

The genesis of the emergence and development of self-regulation in Russia**Anna F. Algazina***Dostoevsky Omsk State University, Omsk, Russia*

The subject. The study of the Genesis of the emergence and development of any phenomenon allows to know its essence, as well as to make a prediction about the prospects for its further development. Given the importance of self-regulation in the context of the changes in our country, administrative reform, addressing the problems of the Genesis of self-regulation is very timely and relevant.

The purpose of the article is to reveal the peculiarities of the emergence and development of self-regulation in Russia.

Methodology. The methodological basis for the study: general scientific methods (analysis, synthesis, comparison, description); private and academic (comparative legal, interpretation, formal-legal).

Results, scope. Under self-regulation this article is to understand the management activities carried out by self-regulatory organizations, and consisting in the development and establishment of standards and rules of professional activity, as well as sanctions for non-compliance or inadequate performance. Based on the author's proposed definition of "self-regulation", the fundamental criterion for the recognition of any organizations the prototype of the modern self-regulating organizations was selected the purpose of their creation: regulation of activity of subjects of professional activities and the availability of appropriate given the objectives of the authority. The study of the history of creation and functioning of associations of subjects of professional activity allows to conclude that self-regulation is not fundamentally new, previously unknown in our country a legal phenomenon.

Conclusions. The first prototypes of self-regulatory organizations originated in Russia in the Middle ages as a voluntary Association of merchants.

In the XVIII century found the beginnings of a model of mandatory self-regulation. In this period at the state's initiative used the European experience, was created workshops as an organizational form of Association of artisans, granting the right to engage in trade.

In the Soviet period on the self-regulation can only speak as declaratory of the principle of functioning of the legal profession.

The emergence of self-regulation as a special kind of management activities occurred in Russia in late 1990s – early 2000-ies. The greatest degree of legal regulation-regulation achieved after the adoption of the Law on SRO, established a combination of voluntary and mandatory models of self-regulation.

Keywords: public administration; managerial activity; self-regulation; self-regulating organization; craft guilds; corporate associations; professional activity; subjects of professional activity.

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Introduction.

Research of the process of origin and development of any phenomenon allows us to identify the prerequisites for its occurrence and the features of functioning at the present stage,

and also to make a forecast concerning its further development. The study of genesis is of particular importance when it comes to dynamically developing phenomena affecting both private and public interests. Self-regulation is such a phenomena.

According to Part 1 of Art. 2 of the Federal Law dated 01.12.2007 number 315-FZ "On self-regulatory organizations" [1] (hereinafter - Act SRO) self-regulation is an independent activity carried by subjects of business and professional activity and the content of which is the development and establishment of standards and rules specified activity, as well as monitoring compliance of these standards and regulations requirements .

At the same time, the legal definition of the concept of "self-regulation" does not appear to be flawless from the position of the theory of public administration and the laws of formal logic. The study of several works on public and local rule and law in theory [1, p. 63-64; 2, p. 10; 3, c. 150; 4, p. 41; 5, p. 47-49; 6, p. 56; 7, p. 21-30] allows us to conclude that the regulation is a component of the broader concept of "governance", along with control, accounting, forecasting, coordination, etc.

In our opinion, self-regulation can be defined as a management activity carried out by self-regulatory organizations, consisting in the development and establishment of standards and rules of professional activity, as well as sanctions for non-performance or improper performance. In the case of compulsory self-regulation, this type of activity acquires a public character and the SRO, which transfers publicly-authoritative powers, has the right to take management actions with respect to persons who are not in their official dependence on them, that is, administer [8, p. 35- 37].

1. The origin of the elements of self-regulation: the international experience.

The origin of the elements of self-regulation is associated with various historical periods.

A number of authors believe that the origin of the foundations of self-regulation occurred in the Ancient period. Thus, I.G. Morozova [9, c. 77] detects the beginnings of self-regulation in the VI. BC, when the Roman society created trade unions of artisans, bakers, sewers, etc. "The researchers believe that all the free alliances that ever existed in Rome were of a public nature and arose on the basis of public law. ... In the imperial era and later, in the postclassical era, hereditary shops were formed, whose members, together with their descendants, were obliged to send a certain craft as a duty in favor of the state, which for this freed them from carrying other burdens. Such were the colleges of artisans, bakers and bakers, shipmen in Rome and provinces. ... colleagues who have not been directly established by the Government, and formed by the artisans, because of the unity of craft or industrial specialty, acquired the same coercive nature "[10, c. 49-50].

The most common is the view that the first manifestations of self-regulation belong to the Middle Ages. "In every city," wrote G.F. Shershenevich, - the merchants were divided into corporations according to the subject of their trade. It developed a special custom for each corporation, "and" to strengthen state sovereignty takes on the task dispensation private relations of society "[11, c. 56-57]. M.S. Mateykovich also links the emergence of self-regulation with the emergence of the first associations of merchants in the Middle Ages in Western Europe [1 2, c. 123].

Each of the above points of view is backed up by historical material and, of course, has the right to exist. Due to the fact that self-regulation is a complicated phenomenon, multifaceted, its origin did not take place at once, and therefore separate elements of self-regulation are found in specific territories at different periods.

2. Features of the emergence of self-regulation in Russia.

A feature of the Russian tradition of self-regulation is the gradual transition from voluntary self-regulation to a combination of models of voluntary and compulsory self-regulation.

Proceeding from the definition of the concept of "self-regulation" proposed by the author, the main criterion for recognizing any organizations as a prototype of modern self-regulating organizations was the goal of their creation: regulation of the activities of subjects of professional activity and the availability of appropriate powers.

Elements of self-regulation in Russia are found in the XII - XV centuries when creating cooperatives represented a cohesive organization "... with certain contributions to the friendly capital, with the obligation of additional contributions, the distribution of responsibility in case of loss, with a complex general business management system" [13, p. 56].

Thus, in the 12th century, the association of wholesalers, the Ivan community at the Church of St. John the Baptist in Opoki, was one of the most influential associations of merchants in Novgorod. The objectives of the community were to protect common interests, comradely regulation and the promotion of trade. The order of management of the Ivanskoy community was determined by the Charter. In order to become a full and hereditary member of the community, it was necessary to pay a fee [14, p. 47]. As A.A. Bessolitsyn, the Ivansky community is not the only example of a corporate association of the merchants of Novgorod. In Novgorod, there were dozens of similar merchant artels, formed depending on the goods sold by merchants or from the area where trade was carried out [14, p. 48].

Thus, the first corporate associations formed on the initiative of the traders themselves, are found already in the period of feudal disunity of Russia. As S.B. Tretyakov, the main prerequisite for the emergence of these associations is the need to streamline social relations in areas not regulated by law [15, p. 56].

Concerning the development of trade and crafts in Moscow Rus, it should be noted that entrepreneurship developed in the face of the growing role of the state, which undoubtedly deterred the initiative of entrepreneurs. During this period the guild and corporate system did not develop [16, p. 88].

A separate stage in the organization of merchants and artisans in Russia is connected with the transformation of Peter I in the sphere of city government.

The idea of the guild system was adapted by Peter I in Germany. With a view to the early introduction of the guild system on January 16, 1721, the Rules of the Grand Magistrate were issued, prescribing to organize guilds and workshops in the cities.

In accordance with the Decree of January 16, 1721, the entire urban population, with the exception of foreigners, nobles, clergy and "vile people", was divided into two guilds. The first guild included bankers, noble merchants, city doctors and others. The second guild consisted of the lowest class of urban population, including artisans [14, p. 91].

The Chief Magistrate, among other functions, assigned the formation of meetings of craftsmen in the number of crafts and arts. In accordance with the Decree of April 27, 1722, it was forbidden to engage in craft without being recorded in the shops where they were organized [16, p. 37]. Shops Peter I regarded as "true means to raise the level of the then Industry" [18, p. 13].

Thus, the specified document foresaw the formation of the workshop as a special form of organization of artisans. Subsequent execution of the guild organization took place under Catherine II and Paul I.

Given the fact that the initiative of dividing the citizens on the guild and create workshops came from the state, to use the European experience of the guild organization, we consider it possible to consider the reform of Peter I as a prototype of compulsory self-regulation model in modern Russia.

The next manifestation of the beginning of self-regulation is revealed in 1864 with a construction of the Bar Association [19, p. 155]. Judicial statutes provided for the establishment in each judicial district of the Council of Sworn Attorneys, who, despite the existence of certain regulations in the Institution of judicial regulations concerning ethical principles of advocacy, independently developed techniques of lawyer technology and rules of legal ethics due to the absence in Russia of any traditions of advocacy [20, p. 6-8]. Powers of the Soviets also included

the admission of new lawyers, the supervision of compliance by jurors with laws, established rules, the performance of duties, and the application of measures of influence - from reprimanding to expulsion from the bar and bringing to the criminal court [21, p. 12]. Despite the fact that the initiative to establish the institute of sworn attorneys came from the state, the reform of 1864 did not provide introduction of a lawyer monopoly on representation of interests in court, joining the number of jurors was voluntary.

The Moscow Stock Exchange is also considered as a prototype of a self-regulatory organization with voluntary membership. Approved in 1870, the Charter of the Moscow Stock Exchange defined the stock exchange as "the place of permanent meetings of persons engaged in trade in Moscow for mutual relations and transactions in all branches of trade and industry, as well as obtaining the information necessary for this." The Exchange established its own rules and rules for conducting trades, exercised control over their execution and brought the guilty persons to justice in case of their violation [22, p. 38], which allows to establish a community of its functions with the basic features of modern SRO. The literature also notes that exchange in Russia originally, since the time of Peter I, were "not only a place of trading organizations, but also a kind of association of economic entities" [23, p. 50].

After 1917, nationalization of all spheres of public life took place in our country. Regulation of social relations in the Soviet period was carried out, as a rule, only by the state.

Artisans association ceased to exist due to the emergence of the Decree of November 11, 1917, to abolish "all hitherto existing class in Russia and Class division of citizens, class privileges and restrictions, class organizations and institutions, as well as all civil ranks".

On self-regulation in the Soviet period, individual authors speak of the principle of the functioning of the bar [24, p. July 8]. Concerning this thesis, it is necessary to note the following. In the period from November 1917 to July 1922, all the achievements of the reform of 1864 were actually reduced to zero.

In 1922 the People's Commissariat of the RSFSR was approved by the Regulation of the Bar, and provided for the creation of the Bar in each province or region. Despite the fact that the board was a public organization, they did not have authority to adopt any rules governing the activities of defenders.

Despite the actual absence during the Soviet period of self-regulation of professional activity, there were examples of the exercise of public powers by entities that are not part of the system of public authorities.

3. Features of self-development in modern Russia.

For the first time the term "self-regulatory organization" was mentioned in the decree of the Russian President on November 4, 1994 № 2063 "On measures on state regulation of securities market in the Russian Federation". Among the powers established in accordance with paragraph 6 of the said Decree of the Federal Commission on Securities and Stock Market under the Government of Russian Federation (FSC) included the adoption of mandatory federal executive authorities, executive authorities of the Federation authorities, local authorities and market participants in the securities regulations and regulations on the regulation of this market, the activities of its professional participants and their associations (including self-regulatory organizations) and monitoring compliance with laws and regulations. That is, at this stage, self-regulating organizations were mentioned only as an object of state influence.

The Federal Law of July 18, 1995 No. 108-FZ "On Advertising" provided for self-regulatory law in the field of advertising as public organizations (associations), associations and unions of legal entities.

In April 1996, the Law on the Securities Market was adopted, recognizing the definition of self-regulating organizations of professional securities market participants, their rights and duties. After the adoption of this law the status of self-regulatory organizations have purchased two organizations: National Association of Securities Market Participants (NAUFOR) and the Professional Association of Registrars, Transfer Agents and Depositories (PARTAD).

In 2013 NAUFOR also received the permission to operate as a self-regulatory organization of management companies. On March 10, 2016 NAUFOR received the status of a self-regulatory organization in accordance with the Federal Law of 07.13.2015 number 223-FZ "On self-regulatory organizations in the financial market".

PARTAD is also one of the first self-regulatory organizations. To date, members of the Association are the leading registrars, depositories and specialized depositories.

The Federal Law of August 7, 2001 № 119-FZ "On Auditing" as amended by Federal Law of December 14, 2001 № 164-FZ mentioned the term "self-regulating association": under the accredited professional auditor association was understood self-regulating association of auditors, individual auditors, audit firms, established in accordance with the Russian legislation in order to ensure conditions of the audit activities of its members and protect their interests, acting on a commercial basis, establishes mandatory for its members internal rules (standards) of auditing and professional ethics, carrying out a systematic monitoring of compliance, accredited to the authorized federal body.

In October 2002 the Federal of The Law "On Insolvency (Bankruptcy)" was adopted, according to which one of the qualifying features of the arbitration control was membership in SRO. Thus, membership in the SRO was first stated as a requirement of a particular activity. Prior to the adoption of this law the only model of voluntary self-regulation has existed in modern Russia.

The concept of self-regulation of professional and entrepreneurial activity is also reflected in the policy documents.

The Decree of the Government on July 17, 1998 № 785 "On the State Program of protection of investor rights for 1998 - 1999" proposed to continue the development of non-state forms of protection of investors' rights, including through the mechanism of self-regulation of professional participants of securities market, as well as to tighten state regulation of investor protection by inclusion in the work on the control of self-regulating organizations of professional securities market participants .

The Decree of the Russian Federation from February 14, 2000 № 121 "On the Federal program of state support of small business in the Russian Federation for 2000 - 2001" made a gradual shift from state regulation of certain aspects of small business activities for self-regulation was envisaged as one of the priority measures envisaged to achieve the objectives of the Program.

Program of Social and Economic Development of the Russian Federation in the medium term approved by Decree of the Russian Federation from July 10, 2001 № 910-p, among the tasks was intended to develop the legal framework for the activities of self-regulation organizations, establishing high standards of behavior of economic entities - members of these organizations in the market.

The adoption of the Law on SRO is associated with the beginning of reforming the entire system of state regulation of business in the Russian Federation [26 , p. 2142-2143], because it served as an impetus for the development of self-regulating organizations of legislation for the development of an appropriate conceptual apparatus, the further unification of the law [27, p. 330-332] and expansion of areas of activity with compulsory self-regulation. So, as a result of the adoption of new laws and amendments to existing since 2007 membership in the SRO became mandatory in the field of auditing, engineering surveys, preparation of project documentation, construction, energy audits, financial cooperatives, actuarial work, the organization of gambling in bookmakers and sweepstakes. Law on SRO combination of two models of self-regulation was confirmed: voluntary and compulsory.

In addition, the Federal Law of July 13, 2015 № 223-FZ "On self-regulatory organizations in the financial market", which is the first special legal act, defines the relationship of self-regulation in a particular field of activity. The adoption of this legislative act is due to the fact that the Law on SRO initially did not apply to self-regulating organizations of financial market participants. SRO regulation activity in this area was carried out in accordance with the

federal laws on the activities of the relevant financial market participants in the absence of a unified legal framework.

Thus, the obvious purpose of the Law № 223-FZ is to fill existing gaps in the legislative regulation of SROs financial market participants. However, a number of the provisions stipulated by the act is contrary to the general system of self-regulation.

On July 1, 2016 compulsory self-regulation in the sphere of activity of cadastral engineers has been introduced.

Discussions about the appearance of self-regulatory organizations, based on mandatory membership in health care [28, p. 14-15], in housing and communal services, fire safety and other areas are actively conducted.

Conclusions.

Study of the history of creation and functioning of the associations of professional business entities allows us to conclude that self-regulation is not an entirely new and previously unknown in our country legal phenomenon. The first prototypes of self-regulating organizations in Russia originate in the Middle Ages as a voluntary association of merchants.

The compulsory self-regulation model found the beginning in XVIII century.

Self-regulation on the Soviet period can only be described as a declarative principle of functioning of the legal profession.

The formation of the self-regulation as a special kind of administrative activity occurred in Russia in the late 1990s - early 2000s. The greatest degree of legal regulation of self-regulation has reached after the enactment of the SROs, to fix a combination of voluntary and compulsory self-regulation models. At present, the development of self-regulation continues, including through the expansion of areas of activity in which membership in the SRO is a prerequisite for the exercise of professional activities.

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