

# Self-Regulation as an alternative mechanism of private governance and dispute resolution in Russia and Kazakhstan

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**Abstract:** The article seeks to explore self-regulation as an innovative, effective legal mechanism of private governance of any economic or professional activity and dispute resolution, which aims to substitute state regulation and thereby limit state interference in the economy. The research methodology consists of the critical analysis of scholars' publications, different legislative acts and judicial practice of their enforcement in the Russian Federation and the Republic of Kazakhstan as well as finding legal uncertainties and gaps and making solutions for their settlement in the sphere in question. Special attention is paid to the comparative method. On the examples of the law of these two countries, it is argued that self-regulation as such lays down the freedom of economic activity guaranteed in the constitutional, business and other legislative provisions and stipulates uniting the subjects of economic or professional activity within a self-regulatory organization mainly under the scope of corporate law. It includes (a) setting standards and other rules for pursuing any economic or professional activity by members of a self-regulatory organization; (b) monitoring compliance with such requirements and applying different alternative methods of resolution of legal disputes with the participation of its members. Such corporate normative acts adopted by non-governmental actors are suggested to be recognized as a specific type of source of private law to be clearly enshrined in the present legislation of the Russian Federation and the Republic of Kazakhstan. Unlike recommendatory documents of most non-profit organizations, they are mandatory and can be enforced through legal instruments determined in the special legislation on self-regulation. It allows the proper balance of private and public interests under the joint state and private governance of economic and professional activities. The article also stipulates enlarging the application of self-regulation to digital and other new spheres, which require a lot of rules to be adopted.

**Keywords:** Self-Regulation. Self-Regulatory Organization. Dispute Settlement. Dispute Resolution. Private Regulation. Corporate Governance. Standards of Economic and Professional Activities. Corporate Acts. Sources of Law.

**Summary:** **1** Introduction – **2** Research methods – **3** The concept of self-regulation – **4** The spheres of implication of self-regulation and perspectives for its further implementation – **5** Self-regulatory organization and its legal status – **6** Standards and other normative acts of self-regulatory organizations as a specific source of law – **7** Enforcement of standards and rules of self-regulatory organizations and resolution of the disputes – **8** Conclusion – References

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## 1 Introduction

The function of making rules of law is usually performed by the state throughout adopting a lot of legislative and by-law acts by competent governmental bodies. However, it can be decentralized, while enabling private parties to make law.<sup>1</sup> It is deemed that the freedom of entrepreneurial and other economic activities underlying in law can be maintained and developed more effectively by the private sector itself.<sup>2</sup>

It casts light to understanding why the Russian Federation and the Republic of Kazakhstan, seek to delegate some powers to regulate to private organizations. One of the areas of implementation of the administrative reform in such countries is to abolish redundant and duplicative state's functions performed by executive authorities and to transfer a number of them to self-regulatory organizations. It enables to limit the state interference into the economic activities of subjects of entrepreneurship, including ending the excessive state regulation. In addition, the self-regulation performed throughout making private rules by self-regulatory organizations sometimes can be considered as one of the principles of the business law or the interaction between the subjects of entrepreneurship and state.<sup>3</sup>

Meanwhile, it is necessary to note that the rules adopted by self-regulatory organizations are usually not duly specified in the system of traditional sources of law, for instances, in the legislation of the Russian Federation and the Republic of Kazakhstan. Moreover, the legal mechanism of dispute resolution and enforcement of responsibility of both participants of a self-regulatory organization and such an organization before consumers is not also fully developed. As a result, a number of cases appear before courts, where the internal normative acts of self-regulatory

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<sup>1</sup> BONE, R. Decentralizing the Lawmaking Function: Private Lawmaking Markets and Intellectual Property Rights in Law, *International Review of Law and Economics*, v. 38, supplement, p. 132, 2014.

<sup>2</sup> GRAJZL, P., BANIAK A., Industry Self-Regulation, Subversion of Public Institutions, and Social Control of Torts, *International Review of Law and Economics*, v. 29, n. 4, p. 360, 2009.

<sup>3</sup> REPUBLIC OF KAZAKHSTAN. The Business Code of the Republic of Kazakhstan: Law No. 375-V of October 29, 2015, art. 3 (2), [https://online.zakon.kz/document/?doc\\_id=38259854&mode=p&page=1](https://online.zakon.kz/document/?doc_id=38259854&mode=p&page=1). Access: 12.05.2024.

organizations need to apply, but they might be in contradiction with the legislative and other legal provisions enshrined in different sources of law.<sup>4</sup>

## 2 Research methods

The article implies the use of legal methods of research, which allow describing, generalizing, classifying, and systematizing the legal knowledge on self-regulation. They include the doctrinal method and black letter approach which imply the critical analysis of scholars' publications, different legislative acts and judicial practice of their enforcement in the Russian Federation and the Republic of Kazakhstan as well as finding legal uncertainties and gaps and making solutions for their settlement in the sphere in question. Special attention is paid to the comparative method, which is employed, first of all, under the analysis of the Federal Law of the Russian Federation No. 315-FZ of December 1, 2007 "On Self-Regulatory Organizations"<sup>5</sup> and Law of Republic of Kazakhstan No. 390-V of November 12, 2015 "On Self-Regulation".<sup>6</sup> The article compares the definition and specifics of self-regulation in such laws and thereby reveals its main features under the state and private governance of any economic or professional activity. It also compares existing legal mechanism of dispute resolution and enforcement of responsibility of both participants of a self-regulatory organization and such an organization before consumers.

## 3 The concept of self-regulation

The concept of self-regulation is based on the freedom of economic activity which is enshrined in constitutional, business and other legislative acts. Among different branches of law, it is deemed to be originally corporate law which can provide the necessary legal framework for developing self-regulation. As such, it usually allows participating individuals and legal entities in one corporate organization, adopting rules mandatory for participants of such an organization, and excluding them from the organization in case of committing corporate offences.<sup>7</sup> Such relations associated with the participation in or management of corporate organizations are

<sup>4</sup> RUSSIAN FEDERATION. The Resolution of the Constitutional Court No. 12-P of December 19, 2005 "On the Case of Checking the Constitutionality of Article 20 (1, paragraph 8) of Federal Law "On Insolvency (Bankruptcy)" in Connection with the Complaint of Citizen A.G. Mezhtentsev". *The Collection of Legislation of the Russian Federation*, n. 3, art. 335, 2006.

<sup>5</sup> RUSSIAN FEDERATION. The Federal Law No. 315-FZ of December 1, 2007 "On Self-Regulatory Organizations". *The Collection of Legislation of the Russian Federation*, n. 49, art. 6076, 2007.

<sup>6</sup> REPUBLIC OF KAZAKHSTAN. The Law No. 390-V of November 12, 2015 "On Self-Regulation", [https://online.zakon.kz/Document/?doc\\_id=36858926](https://online.zakon.kz/Document/?doc_id=36858926). Access: 12.05.2024.

<sup>7</sup> SHITKINA, P. (ed.). *Corporate Law*. Moscow: Knorus, 2011, pp. 32-33, 451-457, 500-508 (in Russian); AMIRALTY, E. & ARCHER M. *Canadian Business Law*. Nelson Canada, 1988, pp. 280-285.

in the scope of private law and they can be also governed by-laws adopted by executive governmental bodies.<sup>8</sup>

In theory, the self-regulation is usually understood as a type of non-state regulation of entrepreneurial relations,<sup>9</sup> in which their participants, in order to regulate and organize their own behavior, determine mutual rights and obligations within the limits established by the state, influence their activity by establishing the rules of conduct binding on themselves.<sup>10</sup> Furthermore, it might be recognized as a special type of corporate governance. If corporate governance is performed within a legal entity, the self-regulation also includes the controlling influence of a self-regulatory organization in relation to the entrepreneurial activities of its members.<sup>11</sup> It stipulates the development and establishment of standards and rules for the implementation of professional activities, as well as sanctions for their non-fulfillment or improper execution.<sup>12</sup>

There are also legislative definitions of self-regulation in the Russian Federation and the Republic of Kazakhstan, which are similar. For instance, it is defined as an independent and initiative activity that is carried out by the subjects of entrepreneurial or professional activity and the content of which is the development and establishment of standards and rules for this activity, as well as monitoring compliance with the requirements of these standards and rules.<sup>13</sup>

Thus, the self-regulation can be considered as a private legal mechanism which is alternative to traditional public regulation and capable to limit the state interference into the economy. It is deemed to contain two main essential elements:

- (a) setting standards and other private rules by a self-regulatory organization for its members – subjects of economic (entrepreneurial or business) or professional activity;
- (b) monitoring compliance with the requirements of these rules and the application of different alternative methods of resolution of legal disputes with the participation of its members.

<sup>8</sup> RUSSIAN FEDERATION. The Civil Code of the Russian Federation (Part One): Federal Law No. 51-FZ of November 30, 1994, art. 2-3. *The Collection of Legislation of the Russian Federation*, n. 32, art. 3301, 1994.

<sup>9</sup> MOKHOV, A.A. Governmental Regulation and Self-Regulation of Economic Activity from the Position of System Theory, *Gosudarstvo i pravo = State and Law*, n. 6, pp. 56-65, 2019 (in Russian).

<sup>10</sup> LESKOVA, Y. *Self-Regulation as Legal Way of Organization of Business Relations*: Abstract of Doctor's Thesis. Moscow, 2013, p. 15 (in Russian).

<sup>11</sup> *Ibid.*, p. 17.

<sup>12</sup> ALGAZINA, A. *Self-Regulation as Type of Governance Activity (Administrative Law Aspect)*: Abstract of Candidate's Thesis. Omsk, 2017, p. 6 (in Russian); BURROWS, P. Combining Regulation and Legal Liability for the Control of External Costs, *International Review of Law and Economics*, v. 19, n. 2, pp. 227-244, 1999.

<sup>13</sup> RUSSIAN FEDERATION. The Federal Law No. 315-FZ of December 1, 2007 "On Self-Regulatory Organizations", art. 2 (1, 2). *The Collection of Legislation of the Russian Federation*, n. 49, art. 6076, 2007.

## 4 The spheres of implication of self-regulation and perspectives for its further implementation

The sphere of implication of self-regulation is diverse. As it follows from the legal definitions concerned, it is carried out on the terms of the association of subjects of any entrepreneurial or professional activity in self-regulatory organizations.<sup>14</sup> It can be voluntary or mandatory. The former one is based on voluntary membership (participation) and it stipulates mandatory private standards of conduct for subjects of self-regulation and their activities, which can be higher and stricter than the requirements established by the legislation. The latter one requires the compulsory membership (participation) and it happens in cases determined in the legislation, usually in the areas of activities associated with the implementation of state functions or the need to delegate certain functions performed by state bodies.<sup>15</sup> For instance, in Russia they are engineering surveys, architectural and construction design, construction,<sup>16</sup> valuation activity,<sup>17</sup> activity of arbitration managers,<sup>18</sup> “auditing”,<sup>19</sup> actuarial activity,<sup>20</sup> activity of professional participants of the securities market,<sup>21</sup> etc.

The perspectives of implication of self-regulation in the governance of economic activities are deemed to be much wider. It is not limited to the types or spheres in which the state is mostly interested in their regulation, but those which are now out of any state governance or have some legal gaps and shortages in the present legal regulation.

One of them is digital environment, including Internet, cryptocurrency, digital rights, financial digital assets, electronic documents, artificial intelligence and other informational technologies. It is the sphere where the law falls behind the economic development too much. The matter is that there are no special rules in international and national law which would govern digital economy properly. Such newly appeared

<sup>14</sup> RUSSIAN FEDERATION. The Federal Law No. 315-FZ of December 1, 2007 “On Self-Regulatory Organizations”, art. 2 (2). *The Collection of Legislation of the Russian Federation*, n. 49, art. 6076, 2007.

<sup>15</sup> REPUBLIC OF KAZAKHSTAN. The Law No. 390-V of November 12, 2015 “On Self-Regulation”, art. 3 (2, 3), <https://online.zakon.kz/Document/?docid=36858926>. Access: 12.05.2024.

<sup>16</sup> RUSSIAN FEDERATION. The Town-Planning Code of the Russian Federation: Federal Law No. 190-FZ of December 29, 2004, ch. 6.1. *The Collection of Legislation of the Russian Federation*, n. 1, art. 16, 2005.

<sup>17</sup> RUSSIAN FEDERATION. The Federal Law No. 135-FZ of July 29, 1998 “On Valuation Activity in the Russian Federation”, art. 15. *The Collection of Legislation of the Russian Federation*, n. 31, art. 3813, 1998.

<sup>18</sup> RUSSIAN FEDERATION. The Federal Law No. 127-FZ of October 26, 2002 “On Insolvency (Bankruptcy)”, art. 20. *The Collection of Legislation of the Russian Federation*, n. 43, art. 4190, 2002.

<sup>19</sup> RUSSIAN FEDERATION. The Federal Law No. 307-FZ of December 30, 2008 “On Auditing”, art. 4. *The Collection of Legislation of the Russian Federation*, n. 1, art. 15, 2009.

<sup>20</sup> RUSSIAN FEDERATION. The Federal Law No. 293-FZ of November 2, 2013 “On Actuarial Activity in the Russian Federation”, art. 7. *The Collection of Legislation of the Russian Federation*, n. 44, art. 5632, 2013.

<sup>21</sup> RUSSIAN FEDERATION. The Federal Law No. 223-FZ of July 13, 2015 “On Self-Regulatory Organizations in the Financial Market”, art. 3. *The Collection of Legislation of the Russian Federation*, n. 29, art. 4349, 2015.

objects in the digital form are different from traditional ones in civil law (especially things) so that the general legal instruments stipulated in the contemporary law can be hardly applied. The legislator is now just trying to conceive and sometimes to introduce some new rules into the legal system, taking into account a plenty of various concepts on cryptocurrency and other IT objects, especially in economics and IT science. Meanwhile, a lot of issues, such as the order of appearance, implementation and protection of digital rights as well as conflict of law, are to be clearly settled in the law. IT standards regulation is strongly needed.<sup>22</sup>

It is thought that all such necessary rules can be developed much easier under a self-regulatory organization and then be shared among its participants, taking into account their needs and interests. Moreover, the mechanism of self-regulation can improve the protection of consumers and other counterparties of such members and thereby limit their responsibility throughout the establishment of compensation funds and other legal and economic tools stipulated in the legislation.

## 5 Self-regulatory organization and its legal status

The function of enacting mandatory private standards for pursuing any economic or professional activity is performed by a self-regulatory organization which is recognized as a legal entity (non-profit organization). It brings together the subjects of the activity of a certain type which is usually based on the unity of the industry of production or the market of manufactured goods (works, services).

As a non-profit organization it is entitled to conduct not business (entrepreneurial) activity itself,<sup>23</sup> but another economic activity, such as making conditions for its members to pursue their business or professional activity in different spheres, including self-regulation. Although there are a lot of non-profit organizations uniting the subjects of entrepreneurial activities (e.g., the Chamber of Commerce and Industry of the Russian Federation, the Russian Union of Industrialists and Entrepreneurs, etc.), not all of them are recognized as self-regulatory organizations. It is important to note that a non-profit organization should acquire the status of a self-regulatory organization under the inclusion of the information about this organization into the state register (official list) of self-regulatory organizations and it loses such a status from the date of exclusion of the information on the organization from the register.

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<sup>22</sup> STUURMANM, K. IT standards regulation, *Computer Law & Security Review*, v. 8, n. 1, pp. 2-10, 1992.

<sup>23</sup> LISITSA, V. & PARKHOMENKO, S. Some Aspects of Improving the Efficiency of Criminal Law in the Sphere of Economy: Developing the Categories. *Russian Journal of Criminology*, v. 12, n. 2, p. 196, 2018 (in Russian).

Similar to any legal entity, a self-regulatory organization is to be established in conformity with the general provisions of the civil legislation on legal entities.<sup>24</sup> In addition, a number of additional requirements shall be met, such as:<sup>25</sup>

- (a) joining at least twenty-five subjects of an entrepreneurial activity or at least one hundred subjects of professional activity of a certain type, unless otherwise established by federal laws;
- (b) existing standards and rules of an entrepreneurial or professional activity that are mandatory for all members of a self-regulatory organization;
- (c) ensuring by a self-regulatory organization of additional property liability of each of its members to consumers of manufactured goods (works, services) and other persons in accordance with this Federal Law. For this purpose, a non-profit organization shall create specialized bodies entitled to monitor compliance by the members of such an organization with its requirements and to resolve disputes on the application of disciplinary measures against those members, including their exclusion from the non-profit organization.<sup>26</sup>

The acquisition of the status of a self-regulatory organization gives some privileges in comparison to other legal entities. One of them is the right on its own behalf to challenge any legal acts and (or) actions (inaction) of the state and local authorities that violate the rights and lawful interests of the self-regulatory organization, its members or threatening such an infringement. It is of practical importance for such an organization to bring an administrative lawsuit without a proxy from its member before court.<sup>27</sup>

From this regard, a self-regulatory organization has the dual legal nature. On the one hand, it is a non-profit organization functioning as a person of private law. On the other hand, from the date of its inclusion in the appropriate state register, it acquires the special public-law status of self-regulatory organizations,<sup>28</sup> which

<sup>24</sup> RUSSIAN FEDERATION. The Civil Code of the Russian Federation (Part One): Federal Law No. 51-FZ of November 30, 1994. *The Collection of Legislation of the Russian Federation*, n. 32, art. 3301, 1994; The Federal Law No. 7-FZ of January 12, 1996 "On Non-Commercial Organizations". *The Collection of Legislation of the Russian Federation*, n. 3, art. 145, 1996.

<sup>25</sup> RUSSIAN FEDERATION. The Federal Law No. 315-FZ of December 1, 2007 "On Self-Regulatory Organizations", art. 3 (3). *The Collection of Legislation of the Russian Federation*, n. 49, art. 6076, 2007.

<sup>26</sup> RUSSIAN FEDERATION. The Resolution of the Thirteenth Arbitration Court of Appeal No. 13AP-4140/2017 of March 21, 2017. Case No. A56-59530/2016, <http://www.consultant.ru/> Access: 20.04.2024.

<sup>27</sup> RUSSIAN FEDERATION. The Resolution of the Plenum of the Supreme Court No. 50 of December 25, 2018 "On the Practice of Consideration by Courts of Cases on Challenging Normative Legal Acts and Acts Containing Explanations of Legislation and Having Normative Features", <http://www.consultant.ru/> Access: 12.05.2024.

<sup>28</sup> RUSSIAN FEDERATION. The Resolution of the Constitutional Court No. 12-P of December 19, 2005 "On the Case of Checking the Constitutionality of Article 20 (1, paragraph 8) of Federal Law "On Insolvency (Bankruptcy)" in Connection with the Complaint of Citizen A.G. Mezhentsev". *The Collection of Legislation of the Russian Federation*, n. 3, art. 335, 2006.



enables them to perform some state's functions.<sup>29</sup> This statement correlates with the conclusions of the European Court of Human Rights, which found that notary chambers cannot be considered as ordinary associations in the sense of Article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950.<sup>30</sup> It ascertained that the regulatory bodies of the liberal professions are not associations within the meaning of Article 11 of the Convention. The object of such bodies, established by legislation, is to regulate and promote the professions, whilst exercising important public law functions for the protection of the public. They cannot, therefore, be likened to trade unions but remain integrated within the structures of the State.<sup>31</sup>

## 6 Standards and other normative acts of self-regulatory organizations as a specific source of law

A self-regulatory organization prepares and approves the mandatory standards and rules of an entrepreneurial or professional activity. They are based on the legislation and contain requirements for its members to be complied with. They should correspond with business ethics, eliminate or reduce the conflict of interests of members of the self-regulatory organization, their employees and members of the permanent collegial control body of the given organization. They must prohibit its members from carrying out activities to the detriment of other subjects of an entrepreneurial or professional activity, and also establish requirements that prevent unfair competition, actions that cause moral harm or damage to consumers of goods (works, services) and other persons, actions that damage the business reputation of a member of the self-regulatory organization or its business reputation.<sup>32</sup>

Unfortunately, it does not cast light to the legal nature of the standards and rules concerned and their place in the system of sources of legal regulation. Moreover, the present Russian civil legislation keeps silence about it. Meanwhile, the existence and broad application of similar private rules often happens in the sphere of private law.<sup>33</sup> In contrast to civil legislation, such sources are usually mentioned only in legal theory.<sup>34</sup>

<sup>29</sup> MASALAB, A.F. Self-Regulatory Organizations as Legal Entities of Public Law, *Law Enforcement Review*, v. 3, n. 4, p. 79, 2019.

<sup>30</sup> UNITED NATIONS. The Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950. URL: [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf) Access: 12.05.2024.

<sup>31</sup> EUROPEAN COURT OF HUMAN RIGHTS. *O.V.R. v. Russia*. The Decision No. 44319/98 of April 3, 2001, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-5846%22%5D%7D> Access: 12.05.2024.

<sup>32</sup> RUSSIAN FEDERATION. The Federal Law No. 315-FZ of December 1, 2007 "On Self-Regulatory Organizations", art. 4 (3-7). *The Collection of Legislation of the Russian Federation*, n. 49, art. 6076, 2007.

<sup>33</sup> LISITSA, V. Responsibility of a Host State in Transnational Investment Disputes. *Journal of Advanced Research in Law and Economics*, v. 31, n. 1, p. 141, 2018.

<sup>34</sup> BIRYUKOV, S.V. National Law and Legal Pluralism, *Law Enforcement Review*, v. 6, n. 4, pp. 7-8, 2022.



At first sight, it is important to note that the given standards are adopted by the competent bodies (usually the meeting of the members) of self-regulatory organizations and, from this regard, they cannot be recognized as contracts. The matter is that such rules are mandatory to all the members of the organization, even where not all of the members agree with the rules adopted by the majority. Meanwhile, the contracts are to be concluded by all the members. However, it hardly happens in fact. In contrast to contractual terms, the standards and other rules of self-regulatory organizations express particular models of conduct addressed to a group of persons and designed for repeated use. From this regard, they are more similar to a normative legal act, which has such specific features, as: (a) issuing in the duly order by an authorized body of state power; (b) containing rules of conduct obligatory for the uncertain circle of persons, which are intended for repeated application; (c) aiming to regulate particular social relations, to modify or terminate an existing legal relationship.<sup>35</sup>

If the standards and other rules of a self-regulatory organization are recognized as rules of law it is necessary to determine their type of sources of law. In theory, there may be a normative act, judicial precedent, legal custom, normative agreement, doctrine.<sup>36</sup> In civil law jurisdictions, including the Russian Federation and the Republic of Kazakhstan, three main sources of law are traditionally recognized. They are an international treaty, legislation consisting of any legislative and other normative acts adopted on different governmental levels, and a legal custom.<sup>37</sup> Unlike the common law systems, civil law jurisdictions do not adopt a stare decisis principle in adjudication.<sup>38</sup>

From these provisions the standards of a self-regulatory organization can be hardly recognized as a legislative or another normative act of the state, given that they are adopted by a private organization rather than the state represented by any authorized governmental body. In this regard it is doubtful to fall such rules into the state regulation, even in its reduced or trimmed form, as some scholars write in their

<sup>35</sup> RUSSIAN FEDERATION. The Resolution of the Plenum of the Supreme Court No. 50 of December 25, 2018 "On the Practice of Consideration by Courts of Cases on Challenging Normative Legal Acts and Acts Containing Explanations of Legislation and Having Normative Features", <http://www.consultant.ru/> Access: 12.05.2024.

<sup>36</sup> BOSHNO, S. Doctrinal Forms and Sources of Law, *Gosudarstvo i pravo = State and Law*, n. 9, p. 6, 2018 (in Russian).

<sup>37</sup> EROFEEVA, D.V., SHAGIEVA, R.V. The Sources of Private Law: The Theoretical Aspects of Comprehension and Practice of Their Perfection in Russia, *Gosudarstvo i pravo = State and Law*, n. 10, pp. 23-31, 2013 (in Russian); RUSSIAN FEDERATION. The Civil Code of the Russian Federation (Part One): Federal Law No. 51-FZ of November 30, 1994, art. 3, 5, 7. *The Collection of Legislation of the Russian Federation*, n. 32, art. 3301, 1994; REPUBLIC OF KAZAKHSTAN. The Civil Code of the Republic of Kazakhstan: Law No. 268-XIII of December 27, 1994, art. 3, [https://online.zakon.kz/document/?doc\\_id=38259854&mode=p&page=1](https://online.zakon.kz/document/?doc_id=38259854&mode=p&page=1). Access: 12.05.2024.

<sup>38</sup> FON, V., PARISI, F. Judicial Precedents in Civil Law Systems: A Dynamic Analysis, *International Review of Law and Economics*, v. 26, n. 4, p. 519, 2006.

publications.<sup>39</sup> It is thought more reasonable to qualify them as quasi-regulation or de-regulation,<sup>40</sup> which are enshrined in normative acts of an authorized private organization.

Unfortunately, such acts have different names taking into account their application in different branches of law (local acts in labour law, internal documents or corporate normative acts in corporate law, etc.).<sup>41</sup> That is why in theory they are argued to be called with the only one unified name.<sup>42</sup> Moreover, it is deemed to recognize them as the separate type of sources of law, especially in business and labour law,<sup>43</sup> which should be clearly specified in the legislation, in particular in the Civil Code of the Russian Federation<sup>44</sup> and the Business Code of the Republic of Kazakhstan.<sup>45</sup>

Such legal ambiguity was noted in judicial practice. For instance, in one case on the challenge of the internal labor regulation of a joint stock company by the prosecutor, it was held by the court that the Civil Procedural Code of the Russian Federation does not contain special rules regulating the challenge of local normative acts. In this regard, the claim procedure used for contracts shall be applied to such acts, although they are in their legal nature are a source of law and different from transactions.<sup>46</sup> In the whole, it can be stated that the Russian judicial practice permits the state to delegate its some public functions to private persons, including making rules of law. Such a transfer is permissible if it does not contradict the Constitution of the Russian Federation and federal laws.<sup>47</sup>

<sup>39</sup> SHISHKIN, S. *Business Law (Economic Law): Framework of State Regulation of Economy*. Moscow: Infotropik Media, 2011, pp. 4, 5, 127 (in Russian).

<sup>40</sup> GUBIN, E. *The State Regulation of Market Economy and Entrepreneurship: Legal Problems*. Moscow: Jurist, 2006, p. 37 (in Russian).

<sup>41</sup> MOROZOVA, L.A. The Legal Nature and Role of Local Law-Making at the Present Stage, *Gosudarstvo i pravo = State and Law*, n. 9, pp. 71-78, 2018 (in Russian).

<sup>42</sup> BOLDYREV, V. Procedure for Adoption and Problems of Challenge of Provisions of Internal Documents. *Bulletin of Arbitration Practice*, n. 5, p. 13, 2015 (in Russian).

<sup>43</sup> ANDREEV, V. & LAPTEV, V. *Corporate Law of Modern Russia*. Moscow: Prospekt, 2017, p. 53 (in Russian); CHIKULAEV, R.V. Corporative and Local Norm-Making in the Legal Mechanism of the Securities Market Regulation, *Perm University Herald. Juridical Sciences*, v. 2, n. 8, p. 150, 2010 (in Russian); SULEIMENOV, M. The Theory of Legal Facts: History and Modernity, *Gosudarstvo i pravo = State and Law*, n. 5, p. 23, 2016 (in Russian).

<sup>44</sup> RUSSIAN FEDERATION. The Civil Code of the Russian Federation (Part One): Federal Law No. 51-FZ of November 30, 1994. *The Collection of Legislation of the Russian Federation*, n. 32, art. 3301, 1994.

<sup>45</sup> REPUBLIC OF KAZAKHSTAN. The Business Code of the Republic of Kazakhstan: Law No. 375-V of October 29, 2015, [https://online.zakon.kz/document/?doc\\_id=38259854&mode=p&page=1](https://online.zakon.kz/document/?doc_id=38259854&mode=p&page=1) Access: 12.05.2024.

<sup>46</sup> RUSSIAN FEDERATION. The Decision of the Tigil'skiy District Court of Kamchatskiy Krai No. 2-94-2010 of October 15, 2010, <http://www.consultant.ru/>. Access: 20.04.2024.

<sup>47</sup> RUSSIAN FEDERATION. The Resolution of the Constitutional Court No. 15-P of May 19, 1998 "On the Case of Checking the Constitutionality of Certain Provisions of Articles 2, 12, 17, 24 and 34 of the Fundamentals of the Legislation of the Russian Federation on Notaries". *The Collection of Legislation of the Russian Federation*, n. 22, art. 2491, 1998.

The standards concerned are different from a legal custom as a rule of behavior which has been established and is widely applied in some sphere of an entrepreneurial or other kind of activities, and which has not been stipulated by legislation, regardless of whether it has or has not been fixed in any document.<sup>48</sup> A custom may be fixed in a document (published in the press, set out in a court decision on a specific case containing similar circumstances, witnessed by the chamber of commerce), or existing independently of such a record. It is the party that refers to a custom shall prove its existence. However, the legal effect of the standards of self-regulatory organizations is directly stipulated in the legislation so that there is no need to prove them in courts.

Thus, the standards of a self-regulatory organization should be regarded as a specific source of law to be clearly recognized by the state in conformity with its national legislation.

## 7 Enforcement of standards and rules of self-regulatory organizations and resolution of the disputes

The enforcement of standards and rules of self-regulatory organizations is performed with the use of some legal means enshrined in the legislation. Firstly, such an organization must establish disciplinary measures against its members for infringement of requirements of its private standards and rules. Secondly, it must perform monitoring (control) the activity of its members by means of inspections to check the compliance with these requirements, conditions of membership in the self-regulatory organization. Thirdly, in case of their violation appropriate materials shall be forwarded to the competent body of the self-regulatory organization which is authorized to consider cases on the application of disciplinary measure (responsibility) against the guilty member of the self-regulatory organization.<sup>49</sup> Such disciplinary measures include:

- (a) issuing an order obliging the member of the self-regulatory organization to eliminate the detected violations and setting a time frame for the elimination of such violations;
- (b) issuing a warning to the member of the self-regulatory organization;
- (c) imposing a fine on the member of the self-regulatory organization;
- (d) making recommendation to exclude the person from the membership of the self-regulatory organization, subject to review by the permanent collegial governing body of the self-regulatory organization;

<sup>48</sup> RUSSIAN FEDERATION. The Civil Code of the Russian Federation (Part One): Federal Law No. 51-FZ of November 30, 1994, art. 2-3. *The Collection of Legislation of the Russian Federation*, n. 32, art. 3301, 1994.

<sup>49</sup> RUSSIAN FEDERATION. The Federal Law No. 315-FZ of December 1, 2007 "On Self-Regulatory Organizations", art. 4 (5), 9. *The Collection of Legislation of the Russian Federation*, n. 49, art. 6076, 2007.

- (e) other measures established by internal documents of the self-regulatory organization.

Dispute resolution procedure related to disputes arisen from complaints and cases related to application of disciplinary measures is not properly define both in Russian Federation and in Kazakhstan.

Notably, that the procedure for consideration of complaints and cases and applying disciplinary measures against members of the self-regulatory organization shall be determined by its internal documents considered as a specific source of law alongside with the standards under consideration.

In accordance with this fact, we can conclude, that it seems that self-regulatory organizations offer specific way to resolve the disputes. This way can be named as an alternative method of dispute resolution, which is provided within the self-regulatory organization with the use of both private (e.g., the internal documents of the organization) and public (e.g., special public law acts on self-regulatory organizations and enforcement of their decisions) instruments.

However, in authors' opinion, the procedural rules for resolving disputes arising from self-regulatory organizations and its members' activity should be properly developed for faster, cost-efficient and professional alternative dispute resolution.

## 8 Conclusion

The development of making rules of law by private organizations reflects the formation of civil society and aims to substitute the state regulation and thereby to limit the state interference into the economy. It lays down the freedom of economic activity guaranteed in the constitutional, business and other legislative provisions and stipulates uniting the subjects of any economic or professional activity within a self-regulatory organization mainly under the scope of corporate law. The self-regulation is argued to contain two main elements:

- (a) setting private standards and other rules by such an organization for its members;
- (b) monitoring compliance with the requirements of these rules and the application of different alternative methods of resolution of legal disputes with the participation of its members.

The rules under consideration are enshrined in the specific type of sources of law such as corporate (internal) normative acts to be clearly stipulated in the present legislation, in particular, in the Civil Code of the Russian Federation and Business Code of the Republic of Kazakhstan. Unlike codes of conduct and other recommendatory documents of most non-profit organizations, the rules of a self-regulatory organization are mandatory to its members and can be enforced throughout both private and public legal instruments established in the special

legislation on self-regulation. One of them is to exclude a guilty member from the self-regulatory organization and as result to deprive him of the special right (privilege) to lawfully pursue his economic or professional activity in a particular sphere of the economy.

The sphere of implication of self-regulation is diverse and can include any economic or professional activity. It is deemed to have great demands and perspectives for further application in digital and other new spheres which need a lot of rules of conducting investment and other activities on the Internet in the present conditions of legal gaps in international and national law. It also requires procedural rules for resolution of the disputes to be properly developed for faster, cost-efficient and professional alternative dispute resolution.

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#### **Autorregulamentação como mecanismo alternativo de governança privada e resolução de disputas na Rússia e no Cazaquistão**

**Resumo:** Este artigo explora a autorregulação como um mecanismo legal inovador e eficaz para a governança privada de atividades econômicas e profissionais, bem como para a resolução de disputas, visando substituir a regulação estatal e, assim, limitar a interferência governamental na economia. A metodologia de pesquisa consiste em uma análise crítica de publicações acadêmicas, diversos atos legislativos e práticas judiciais relacionadas à sua aplicação na Federação Russa e na República do Cazaquistão, identificando incertezas e lacunas jurídicas e propondo soluções para sua resolução. Atenção especial é dada ao método comparativo. Usando exemplos das legislações desses dois países, o artigo argumenta que a autorregulação fundamenta a liberdade de atividade econômica, garantida por disposições constitucionais, legislativas e empresariais, e facilita a unificação dos *stakeholders* dentro de organizações autorreguladoras, principalmente sob a perspectiva do direito corporativo. Isso inclui: (a) o estabelecimento de padrões e regras para a condução de atividades econômicas ou profissionais pelos membros de uma organização autorreguladora; (b) o monitoramento do cumprimento desses padrões e a aplicação de vários métodos alternativos para a resolução de disputas legais envolvendo seus membros. Sugere-se que esses atos normativos corporativos adotados por atores não governamentais sejam reconhecidos como um tipo específico de fonte do direito privado, a ser claramente consagrado na legislação vigente da Federação Russa e da República do Cazaquistão. Ao contrário dos documentos recomendatórios da maioria das organizações sem fins lucrativos, esses atos são obrigatórios e podem ser aplicados por meio de instrumentos legais determinados na legislação especial sobre autorregulação. Isso permite alcançar um equilíbrio adequado entre interesses privados e públicos sob a governança conjunta estatal e privada das atividades econômicas e profissionais. O artigo também sugere a ampliação da aplicação da autorregulação para esferas digitais e outras novas, que exigem a adoção de muitas regras.

**Palavras-chave:** Autorregulação. Organização Autorreguladora. Resolução de Disputas. Regulação Privada. Governança Corporativa. Normas de Atividades Econômicas e Profissionais. Atos Corporativos. Fontes do Direito.

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