

Функции саморегулируемых организаций: содержание и проблемы реализации

А.Ф. Алгазина

Омский государственный университет им. Ф.М. Достоевского, г. Омск, Россия

Статья посвящена характеристике основных функций саморегулируемых организаций: регулирующей, контрольной, организационно-обеспечительной, юрисдикционной. Совокупность осуществляемых саморегулируемыми организациями в отношении своих членов функций определяет особенности правового статуса СРО. Анализ особенностей осуществления саморегулируемыми организациями указанных функций позволил автору прийти к выводу о том, в настоящее время административно-правовой статус саморегулируемых организаций нуждается в дальнейшей конкретизации, поскольку содержание нормативных правовых актов, регулирующих отношения в сфере саморегулирования, зачастую носит противоречивый характер и требует совершенствования. В случае обязательного саморегулирования СРО, наделенные специальным административно-правовым статусом, осуществляют в отношении своих членов публично-властные полномочия, а значит, возникающие при реализации данных полномочий отношения являются вертикальными.

Ключевые слова: управленческая деятельность; саморегулирование; саморегулируемая организация; функции; полномочия.

Functions of self-regulating organizations: content and problems of implementation

Anna F. Algazina

Dostoevsky Omsk State University, Omsk, Russia

The subject. The article is devoted to the description of the basic functions of self-regulating organizations: regulatory, control, organizational and security, jurisdictional.

The purpose of the article is to explore the content features of self-regulating organizations, to identify problems in their implementation and offer recommendations for their solution.

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

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. Set forth in the Law on SRO powers to self-regulating organizations United by the author and summarized as to their functions - activities of the SRO. The main functions of the SRO as special entities, the following:

- regulatory, which manifests itself in the development of standards and rules, conditions of membership in self-regulating organizations and other internal documents SRO;
- control: self-regulating organizations exercise control over the professional activities of its members;
- organizational and security. An example of this function is the maintenance of the register of members of the SRO, ensuring property liability of members of self-regulating

organizations to consumers of goods (works, services) and other persons forming management authorities of the self-regulating organization, lodging of statutory documents and information on the official website of SRO;

– jurisdictional: SRO consider complaints against actions of members of self-regulating organization and cases on breaches of its members of the standards and rules of self-regulating organizations, conditions of membership in self-regulating organization, apply disciplinary measures against its members.

Conclusions. The combination of ongoing self-regulating organizations against their members functions determines features of the legal status of SRO.

Analysis of peculiarities of self-regulating organizations of these functions has allowed the author come to the conclusion that, at present, administrative and legal status of self-regulating organizations in need of further refinement, since the content of normative legal acts regulating relations in the sphere of self-regulation, often contradictory and requires improvement.

In the case of mandatory self-regulation SRO vested with the special administrative-legal status, carry out in relation to their member state authority, which means that the implementation of these authority relationships are vertical.

Keywords: managerial activity; self-regulation; self-regulating organization; functions; powers.

Информация о статье:

Дата поступления – 14 сентября 2017 г.

Дата принятия в печать – 10 октября 2017 г.

Дата онлайн-размещения – 20 декабря 2017 г.

Article info:

Received – 2017 September 14

Accepted – 2017 October 10

Available online - 2017 December 20

Introduction.

Since the beginning of the administrative reform the study of problems of self-regulation as a mechanism designed to reduce the degree of state intervention in certain areas of professional activity and to remove redundant administrative barriers has not lost its relevance.

Self-regulation is an independent type of management activities carried out by the second self-regulatory organizations and consisting in the development and establishment of standards and rules of professional activity, as well as sanctions for non-performance or improper performance [1, c. 110].

At the present time, self-regulation in the Russian Federation is carried out on conditions of combining subjects of professional activity in self-regulating organizations. Membership in self-regulatory organizations, as a general rule, is voluntary. At the same time, federal laws on certain types of entrepreneurial activity may provide mandatory membership in self-regulatory organizations. Thus, depending on the legal significance, two models of self-regulation can be distinguished: voluntary (not having a public character) and mandatory.

The study of the fundamental principles of the theory of public administration and administrative law, as well as the patterns of their reflection in legislative acts, makes it possible to build a system of principles of mandatory self-regulation. In the legal science, principles are understood to mean the basic guiding principles, the main ideas of activity that adequately reflect the objective laws of social development [2, p. 100; 3, p. 27-29].

The system of principles of compulsory self-regulation includes general principles of public administration, singled out in accordance with the sphere of operation: objectivity, efficiency, legality, democracy, publicity, and special principles of self-regulation: organizations on professional and (or) territorial grounds, organizational independence of self-regulating organizations, interaction of self-regulating organizations with public authorities, transparency of self-regulatory organizations, a combination of public and private interests, self-financing, state provision of legal and organizational guarantees for self-regulation.

Federal Law No. 315-FZ of December 1, 2007 "On Self-Regulating Organizations" [1] (hereinafter referred to as the SRO Law) self-regulating organizations as non-profit organizations established for the purposes specified by the said Federal Law and other federal laws based on membership, uniting the subjects of entrepreneurial activity on the basis of the unity of the industry producing goods (works, services) or market of manufactured goods (works, services) or uniting subjects of professional activity of a certain type.

In the definition set forth in the SRO Law, there is no mention of the functions of self-regulating organizations. In other articles of the law, the functions of self-regulating organizations are also not clearly identified [4, p. 121].

In philosophical and socio-sociological terms, a function is understood as "an external manifestation of the properties of an object in a given system of relations" [5, p. 97].

The functions of the federal executive body in literature are defined as normatively established and constantly implemented main directions of the authority's activities of this body, conditioned by the tasks assigned to it and specified in its authority [6, p. 170].

Powers are a combination of subjective rights and responsibilities for the implementation of specific management actions [7, p. 212].

When considering the question of the functions of self-regulating organizations in literature, it is often possible to confound the functions of the self-regulating organizations with their rights and obligations [8, p. 41], which can be explained by the construction used in Art. 6 of the Law on SRO. In part 1 of this article, the legislator fixes a list of the main functions of the SRO, and then in part 5 indicates that the implementation of a number of functions is the responsibility of the SRO.

Identification of functions with authority (a combination of rights and obligations) is unacceptable. The totality of the powers of self-regulatory organizations enshrined in the Law on SROs can be combined and generalized as their functions - the lines of activity of the SRO.

Among the main functions of SRO as special subjects of law, the following can be singled out:

- regulatory, which manifests itself in the development of standards and rules, conditions for membership in a self-regulatory organization and other internal documents of the SRO;
- control: self-regulating organizations exercise control over the professional activities of their members;
- organizational and security. Examples of the manifestation of this function is the maintenance of the register of SRO members, ensuring the property responsibility of members of the self-regulatory organization to consumers of goods (works, services) produced by them and other persons, the formation of self-regulatory organization management bodies, the placement of documents and information provided by law on the official website of the SRO;
- jurisdictional: SROs consider complaints against actions of members of a self-regulatory organization and cases of violation by its members of the requirements of standards and rules of a self-regulatory organization, conditions for membership in a self-regulatory organization, apply disciplinary measures against their members.

1. Regulating function of SRO.

The content of this function is the development and approval of standards and rules of professional activity. The SRO law defines these categories as follows: the requirements for the implementation of the relevant activity, which are binding for all members of the self-regulatory organization.

It follows that the legislator identifies rules and standards of activity. Some authors consider the rules as a generic concept in relation to standards [9, p. 60-61].

The explanatory dictionary of Ozhegov defines the rule as "a decree, a prescription establishing the order of something; standard - as a model, which must correspond, satisfy something by its characteristics, properties, qualities, as well as a document containing the relevant information" [10, p. 574].

In view of the foregoing, we believe that the rules need to understand the document establishing the procedure for the implementation of professional activity, the standards is a document that establishes requirements for the characteristics of the result of professional activity.

Art. 4 of the Law on SRO establishes the following requirements for standards and rules:

1) standards and rules must comply with federal laws and other regulatory legal acts, business ethics rules;

2) standards and rules should eliminate or reduce the conflict of interests of members of a self-regulatory organization, their employees and members of a permanent collegial management body of a self-regulatory organization;

3) standards and rules should establish a ban on the exercise by members of a self-regulatory organization of activities to the detriment of other subjects of professional activity;

4) standards and rules should establish requirements that prevent unfair competition, commit acts that cause moral harm or damage to consumers of goods (work, services) and other persons, actions that damage the business reputation of a member of a self-regulatory organization or the business reputation of a self-regulatory organization.

In part 3 of Art. 4 of the Law on SRO also stipulates that the standards and rules of a self-regulatory organization may establish additional requirements for professional activities of a certain type.

The question of the legal nature of standards and rules of professional activity is debatable. A.V. Basova considers standards and rules of self-regulation as local normative acts [11, p. 15]. Some authors define self-regulation as a special kind of subordinate legal regulation [12, p. 11].

D.O. Grachev believes that the rules of self-regulating organizations are "one way to unify the customs of business turnover and business custom", because they contain in the generalized form the established customs and business practices [13, p. 16].

In our opinion, standards and rules of self-regulation can be referred to the number of local regulations.

The following signs of local normative acts are singled out [14, p. 20-21]:

1. Normative character, which means the possibility of their repeated application.

2. Local nature of the action. This sign means that the action of the local normative act is limited to the limits of the organization in which it is adopted.

3. Subordinate nature. In particular, local normative acts should not contain norms "worsening the situation of employees in comparison with the established labor legislation and other normative legal acts containing labor law norms" (Article 8 of the Labor Code of the Russian Federation [2]).

4. Obligatory performance for employees.

5. Special procedure for adoption: taken by the employer alone or taking into account the opinion of the representative body of employees in cases provided for by law.

The revealed signs of local normative acts, having acquired a certain specificity as applied to the sphere of self-regulation, are generally typical for standards and rules of self-regulation [15, p. 37]:

- standards and rules for self-regulation must comply with federal laws and other normative legal acts adopted in accordance with them;

- the scope of their actions is limited by the limits of the activity of a specific SRO;

- standards and rules for self-regulation are designed for repeated use;

- these acts are accepted by the competent bodies of the SRO;

- for standards and rules of self-regulation is characterized by direct action and mandatory execution.

Examples of the same legal practices are codes of ethics or codes of corporate conduct of self-regulating organizations that consolidate the established rules of conduct for subjects of professional activity.

Standards and rules for self-regulation are mandatory for members of any self-regulatory organization. However, in cases where the standards and rules are established by self-regulating organizations, whose membership is voluntary, economic entities have the choice: to join or not to join a self-regulatory organization and, accordingly, to accept or not to assume the obligation to comply with the requirements of the standards developed by SROs and rules. In the case of mandatory self-regulation, the SRO implements the publicly-vested authority delegated to it to develop and establish standards and rules, compliance with which is a condition for the implementation of the relevant type of professional activity.

Standards and rules approved by self-regulating organizations with mandatory membership, ensure the interests of society and the state as a whole, their non-compliance can lead to adverse consequences not only for the parties of a particular treaty, but for an indefinite circle of persons [16, p. 124].

2. Control function of SRO.

Self-regulating organizations exercise preliminary, current and subsequent control in relation to their members.

Preliminary control is carried out at the stage of admission of the subject of professional activity to the SRO members and is connected with the verification of its compliance with the established membership requirements, the inconsistency of which is the basis for refusing admission to the membership of a self-regulatory organization. Current monitoring is carried out continuously by analyzing the activities of SRO members based on the information they submit to the self-regulatory organization [17, p. 30-32].

So, according to Part 8 of Art. 7.1 of the SRO Law, members of a self-regulating organization are obliged to notify the SRO of any events that entail a change in the information contained in the register of members of the self-regulating organization.

Follow-up control is organized through scheduled and unscheduled inspections. The subject of planned inspection includes compliance by members of a self-regulatory organization with the requirements of standards and rules of a self-regulating organization, the conditions of membership in a self-regulatory organization. The duration of the planned inspection is determined by the permanent collegial management body of the SRO. Scheduled inspections should be conducted at least once every three years and not more often than once a year.

The basis for an unscheduled audit conducted by a self-regulatory organization may be a complaint submitted to a self-regulatory organization for violation of the requirements of standards and rules of a self-regulatory organization by a member of a self-regulatory organization.

Self-regulatory organization may also provide other grounds for conducting an unscheduled audit.

A distinctive feature of the control exercised by self-regulating organizations with mandatory membership is its scope. These SROs monitor compliance with their members' requirements not only of standards and regulations, but also of federal legislation regulating the relevant type of activity [3].

In this situation, self-regulating organizations actually carry out publicly-authoritative powers of bodies of executive power, which belong to the functions of state control in a certain sphere of professional activity.

However, in practice, this situation often leads to duplication of control powers of self-regulating organizations and authorized federal bodies of state power, exercised with respect to SRO members.

So, self-regulatory organization of auditors carry out an external quality control of audit firms and individual auditors. In addition, the external quality control of the SRO Auditors also carries out federal executive body.

Order of the Ministry of Finance of the Russian Federation dated December 18, 2015 № 203n [4] the Regulations on the principles of the external quality control of audit organizations,

individual auditors and requirements for organization of said control. Thus, the requirements for organizing and conducting the external quality control of audit firms and auditors fixed a single legal act, and for the cases of such activities self-regulatory organizations, and for external quality control by the authorized body of state power.

This state of affairs is contrary to the objectives of the creation of self-regulatory organizations, as it leads to an increase in the administrative burden on the subjects of professional activity. It seems that part of the subject of self-monitoring procedure in respect of the activities of the subjects of the professional and business activities should provide appropriate self-regulatory organization authorized by the public authorities should be focused primarily on the verification activities of the SRO.

Thus, there should be a monitoring system under which direct state control over economic entities is replaced by indirect control with the participation of SRO:

- 1) State authorities supervise the activities of SROs, checking its compliance with the requirements of normative legal acts regulating the activities of the SRO;
- 2) SRO exercise control over the activities of their members, including their compliance with the requirements of the standards and rules of professional activity, as well as the requirements of the federal laws regulating the exercise of a particular type of professional activity [18].

3. Organizational security functions of SROs.

Features of the implementation of this function will be considered as an example of the activities of the CPO as the maintenance of the register of members of self-regulatory organizations.

Self-regulatory organization maintains a register of members of the self-regulatory organization from the day of information about it in the state register of self-regulatory organizations.

Register of members of the self-regulatory organization is an information resource that, firstly, must comply with the requirements of the SROs and, secondly, to have systematic information on former and current members of the self-regulatory organization.

According to para. 2 Art. 7.1 of the Law on SRO person acquires all the rights of a member of the self-regulatory organization to make the date the information about it in the register of members of the self-regulatory organization.

Thus, the entry of information in the register of SRO members is legally significant action, since the commission of which a person is endowed with the rights of members of the SRO, i.e. acquires a special capacity.

In the case of compulsory self-entry of information on the subject of professional activity in the register of members of the SRO is legally significant actions, from the moment of which the subject of professional activity acquire the right to engage in the relevant activity.

The register of members of the SRO shall contain the following information:

- 1) registration number of SRO members;
- 2) data to identify a member of a self-regulatory organization. The set of this information varies depending on the features of the legal status of a member of the self-regulatory organization: individual, individual entrepreneur, a legal entity;
- 3) information about whether the member of self-regulatory organization for membership in the self-regulatory organization, as defined by the legislation of the Russian Federation and (or) internal documents of the self-regulatory organization;
- 4) information on property accountability of self-regulatory organization member to the consumers of the goods made by him (works, services) and other persons;
- 5) information on the results of the self-regulatory organization member of self-regulatory organization of inspections and the application of the facts to his disciplinary and other sanctions.

In applying this provision, the question arises, whether the self-regulatory organization is obliged to post information on the specific measures penalties applied to its members.

For example, a Non-Profit Partnership "Far Eastern Interregional self-regulatory organization of professional arbitration managers" appealed to the arbitration court for invalidation and cancellation of the administrative liability of Part 2 of Article 14.52 of the Code of Administrative Offenses.

The trial court found that the official website of the self-regulatory organization in the network "Internet" was published by the register of members, which in the section "Information about the disciplinary action" placed only information about the protocols of the Disciplinary Commission and the bottom engaging member of the Partnership to disciplinary action, without applied disciplinary measures, and that was the reason for bringing the SRO to administrative liability under part 2 of Article 14.52 of the administrative Code.

However, the Court pointed out that the content of paragraph 5 of Part 3 of Article 7 of the Law on the SRO should not be an unequivocal conclusion that when placed on the official website of SRO information about the facts of the application to the members of SRO disciplinary and other sanctions concrete measure applied penalties must be specified.

This formulation as "information about the facts" may indicate a duty to place information about the event to a member of SRO disciplinary action.

On this basis, the arbitration court of appeal found the correct conclusion of the Court of First Instance of the rules of legal uncertainty as to whether the self-regulatory organization the responsibility for placement on the official site in the "Internet" network of information on concrete measures of administrative penalty, applied to the members of the SRO.

Trial court's decision on the abolition of the contested decision upheld [5].

The list of information above is not exhaustive, and the self-regulatory organization shall be entitled to supplement the above list.

For example, the Regulation on information disclosure by the self-regulating organizations of appraisers Association "Community assessment professionals" [6] provides that the Registrar of the Association's members, along with under Art. 7.1 of the Law on SRO information, should be included the following information: about the seniority of the member of the Association of valuation activities; the date of termination of membership in the Association and the grounds for the termination (in relation to persons who have ceased to Association membership).

Part 7 of Art. 7.1 of the Act establishes the obligation of members of the SRO notify the self-regulatory organization "about the occurrence of any events that result in a change in the information contained in the register of members of the self-regulatory organization, within three working days from the day following the day of occurrence of such events."

Securing considered responsibilities for SRO members intended to ensure that the register of members of the SRO requirements of completeness, reliability and relevance of the information contained therein.

The responsibility for the failure of this duty is fixed, as a rule, in internal documents of the SRO. For example, provisions of the Disciplinary Committee of the All-Russian "Russian Society of Appraisers" NGO [7] Failure in RSA information about changes in the information contained in the register of members of the NGO, or other information to be disclosed in accordance with the requirements of the Russian legislation and internal documents of the NGO, stated among the violations of the requirements for membership in the RSA.

Due hours. 8 Art. 7.1 of the Law on SRO federal laws and in accordance with them other normative legal acts of the Russian Federation, additional requirements for the composition information may be set for the SRO with compulsory membership, contained in the SRO registry, conduct of business registers and placing information on the official website of the self-regulatory organization.

For example, laws on specific types of professional activities, as well as adopted in accordance with them subordinate regulatory acts set different deadlines for entering the

information in the register of members of the SRO and placing information on the official website [8] and the timing of data from the registry at the request of [9].

We believe that the consolidation of opportunities to establish additional requirements for the composition of information due to the existence of a significant number of features of various types of professional and business and deserves a positive assessment.

However, given that in the case of compulsory self-entry of information on the subject of professional activity in the register of members of the SRO is a legally significant action upon occurrence of which the corresponding entity acquires the right to engage in the relevant activity, the Law on the CPO should be defined the same for all self-regulatory organizations compulsory membership procedure for maintaining the register of members of SRO and placing information on the official website.

4. Jurisdictional function of SRO.

The content of the jurisdictional functions of the SRO is studying of complaints against members of the self-regulatory organization and cases of violation of the requirements of its members standards and rules of self-regulatory organization, the conditions for membership in the self-regulatory organization, as well as the application of disciplinary measures to the members of the SRO.

Consideration of complaints against members of the self-regulatory organization and cases of violation of its member requirements of the standards and rules of professional activity, conditions of membership in the self-regulatory organization carries a special body. Authority to hear cases on the application to members of the self-regulatory organization disciplinary action is among the bodies set up permanent collegial management body of the SRO in the binding order.

The complaint a member of the self-regulatory organization standards and regulations self-regulatory organization may serve as a basis for self-regulatory organization unscheduled activities of its members.

The procedure for dealing with complaints and cases is determined by internal documents of the self-regulatory organization.

This procedure may provide for standards and SRO rules and special regulations. For example, in the Russian public organization "Russian Society of Appraisers" Regulation on the Disciplinary Committee of the All-Russian "Russian Society of Appraisers" NGO [10] as well as the Regulations on the procedure of the control of the Russian public organization "Russian Society of Appraisers [11] fixing the procedures for dealing with complaints against members of the self-regulatory organization and cases of violation of the established requirements of its members.

In addition, a number of procedural points imperatively defined in the law. Thus, the Law on the SRO provides authority duty to consider cases on the application in respect of members of SRO disciplinary measures when considering complaints against members of self-regulatory organizations to invite to its meetings persons who submitted such complaints, as well as members of the self-regulatory organization in respect of which deal with cases of the application of disciplinary measures. Provides decision-making procedure of the disciplinary body of the members of the SRO, the procedure and deadlines for sending to interested parties of the disciplinary body of the decision.

Art. 10 of the SRO Law fixed list of possible disciplinary measures: "1) the imposition of regulations obliging member of the self-regulatory organization to eliminate the revealed violations and to establish terms of elimination of such violations; 2) making a member of a self-regulatory organization of prevention; 3) the imposition on members of the self-regulatory organization of the fine; 4) a recommendation of expulsion of members of the members of the self-regulatory organization to be considered a permanent collegial management body of the self-regulatory organization; 5) other documents established by internal self-regulatory organization measures".

Federal laws on specific types of professional activity also establish an open list of disciplinary measures that can be applied to the CPO by providing self-regulatory organizations to consolidate in their internal documents of the measures not covered by federal legislation.

Thus, according to para. 5 of the Regulation on the Disciplinary Committee of the All-Russian "Russian Society of Appraisers" NGO [13] the Committee has the right to the presence of violations revealed by the results of scheduled and unscheduled inspections, and also on the results of consideration of complaints and cases of violation decide to apply the following disciplinary measures:

- the imposition of regulations binding NGO member eliminate identified as a result of the audit violations and setting deadlines for their elimination;

- the imposition of a member of the NGO warning;

- the imposition on members of the NGO fine;

- suspension of the right of appraisal activity (for a period of not more than 6 months);

- the recommendation to suspend the activities of the NGO expert, subject to review and approval or rejection by the Board of the NGO;

- recommendation to expel a member from the NGO Expert Council, subject to review and approval or rejection by the General Meeting of members of the NGO;

- Recommendation on exclusion of the members of the NGO, subject to review and approval or rejection by the Board of the NGO;

- the imposition of regulations binding on NGO members received an evaluation report, which revealed violations, positive expert opinion of the Expert Council of the NGO;

- ordering the compulsory passage of training in a timely manner by the Committee;

- recommendation to deprive appraiser - NGO member qualification rank, subject to review and approval by the Board of the NGO;

- the recommendation to suspend the membership of the NGO, subject to review and approval or rejection of the NGO Council.

We conclude that the list of disciplinary measures, provided by internal documents of the NGO, is much broader list laid down in the Law on SRO.

The prescription, as well as a recommendation of expulsion of members of the members of the self-regulatory organization, not the impact of the measure is by its legal nature, and the one-way power-willed decision regarding the subject of a well-defined legal relationship [19, p. 27 - 29].

Failure to execute orders entails the application of appropriate sanctions. Recommendation on the exclusion of members of the self-regulatory organization by itself does not create legally significant consequences for the self-regulatory organization member as opposed to exclusion of members of the SRO [14].

In this regard, prescription and recommendation of expulsion of members of the members of the self-regulatory organization shall be excluded from the list of disciplinary measures.

The jurisprudence remains debatable question as to the legal nature of disciplinary proceedings carried out by self-regulatory organizations, and used by them in relation to the impact of the measures.

The term "Discipline" usually associated with the violation of labor laws. However, despite the similarity of terminology between the disciplinary measures that may apply SRO, and measures of disciplinary action, used in connection with the violation of labor laws, there are significant differences. The basis for the application of measures of influence SRO is a violation of the terms of professional activity, established by internal documents of the self-regulatory organization, and in the case of compulsory self-regulation - as the provisions of the federal legislation.

In the literature, the emergence of "disciplinary" term in the Law on SRO explained automatic borrowing the term "SRO disciplinary rules" (disciplinary rules) from the sources of American law [20, p. 132].

By studying the legal nature of disciplinary proceedings in the self-regulatory organizations, GO Abolonin based on analysis of the norms of the Administrative Code, by virtue of which the SROs are not subjects, authorized to consider cases on administrative offenses, comes to the conclusion that the basis of the disciplinary self-regulating organizations of civil foundation [21, p. 14] . Citing an example from fines levied by the CPO, who by law are subject to transfer to the compensation fund self-regulatory organization, the author notes that the data on the legal nature measures are civil law measures property liability established for breach of contractual obligations [21, p. 16].

In our opinion, this position does not apply to cases of compulsory self-regulation.

V.V. Romanov said that "when the self-regulatory organization applies disciplinary measure to its members, the foundation for the emergence of legal liability is not based on a breach of duties arising under civil contract, and violation of a member of a self-regulatory organization rules and standards of the self-regulatory organization. Accordingly, it is no longer about the relationship between the parties to the contract and the relationship organization with the legal definition of public authority, including the granting of admission to exercise a certain activity, and a member who is required to comply with the standards and rules of the organization, and otherwise it can lose and admission and membership" [22, p. 142].

Unlike other legal entities, including the SRO with voluntary membership based on the principle of compulsory membership of self-regulatory organizations apply to its members measure the impact is not due to the failure to fulfill obligations it has taken on voluntarily to ensure private-interests of organizations, and due to violation of requirements of the standards and rules of self-regulation, compliance with which is a prerequisite for the implementation of relevant activities, as well as the provisions of the federal legislators lstva.

One of the possible measures to influence the self-regulatory organization is a member of the exclusion of members of the SRO. In the case of compulsory self-regulation is an exception involves not just the deprivation of its corporate rights, this measure implies a ban on certain types of professional activities and is aimed at the protection of unspecified persons.

Accordingly, the disciplinary proceedings conducted by self-regulating organizations, based on the principle of compulsory membership, as well as those used SRO enforcement measures by their nature are not corporate, and public law.

Conclusions.

Self-regulatory organizations as special subjects of law have the following main functions: regulating, control, organization and an interim, jurisdictional.

At present, the administrative and legal status of self-regulatory organizations in need of further elaboration, since the content of normative legal acts regulating relations in the field of self-regulation is often controversial and requires improvement.

In the case of compulsory self-regulation SRO, endowed with the special administrative legal status, is carried out in relation to its members in the public authority and the right to perform actions against individuals management are not in the service, depending on them, that is, to administer [23, p. 35-36], and therefore, the powers arising from the implementation of these relationships are vertical.

СПИСОК ЛИТЕРАТУРЫ

1. Алгазина А.Ф. Саморегулирование как вид управленческой деятельности // Правоприменение. 2017. Т. 1. № 2. С. 101-114.
2. Алексеев С.С. Собрание сочинений: В 10 т. Т. 3: Проблемы теории права: Курс лекций. М.: Статут, 2010. 781 с.
3. Костюков А.Н. Принципы местного самоуправления // Местное право. 2002. № 3-4. С. 27-46.

4. Сунгатуллина Л.А. Функции саморегулируемых организаций // Ученые записки Казанского университета. Серия «Гуманитарные науки». 2014. Том 156. Номер 4. С. 118-129.
5. Мелехин А.В. Теория государства и права: учебник. М.: Маркет ДС, 2007. 640 с.
6. Давыдов К.В. Административные регламенты федеральных органов исполнительной власти Российской Федерации: вопросы теории: монография / под ред. Ю.Н. Старилова. М.: NOTA BENE, 2010. 390 с.
7. Елистратова В.В. О разграничении понятий «компетенция», «предметы ведения» и «полномочия» // Правовая политика и правовая жизнь. 2010. № 2. С. 212-213.
8. Ростовцева Н.В. Правовое положение саморегулируемых организаций в Российской Федерации // Журнал российского права. 2006. № 11. С. 39-51.
9. Басова А.В. Правила и стандарты саморегулируемых организаций как источники предпринимательского права // Юридический мир. 2008. № 4. С. 59-63.
10. Ожегов С.И., Шведова Н.Ю. Толковый словарь русского языка. М.: ООО «А ТЕМП», 2006. 944 с.
11. Басова А.В. Саморегулируемые организации как субъекты предпринимательского права: Автореф. дис. ... канд. юрид. наук. М., 2008. 25 с.
12. Максимович О.Н. Саморегулирование в сфере предпринимательской деятельности как проявление гражданско-правового метода регулирования общественных отношений: Автореф. дис. ... канд. юрид. наук. Казань, 2007. 21 с.
13. Грачев Д.О. Правовой статус саморегулируемых организаций: Автореф. дис. ... канд. юрид. наук. М., 2008. 22 с.
14. Латыпов Т.В. К вопросу о правовых категориях «корпоративный акт» и «локальный акт»: их соотношение и некоторые особенности применения в сфере спорта // Спорт: экономика, право, управление. 2013. № 4. С. 20-24.
15. Лаптев В.А. Акты саморегулируемых организаций как источник регулирования профессиональной и предпринимательской деятельности // Юрист. 2014. № 20. С. 35-41.
16. Романова В.В. Государственное регулирование и саморегулирование строительства и модернизации энергетических объектов в Российской Федерации. М.: Юрист, 2010. 426 с.
17. Петров Д.А. Контрольная функция саморегулируемых организаций: содержание и проблемы осуществления // Конкурентное право. 2014. № 1. С. 30-35.
18. Лескова Ю.Г., Серова О.А., Диденко А.А., Алгазина А.Ф., Байтенова А.А., Васючкова О.А. Комментарий к Федеральному закону от 1 декабря 2007 г. № 315-ФЗ «О саморегулируемых организациях». Специально для системы ГАРАНТ, 2016 [электронный ресурс] // Доступ из справ.-правовой системы «Гарант».
19. Шалыгин Ю.И. Применение контрольно-надзорными органами законодательства об административной ответственности за правонарушения в области предпринимательской деятельности // Административное право. 2009. № 1. С. 27-49.
20. Чернявский А.Г. Развитие саморегулируемых организаций в Российской Федерации: учебное пособие. М.: Альфа-М: Инфра-М, 2013. 221 с.
21. Аболонин Г.О. Дисциплинарное производство саморегулируемых организаций - на острие конфликта. М.: Волтерс Клувер, 2010. 288 с.
22. Романова В.В. Правовое регулирование строительства и модернизации энергетических объектов. М.: Юрист, 2012. 426 с.
23. Маслов К.В. К вопросу о понятии налогового администрирования // Вестник Омского университета. Серия «Право». 2010. № 1. С. 35-40.

REFERENCES

1. Algazina A.F. Self-regulation as a type of managerial activity. *Pravoprimerenie= Law Enforcement Review*, 2017, vol. 1, no. 2, pp. 101-114 (In Russ.).

2. Alekseev S.S. The collected works, in 10 volumes. Vol. 3: Problems of theory of law: Course of lectures. Moscow, Statut Publ., 2010. 781 p. (In Russ.).
3. Kostyukov A.N. The principles of local self-government. *Mestnoe pravo*, 2002, no. 3-4, pp. 27-46. (In Russ.).
4. Sungatullina L.A. Functions of self-regulatory organizations. *Uchenye zapiski Kazanskogo universiteta. Seriya «Gumanitarnye nauki»*, 2014, no. 4, pp. 118-129. (In Russ.).
5. Melekhin A.V. Theory of state and law: textbook. Moscow, Market DS Publ., 2007. 640 p. (In Russ.).
6. Davydov K.V. Administrative regulations of Federal Executive authorities of the Russian Federation: problems of theory: monograph. Moscow, NOTA BENE, 2010. 390 p. (In Russ.).
7. Yelistratova V.V. On the delimitation of the concepts "competence", "competences" and "powers". *Pravovaya politika i pravovaya zhizn*, 2010, no. 2, pp. 212-213. (In Russ.).
8. Rostovtseva N.V. The legal status of self-regulating organizations in the Russian Federation. *Zhurnal rossiyskogo prava*, 2006, no. 11, pp. 39-51. (In Russ.).
9. Basova A.V. Rules and standards of self-regulatory organizations as sources of business law. *Yuridicheskiy mir*, 2008, no 4, pp. 59-63. (In Russ.).
10. Ozhegov S. I., Shvedova N. Yu. Explanatory dictionary of the Russian language. Moscow, OOO «A TYeMP» Publ., 2006, 944 p. (In Russ.).
11. Basova A.V. Self-regulating organizations as subjects of entrepreneurial law, Cand. Diss. Thesis. 2008. 25 p. (In Russ.).
12. Maksimovich O.N. Self-regulation in the sphere of entrepreneurial activity as a manifestation of civil-law method of regulating social relations, Cand. Diss. Thesis. 2007. 21 p. (In Russ.).
13. Grachev D.O. Legal status of self-regulatory organizations, Cand. Diss. Thesis. 2008. 22 p. (In Russ.).
14. Latypov T.V. To the question of the legal categories of "corporate act" and "act local": their relationship and some of the features of the application in the field of sports. *Sport: ekonomika, pravo, upravlenie*, 2013, no. 4, pp. 20-24. (In Russ.).
15. Laptev V.A. Acts of self-regulating organisations as a source of regulation of professional and entrepreneurial activities. *Yurist*, 2014, no. 20, pp. 35-41. (In Russ.).
16. Romanova V.V. State regulation and self-regulation of the construction and modernization of energy facilities in the Russian Federation. Moscow, Yurist Publ., 2010. 426 p. (In Russ.).
17. Petrov D.A. The control function of self-regulatory organizations: the content and problems of implementation. *Konkurentnoe pravo*, 2014, no. 1, pp. 30-35. (In Russ.).
18. Leskova Yu.G., Serova O.A., Didenko A.A., Algazina A.F., Baytenova A.A., Vasyuchkova O.A. The commentary to the Federal law from December, 1st, 2007 № 315-FZ "On self-regulating organizations". Especially for system GARANT, 2016 (In Russ.).
19. Shalygin Yu.I. The application of the regulatory authorities of the legislation on administrative responsibility for offenses in the field of entrepreneurship. *Administrativnoe parvo*, 2009, no. 1, pp. 27-49. (In Russ.).
20. Chernyavskiy A.G. The development of self-regulating organizations in the Russian Federation: textbook. Moscow, Alfa-M: Infra-M Publ., 2013. 221 p. (In Russ.).
21. Abolonin G.O. Disciplinary proceedings of self - regulatory organizations at the forefront of the conflict. Moscow, Volters Kluver Publ., 2010, 288 p. (In Russ.).
22. Romanova V.V. Legal regulation of construction and modernization of energy facilities. Moscow, Yurist Publ., 2012, 426 p. (In Russ.).
23. Maslov K.V. To the question about the concept of tax administration. *Vestnik Omskogo universiteta. Seriya «Pravo»*, 2010, no. 1, pp. 35-40. (In Russ.).

| | |
|--|---|
| <p>Информация об авторе Алгазина Анна Федоровна – кандидат юридических наук, преподаватель кафедры государственного и муниципального права, Омский государственный университет им. Ф.М. Достоевского, 644077, Россия, г. Омск, пр. Мира, 55а e-mail: anna.masalab@mail.ru SPIN-код: 5431-5436, AuthorID: 936124 ORCID: orcid.org/0000-0003-3429-1910</p> | <p>Information about the author Anna F. Algazina – PhD in Law, Assistant Professor, Department of State and Municipal Law, Dostoevsky Omsk State University, 55a, Mira pr., Omsk, 644077, Russia e-mail: anna.masalab@mail.ru SPIN-code: 5431-5436, AuthorID: 936124 ORCID: orcid.org/0000-0003-3429-1910</p> |
| <p>Библиографическое описание статьи Алгазина А.Ф. Функции саморегулируемых организаций: содержание и проблемы реализации / А.Ф. Алгазина // Правоприменение. – 2017. Т. 1, № 4. – С. . – DOI 10.24147/2542-1514.2017.1(4).75-86</p> | <p>Bibliographic description Algazina A.F. Functions of self-regulating organizations: content and problems of implementation. <i>Pravoprimerenie = Law Enforcement Review</i>, 2017, vol. 1, no. 4, pp. . – DOI 10.24147/2542-1514.2017.1(4).75-86 (In Russ.).</p> |