation of publication instead of its restoration), what is illogical, or to appeal against appropriate court decision.

However, in the article 19 of the Law legislator, obviously, implies that this appeal relates to invalidation of registration certificate of print media by registering body. Recognition of registration

¹ *Справа про скасування свідоцтва про державну реєстрацію друкованого засобу масової інформації за позовом товариства з обмеженою відповідальністю «Видавничий дім «ОГО» до Головного управління з питань внутрішньої політики та інформації Рівненської обласної державної адміністрації, Головного управління юстиції у Рівненській області (ухвала), № 25279/10, ЛААС 2012.* <<http://www.reyestr.court.gov.ua/Review/21974062>> (2015, September, 06).

certificate invalid is exercised upon written notice of a founder (co-founders) agreed with editorial office, about cessation of print media, or by a court decision on cessation of publication. Again, a founder (co-founders) should not appeal against actions of registering body undertaken on the basis of written notice of the same founder (co-founders).

Thus, it is logical to establish that a founder (co-founders) have the right to appeal to court against invalidation of the registration certificate, exercised by registering body on the basis of a court decision on cessation of publication.

To prevent inconsistent interpretation and enforcement of the concept of "the right to appeal against a decision on cessation of publication of print media" and "the right to appeal against recognition of a certificate invalid" we propose the following amendments for the Law of Ukraine "On Print Media (Press) in Ukraine":

Part one of Article 19 shall read as follows:

"A refusal on state registration of print media or violation of established order of state registration prescribed by Article 13 of this Law and recognition of a certificate invalid may be appealed by a founder (co-founders) in a court".

Analysis of the Law of Ukraine "On Print Media (Press) in Ukraine" and the Regulation on state registration of print media in Ukraine (hereinafter – the Regulation) showed that legislation uses terms "decision on termination of print media", but does not explain how it correlates with the concepts of "the decision cessation of publication of media" and "the decision to recognize registration certificate invalid".

In particular, a decision on termination of print media is referred to in subparagraph 3, paragraph 2.8, chapter 2 of the Regulation, in paragraph 3, part 1 of the article 15 and in the article 19 of the Law. These norms enshrine:

- 1) the reason for denial of state registration: if an application is submitted before the end of a year from a date when decision to terminate print media entered into force;
- 2) compensation for losses caused to a founder (co-founder), including lost profits, due to cancellation of a court decision on termination of print media.

Release of print media is carried out after its state registration, that is print media is created after entering of relevant data to the State Register. By analogy with Ukrainian legislation on termination of a legal entity¹, we may assume that termination of print media is the fact of inclusion of data about recognition of certificates invalid or void into the State Register.

Also, we consider it incorrect to use concepts about certain "decisions" of a registering body on recognition of registration certificate invalid or void, or in general - decisions on termination of print media. In particular, the government body that carries out state registration (re-registration) of print mass media does not decide whether to recognize a registration certificate invalid or not, because it automatically recognizes the certificate void in case of violation of one year period to publish the first circulation of print media; it automatically recognizes the certificate invalid on the basis of a court decision on cessation of publication; as well as the law does not provide a registering body with a necessity of voluntary actions to recognize registration certificate invalid if a founder (co-founders) submitted written notice agreed with editorial office on cessation of publication.

Thus, the District Administrative Court of Kyiv in its decision of 23 November 2010 № 2а-16019/10/2670 notes that paragraph 2 of the article 16 of the Law contains imperative rule of direct action, if a founder (co-founders) do not start publication of print media within one year since receiving the certificate (without good reason), issued certificate of registration loses validity.

That is, in this case the legislator prescribes an automatic reason to invalidate the certificate in case of non-publication of print media within one year since receiving the certificate².

Certain volitional decisions of the registering body are needed at a stage of state registration when it authorizes a decision of a founder (co-founders), who decided to exercise their right to establish print media. Only on exhaustive list of legal grounds the registering body refuses to authorize this decision, but a refusal must be motivated, and consideration of each case is accompanied by a comprehensive assessment of legislation and specific circumstances. According to paragraph 6.1 chapter 6 of the Regulation a decision

¹ Цивільний Кодекс України 2003 (Верховна Рада України). Офіційний вісник України, 11, 7.

² Справа про скасування наказу та зобов'язання вчинити дії за позовом ТОВ «Видавничий Дім Український Медіа Холдінг» за участю ТОВ «Медіа Прінт» до Міністерства юстиції України (постанова), № 2а-16019/10/2670, ОАСК 2010. <<http://www.reyestr.court.gov.ua/Review/12575160>> (2015, September, 06).

on state registration, a refusal of state registration or suspension of application consideration is documented by registering body with an order and legal conclusion.

We consider reasonable a proposal to fix the right of a founder (co-founders) to restore a state registration certificate within one year after its invalidation. In case of simultaneous submission of a request to restore a state registration certificate and application for state registration of print media with the same title, the right to restore a state registration certificate should be considered preferred. During this year after invalidation of a state registration certificate according to paragraph 3, part 1 of the article 15 of the Law a reason for refusal of state registration of print media is in force.

As we have already identified in part 1, article 19 of the Law legislator actually gives a founder (co-founders) the right to appeal to court against invalidation of the state registration certificate, but not a right to appeal against a decision on cessation of publication.

Thus, provisions of the Law on compensation for losses caused to a founder (co-founders), including lost profits, due to cancellation of a court decision on termination of print media, means compensation for losses due to cancellation of a court decision on cessation of publication, which was accepted by a court based on violations of requirements of article 3 of the Law.

We may assume that liquidation of a legal entity-founder, regardless of type of liquidation, automatically spurs liquidation commission to notify court about liquidation of a legal entity-founder of print media; on this basis, according to part 3 of article 18 of the Law, the court decides to terminate print media. In case of reorganization (merger, joining, separation, transformation) of a legal entity-founder other legal procedures, involving transition of rights and obligations of a legal entity to a legal successor, are applicable.

Ukrainian legislation does not define how to solve the problem when co-founder of print media is a liquidating legal entity. Let's assume that in such case a legal entity, liquidating by a joint decision of all co-founders, secedes from co-founders of print media. According to article 20 of the Law and paragraphs 3.1–3.3 of the Regulation such a decision is formalized by an agreement between co-founders, and changing composition of co-founders involves re-registration and receiving a new registration certificate of print media.

Thus, termination of print media is recognition of the state registration certificate of print media to be invalid and entering of relevant data to the State Register. Based on these implications we may classify termination of print media based on legal grounds for such termination:

- 1) voluntary termination of print media, which is carried out by registering body upon written notice of a founder (co-founders) agreed with the editorial office;
- 2) forced termination of print media, which is carried out by registering body based on a court decision due to violations by print media of the article 3 of the Law of Ukraine "On Print Media (Press) in Ukraine";
- 3) termination of print media conditioned by legislation, which is made by registering body on the basis of: a) a court decision following liquidation of a legal entity-founder of print media; b) non-publication without good reason of print media within one year since receiving the state registration certificate to start an edition.

In the absence of specified legal grounds from legal position print media will be regarded as operating, because according to paragraph 2.16 of the Regulation the registration certificate of print media has unlimited duration.

It should also be noted the actual termination of print media by a decision of a founder (co-founders) on cessation of publication without following notification of the registering body. The decision of a founder (co-founders) on cessation of publication does not entail legal termination of print media, which should be implemented by registering authority by issuing a legal conclusion and order on recognition of the registration certificate of print media invalid, with the following relevant amendments to State Register. Therefore, such a decision can not be considered as termination of print media from a legal point of view. Ukrainian legislation does not establish an obligation of a founder (co-founders) to inform the registering body about a decision on termination of print media.

Termination of print media conditioned by legislation, which is made by registering body on the basis of non-publication without good reason of print media within one year since receiving the state registration certificate to start an edition, is regulated by the article 16 of the Law and paragraphs 2.17 and 6.1 of the Regulation.

A founder (co-founders) reserves the right to start publishing print media within one year since the

date of receiving the certificate. In case of missing this term without good reason issued certificate of registration loses validity. According to part 4 of the article 1 of the Law print media is considered to be issued when it signed up for publication and printed with any circulation. Spheres for distribution of print media are not restricted.

Resolution of the Cabinet of Ministers of Ukraine "On the order for delivery of mandatory copies of documents" from 05.10.2002 № 608¹ defines beneficiaries of compulsory free copies of Ukrainian editions, according to which, for instance, The National Library named after V.I. Vernadskyi, The National Parliamentary Library, The Book Chamber are subjects to receive mandatory copies of all books in all languages, published in Ukraine, including small circulation editions (under 100 copies).

From legal point of view print media, which was released only once, but during the first year after obtaining the registration certificate will be deemed as not stopping its activity.

This conclusion is confirmed by the ruling of the Supreme Administrative Court of Ukraine from March 12, 2013 № K/9991/36938/11. The Court determined that the letter from the National Library of Ukraine named after V.I. Vernadsky from 18.02.2009 № 37/146 and a letter from state scientific institution "The Book Chamber of Ukraine named after Ivan Franko" from 09.02.2009 № 85/05 confirmed that the latter received the newspaper "Osnova" of a private company "Creative association "World", including a copy of issue №1 for 1994. Thus, a founder of the newspaper "Osnova" started edition of print media, and therefore there are no grounds to invalidate the registration certificate of this print mass media².

Conclusions. Current Ukrainian legislation on termination of print media needs profound improvement. In order to eliminate these disadvantages the author proposed:

1) to fix an obligation of a founder (co-founders) to submit to the registering authority a written notice about a decision on cessation of publication of print media, to simplify the procedure for such submission and to establish administrative responsibility for violation of this obligation;

2) to entitle a founder (co-founders) to take decisions about temporary termination of print media up to 1 year;

3) to fix the right of a founder (co-founders) to restore a state registration certificate of print media;

4) to amend the article 19 of the Law of Ukraine "On Print Media (Press) in Ukraine" with the right of a founder (co-founders) to appeal to court against invalidation of the state registration certificate, but not a right to appeal against a decision on cessation of publication.

It was concluded that: 1) the registering authority does not take volitional decisions on termination of print media, and the legislation provides mandatory rules of direct action for recognition of certificates invalid or void; 2) liquidation of a legal entity-founder of print media automatically spurs liquidation commission to notify registering body about liquidation of a legal person-founder of print media.

It was proposed to classify termination of print media based on legal grounds for such termination as following: 1) voluntary termination of print media; 2) forced termination of print media; 3) termination of print media conditioned by legislation.

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² *Справа про визнання протиправними дій, недійсним свідоцтва, незаконними відмову та бездіяльність та зобов'язання вчинити певні дії у зв'язку з касаційною скаргою Всеукраїнської громадської організації «Основа»* (ухвала) № K/9991/36938/11, ВАСУ 2013. <<http://www.reyestr.court.gov.ua/Review/29931816>> (2015, September, 06).

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