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SELF-REGULATORY ORGANIZATIONS AS LEGAL ENTITIES OF PUBLIC LAW

Anna F. Masalab
Dostoevsky Omsk State University, Omsk, Russia

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The subject. The legal status of self-regulatory organizations based on the principle of man- datory membership was chosen as the subject of the research.
The purpose of the article is to study the features of subjects of administrative law, vested with public powers, and substantiate the possibility of attribution of self-regulatory organ- izations with mandatory membership to legal entities of public law.
The methodological basis for the study: general scientific methods (analysis, synthesis, com- parison, description) as well as formal-legal interpretation of legislation and judicial acts. Results, scope of application. Two types of subjects can take part in administrative relations, as a rule: subjects performing public functions and endowed with authority for their imple- mentation, and subjects not endowed with appropriate powers and representing an exclu- sively private interest. At the same time, the first group of subjects includes not only public-territorial entities, state authorities, but also organizations performing publicly significant functions.
The legal definition of a legal entity does not reflect all the features of the legal status of these subjects, that is why the author refers to the concept of a legal entity of public law. Legal entities of public law have a special nature, different from legal entities of private law, since they have the right to make decisions affecting an indefinite range of persons.
Conclusions. The analysis of the features of the legal entity of public law allocated in the literature (special legal nature; special social quality; special interests and will; connection with the public power; special way of creation; public-legal character of responsibility) al- lowed to justify that self-regulatory organizations are the kind of legal entities of public law - organizations performing publicly significant functions.

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1. Introduction

Despite the fact that more than 10 years have passed since the adoption of the Federal law "On self-regulatory organizations", the question of determining their legal status still remains unresolved.

The legislator understands as self-regulating organizations the non-profit organizations created for the purposes provided by this Federal law and other Federal laws based on membership in uniting subjects of business activity proceeding from unity of branch of production of goods (works, services) or the market of the made goods (works, services) or uniting subjects of professional activity of a certain type.

Given that in some areas of professional and business activities compulsory self-regulation has replaced the licensing and SRO in fact began to exercise the powers previously exercised by the state represented by relevant bodies, the problem of improving self-regulation institute does not lose its relevance [1, p. 21; 2, p. 27-28; 3, p 103; 4, p. 30; 5, p. 770].

At the same time, the improvement of the institution of self-regulation is impossible without establishing the features of the legal status of the SRO.

In the framework of this article, the author attempts to justify the possibility of referring self-regulatory organizations with mandatory membership to the number of legal entities of public law on the basis of the analysis of the relevant concept.

2. The concept and types of subjects of administrative law.

Subjects of administrative law are traditionally understood as natural and legal persons possessing certain rights, duties, and also bearing responsibility in the sphere of public administration.

Even in the Soviet science of administrative law there was a tradition to divide the subjects of administrative law into individual and collective. This tradition is still preserved in the works of administrative scientists [6, p. 58].

Besides, in the doctrine expediency of division of subjects of administrative law on the persons allocated with state-imperious powers, and the persons who are not possessing those is proved [7, p. 10]. The legal position of subjects in the mechanism of public administration is considered as the basis for such classification.

Within the framework of the classification given, for example, by A. B. Agapov (individual and corporate subjects of administrative law), the author refers to corporate subjects as "public law participants of administrative and legal relations" and "private law participants". To public-legal participants, he refers to public authorities and local governments, organizations, institutions
[8, p. 47-48].

A. A. Demin divides the subjects of administrative law according to the criterion of the presence of authority, the main feature of administrative relations in the state form of organization of the company on the managers and managed [9, p. 56].

Thus, in administrative-legal relations, as a rule, two types of subjects can take part: the subjects exercising public functions and endowed with authority for their implementation, and the subjects not endowed with appropriate powers, that is, representing an exclusively private interest. At the same time, the first group of subjects includes not only public-territorial entities, state authorities, but also organizations performing publicly significant functions.

It is obvious that the definition of a legal entity contained in article 48 of the Civil Code of the Russian Federation is not able to reflect the unique characteristics possessed by legal entities exercising the public powers transferred to them. The concept of a legal entity of public law can solve this problem.

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3. The concept of a legal entity of public law.

The idea of legal entities of public law is not new for domestic science. S. N. Bratus in 1947 noted that bourgeois legal entities, depending on the nature and significance of their activities, are divided into public (the state, administrative-territorial entities, some state institutions and so-called public-law corporations) and private (all other public entities) [10, pp. 62-63].
C. A. Yampolskaya assessed the involvement of non-profit organizations in the sphere of public administration as one of "many manifestations of the objective process of further development of democracy occurring under socialism" [11, p. 4].

The founder of the modern theory of legal entities of public law is V. E. Chirkin. According to the author, a purely civil approach to legal entities as subjects of law is insufficient for other branches of law, especially for the sphere of public administration, in which special methods of legal regulation are used [12, p. 26]. Under the legal entity of public law V. E. Chirkin understands "recognized public authorities as tangible and public law non-profit education, acting in legal relations in a variety of legal forms to the common good by the legitimate use of public authority to cooperate with it, pressure on it with the name, other identifying characteristics, with property, with rights and responsibilities and responsible for their own legal acts and actions" [12, p. 94].

Legal entities of public law have a special essence, different from legal entities of private law. Legal entities of public law have a managerial status that allows them to make decisions affecting an indefinite number of persons.

Despite the fact that the delegation of a number of public powers to legal entities that are not state bodies is a real phenomenon in our country, the term "legal entity of public law" has not yet received its normative consolidation. In the domestic legislation, there is also no definition of the concept of "organization performing publicly significant functions", as well as a list of subjects related to them.

4. SROs as legal entities of public law.

To study the features of the status of self-regulatory organizations, the most significant is the classification of SRO depending on the presence or absence of the obligation of the subject of professional activity to be a member of the SRO.

The difference between the two types of self-regulatory organizations, in addition to the presence or absence of the obligation to join them, is as follows. A distinctive feature of SROs based on the principle of compulsory membership is the empowerment of their public authority: the authority to establish standards and rules of professional activity, compliance with which is an imperative condition for the implementation of the relevant activities; the authority to monitor compliance by their members not only with standards and rules of self-regulation, but also with the provisions of Federal laws on certain types of professional activity; authority on consideration of complaints to actions of members of self-regulatory organization and cases on violation of requirements of standards and rules of self-regulatory organizations, conditions of membership in self-regulatory organizations, but the requirements of the laws on individual types of professional activities , and use of its members disciplinary measures, up to expulsion of members of self-regulatory organizations, entailing a ban on the implementation of the corresponding activity.

Due to the fact that SROs with mandatory membership exercise public authority, their functions acquire a public legal character. Performance of SRO with obligatory membership of the functions affects the rights and legitimate interests not only of their members, but an indefinite circle of persons with whom members of SRO enter into private legal relations on which the corresponding regulation extends [13, p.37].

In this regard, it is difficult to agree with D. A. Petrov considers groundless the opposition of two types of SRO, and the SRO division into public law and private law [14, p. 56].

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A.V. Basova subdivides the functions of the SRO into private law and public law. According to the author, the implementation of public-legal functions (to them the author refers to the rule-making, control, suppression, security, information) "affects not only members of the SRO, but also other persons interested in effective activities in the market of consumers of goods (works, services), other market participants, as well as the state and society as a whole»; the primary task of the private legal functions of the SRO (representative, conflict resolution and dispute resolution, educational) is to satisfy the interests of the members of this Association [15, p. 22]. We believe that this division of functions is appropriate only in relation to the functions of the SRO with mandatory membership. Otherwise, it is possible to come to an unfounded conclusion that any legal entity has public legal functions: as a rule, any legal entity adopts local acts, monitors their compliance, discloses information about its activities in cases stipulated by law.

The granting of public authority to SROs based on the principle of compulsory membership, which are non-profit organizations, has given rise to a debate about their legal nature.

In the literature, attempts have already been made to classify self-regulatory organizations as organizations that claim the status of legal entities of public law [16, p. 105].

In our opinion, not all self-regulatory organizations can be referred to the number of legal entities of public law, but only SROs with mandatory membership due to their above-mentioned features.

The analysis of V. E. Chirkin's characteristics of a legal entity of public law [12, p. 100-105] makes it possible to detect a number of such features in self-regulatory organizations with mandatory membership.

1. Special legal nature. Previously Created as non-profit organizations SRO with mandatory membership as a result of entering information into the state register acquires a special public legal nature.
2. Special social quality. Appointment of legal entities of public law, as well as SRO, based on the principle of compulsory membership, is not to participate in civil turnover, and in solving problems of a public nature.
3. As pointed out by V. E. Chirkin, not only the goals and nature of legal entities of private and public law are different, but also their interests and will. In contrast to a private law legal entity exercising the common interests of a group of individuals, a public law legal entity acts in the public interest. Despite the fact that self-regulatory organizations are associations of subjects of professional activity, they act not only in the interests of their members, but also in the interests of consumers of goods, works, services, as well as in the interests of the state, when it comes to self-regulatory organizations with mandatory membership.
4. Connection with public power. Self-regulatory organizations with mandatory membership exercise the public authority delegated to them on the basis of the law, that is, they have a special relationship with the state power.
5. A special way of creating legal entities of public law. With regard to self-regulatory organizations, the state provides for a special procedure for the acquisition and loss of legal capacity.
6. The responsibility of a legal entity of public law is not based on private law, but on public law. Thus, article 14.52 the code of administrative offences provides for administrative liability of self-regulatory organization whose membership is in accordance with the legislation of the Russian Federation is required for failure to perform duties of disclosure.

V. E. Chirkin distinguishes five kinds of legal entities of public law: 1) the state and state (state-like) formations (subjects of federations and territorial autonomies); 2) territorial public collectives of different levels; 3) public authorities (States, subjects of federations and municipalities); 4) public authorities (state, subjects of federations and municipalities); 5) non-profit organizations of public character.

It seems that taking into account the position of the

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constitutional Court of the Russian Federation formulated in Resolution No. 12-P of December 19, 2005, the last group of legal entities of public law should be renamed into "organizations performing publicly significant functions", especially since this term has recently been enshrined in Russian legislation . However, the content of this term is not quite obvious due to the lack of a legal definition and a unified scientific approach to the understanding of publicly significant functions. In the literature, as the main feature of publicly significant functions, their focus on the implementation or promotion of the rights and legitimate interests of an indefinite circle of persons is called
[17, p. 83].

Self-regulatory organizations with mandatory membership can be referred to organizations that perform publicly significant functions, and therefore to legal entities of public law, since their powers (such as the development of standards and rules of activity, compliance with which is a condition for maintaining membership in the SRO and, accordingly, the right to engage in relevant activities, monitoring compliance by their members with the requirements of legislation and internal documents of the SRO, and others), and also carry out the function that they are aimed at protecting the interests of an unlimited circle of persons.

5. Summary.

In administrative-legal relations, as a rule, two types of subjects can take part: the subjects exercising public functions and endowed with authority for their implementation, and the subjects not endowed with appropriate powers, that is, representing an exclusively private interest. At the same time, the first group of subjects includes not only public-territorial entities, state authorities, but also organizations performing publicly significant functions.

The definition of a legal entity contained in article 48 of the civil code of the Russian Federation is not able to reflect the unique characteristics possessed by legal entities exercising the public powers transferred to them. The concept of a legal entity of public law can solve this problem.

The founder of the theory of legal entities of public law V. E. Chirkin identifies the following features of these subjects:
1. Special legal nature.
2. Special social quality.
3. Special interests and will.
4. Connection with public power.
5. A special way of creating legal entities of public law.
6. The responsibility of a legal entity of public law is not based on private law, but on public law.

The analysis of the specified signs of the legal entity of public law allowed to find out a number of such signs at the self-regulating organizations with obligatory membership.

Since self-regulatory organizations with mandatory membership exercise powers (such as the development of standards and rules of activity, compliance with which is a condition for maintaining membership in the SRO and, accordingly, the right to engage in relevant activities, monitoring compliance by their members with the requirements of legislation and internal documents of the SRO, and others) aimed at protecting the interests of an unlimited number of persons, they can be attributed to organizations performing publicly significant functions, and thus to legal entities of public law.

A clear definition of the status of self-regulatory organizations based on the principle of compulsory membership is a necessary condition for strengthening the legality of their activities and improving the system of self-regulation in general.

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INFORMATION ABOUT AUTHOR

Anna F. Masalab – PhD in Law, Senior Lecturer,
Department of State and Municipal Law
Dostoevsky Omsk State University
55a, Mira pr., Omsk, 644077, Russia
e-mail: anna_masalab@mail.ru
ORCID: 0000-0003-3429-1910

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