Legal responsibility in the apartment building management

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Abstract. The article discusses problematic issues of the realization of legal responsibility in the implementation of the apartment building management. Also the legal nature of the apartment building managing contract is considered and its basic conditions are identified. It is noted that for breach of the obligations according to the apartment building management contract, a management organization bears civil liability, in which can be expressed in one-sided termination of the contract with the apartment house owners. In turn, the management organization, protecting its rights, can also terminate this contract if the owners do not fulfill their obligations. In case if the management organization in the process of providing housing and communal services commits an administrative offense, it bears administrative responsibility, the measures of which are expressed in the form of the application of penalties.

Nowadays, in the area of the apartment building management there are still problematic issues concerning both the choice and change of the way of managing the house and the realization of legal responsibility regarding the managers of the organization for inappropriate implementation of obligations under the apartment building managing contract. Thus, in practice many questions raise about quality of provided housing and communal services. Furthermore, the owners’ active participation in the procedural steps of choosing the method of managing such houses and determining the management organization leaves much to be desired. It is no secret that owners reluctantly visit such events. E.Iu. Gorbachevskaiia rightly emphasizes about this problem that
the most significant obstacle in this sphere is «... inappropriate level of living accommodation owners’ self-organization for a joint decision of important questions of the apartment building control, keeping and repair of common property of the house, control over fulfilment of the management organization’s obligations according to the managing contract» [1].

Relevance of considering topic resulted from for a long time the amount of conflict situations between housing accommodation owners and management organizations in the sphere of providing qualitative services of housing and communal services continues to increase. In this, it is worth noting that legal regulation in the area of apartment building control is carried out by both civil and housing law. Nevertheless, in reality many legal tools do not work. It seems that legal responsibility measures contribute to an effective realization of obligations by the owners of the apartment building managing contract.

The purpose of the article is the integrated legal research of issues connected with realization of legal responsibility measures in the area of apartment building management. Consequently, it is necessary to solve the following tasks: firstly, to analyze general-theoretical aspects of legal institute of apartment building control; secondly, to consider the legal responsibility measures which possibly to apply with regard to offender.

This research was implemented through various general scientific and private-scientific methods: system-structural, logic, formally-legal and alternative methods of scientific knowledge.

In considering theoretical questions of realization of legal responsibility on the apartment building management contract, we will define with the categories of general terms, namely, what the essence of management of such house is. Thus, according to the S.Iu. Shakhov’s opinion: «Legal substance of apartment building management occurs in two aspects: 1) apartment building management as the system of norms that represents an independent legal institute; 2) apartment building management within particular legal relations is obligation provided for by law and arising based on complex legal compositions including holding of living accommodation owners’ general meetings in the apartment building, the organizing the competition on selection of management organization, creation of non-profit organizations, conclusion of treaties» [2].

In turn, A.V. Kerimov believes: «Apartment building management is an agreed activity of living accommodation owners in the apartment building, or persons engaged by them, aimed at providing favourable and safe living conditions of citizens, appropriate keeping of common property in the apartment building, solving problems of using common property, and also providing utilities to the citizens living in such house. In activity on apartment building management, that is socially significant, understanding of management as a
single process is important, all components of which are interdependent and irreplaceable» [3].

As shown in the above, the whole point of apartment building management lies in the fact that, primarily, it is an activity which is connected with providing favourable and safe living conditions in this house.

It should be noted that these principles are fixed also in housing law. Analysis of the law and scientists’ points of view allows to indicate that an apartment building is a complex real estate object - residential building; serving and providing objects of the real estate in its composition (residential and non-residential premises) which belong to particular owners [4].

In this way, the essential features of an apartment building can be noted: 1) a residential building, which consists of many residential and (or) premises in the form of flats; 2) the structure of an apartment building also includes premises (non-residential premises), which are intended for its providing (elevators, basements and other premises); 3) residential/non-residential premises belong to the ownership of the house owners. The point of view of E. S. Mishulina does not contradict the said: «As opposed to residential house which also relates to living accommodations, an apartment building consists of a few or many living accommodations - flats, use of which inconceivably without determined infrastructure and premises of general use. Besides, in the apartment building there can be non-residential premises intended for independent use» [5].

We believe that it is impossible to ignore legal specification of the apartment building managing contract, because parties have a legal responsibility for violation of its terms. So, it is possible to give the main essential features of such contract. M.V. Kolosova says: «The object of the apartment building managing contract is this house as a complex of real estate, including residential and non-residential premises, common property owned by natural and (or) legal persons, state or municipal property. The structure of the common property in the apartment building includes common non-residential premises, engineering systems, land and some other elements… » [6].

Consequently, we can agree with the A.A. Shilova’s opinion: «Firstly, the apartment building managing contract relates to organizational contracts and has its specific and characteristic features of civil-law contract, however it is stand out as an independent contract. Secondly, the essential conditions of the apartment building managing contract require specification and more detailed study, as a full definition of the essential conditions of the management contract affects the distribution of risks and responsibilities between the parties of the contract, also it contributes to more effective organization’s activity that manages the apartment house» [7].
As the result, the essential conditions of this contract are: 1) procedure for determining the price; 2) identification of payment size for keeping and repair of common property; 3) determination of payment size of for utilities; 4) identification the procedure payment implementation. In addition, as an essential condition of the contract it is necessary to consider the technical condition of common property of an apartment building.

Furthermore, we examine questions of engagement of management organization to the legal responsibility measures for inappropriate implementation of obligations on the pointed contract. As M.V. Kolosova correctly notes: «Management, like any activity, must be effective, and the result of activity ideally must coincide with the goal. Accordingly, the result of the apartment building management should become favorable and safe living conditions for citizens, qualitative communal services, quality service and keeping of common property, competent and timely decision-making on the use of common property» [8].

Thus, we further talk about two types of legal liability, the measures of which it is possible to apply to the management organizations: civil-law and administrative.

On the basis of the general theoretical understanding of legal responsibility, it can be represented as a coercive measure that is applied to the management organization for non-fulfillment or poor-quality implementation of its obligations to manage an apartment building. These measures can be expressed in the form of penalties, and also in the form of contract termination by owners unilaterally. A.Yu. Kitsai notes: «The institute of management organizations’ responsibility is a complex of legal means of protection and control of managing organization actions by third persons, representing a set of obligations and sanctions established by Russian legislation, regarding the management organization as a legal entity carrying out a special type of activity» [9].

Housing legislation contains norms according to which the owners of the apartment building premises have the right to refuse to perform the contract unilaterally if the management organization does not fulfill the terms of the agreement, and also the right to decide on the choice of another management organization or on changing the way this house is managed (Clause 8.1 of Article 162 of the Housing Code of the Russian Federation).

According to the information above, the basis for termination of the contract is the improper performance of the housing and utilities services by the management organization. However, there are some contradictions in the literature about this. P.A. Anan’in points to the fact that «… analysis of the totality of legislative norms, taking into account the nature and subject composition of participants in legal relations, does not indicate that by choosing once the method of managing a house and a specific management organization, home-
owners are deprived of the opportunity to change this method of managing a house and the management organization, otherwise only in court and only confirmation of violations by the management organization» [10]. It’s hard to disagree with this point of view, because court practice shows that it’s not always possible for owners to prove that the management organization is not fulfilling its obligations.

Thus, civil liability in this area is realized as the possibility of terminating the apartment building managing contract. Whereas, should bear in mind the following:

- first, housing accommodation owners can terminate the contract because of inappropriate performance of contract terms (representation of housing and utilities services). It should be noted here that under the contract other cases may also be established where a unilateral refusal to performance the contract at the initiative of the owners is possible. In turn, for the management organization the housing legislation does not provide grounds for refusal to terminate the contract. On this occasion, S.A. Gromadskaya notes: «In that regard if the management company has not reached an agreement with the owners to terminate the contract, it can be terminated by the management company unilaterally only if such a right is provided for under the terms of this contract» [11];

- secondly, the management organization can terminate the contract in case of non-compliance with the terms of the contract by homeowners (failure to pay for the services provided). As T.V. Petrova writes: «A violation of a contract by one of the parties is recognized as significant, which entails such damage for the another party, that it largely loses what it could have the right to expect when entering into a contract. Such cases include, in particular, failure to pay the services of the management company more than two times in a row, deterioration of the housing stock due to the fault of the owners» [12].

From the given grounds for the termination of the apartment building managing contract, the “problem” from the point of view of compliance with the procedure is its unilateral termination. This is due to the fact that management organizations are reluctant to terminate such contracts initiated by apartment buildings owners. Based on judicial practice, it can be noted that the courts take the position of owners and satisfy their demands for unilateral termination of the contract, but only subject to the procedure provided for by law. However, it should be said that it is not always legal to terminate the contract unilaterally on the part of the house owners.

Furthermore, we consider the administrative responsibility measures. The grounds are administrative offenses in the sphere of property protection. According to E.O. Fakhrtdinova and K.D. Popova: «The correct definition of offenses mostly should be implemented under Article 7.22, 7.23 of the Code of Administrative Offenses of the Russian Federation, such a conclusion can
be reached by analyzing the legislation and judicial practice in the area of administrative responsibility in connection with offenses in the housing and communal services» [13]. Really, there are not so much such offences, as it can seem at first glance.

The Code of Administrative Offenses of the Russian Federation includes some norms for the violation of which responsibility is imposed in the sphere of apartment building management:

1) Violation of the rules for keeping and repair of residential buildings and (or) residential premises (Art. 7.22). It should be noted that as early as 2011 The Supreme Arbitration Court of Russian Federation stated its legal position regarding the composition of the given offence. In its Resolution of the Plenum of February 17, 2011 No. 11, the court indicated that if the owners of the premises in an apartment building decided to manage the residential building by a homeowners' association or a housing cooperative or another specialized consumer cooperative, the subjects of responsibility for this administrative offense would be partnerships homeowners or housing cooperatives or other specialized consumer cooperatives as persons that are responsible for managing of the house [14].

2) Violation of the regulatory level or the regime of providing the population with utilities (Art. 7.23). The Supreme Court of the Russian Federation pointed that the quality of provided utilities must meet the requirements given in the Rules for the provision of utilities to owners and users of premises in the apartment buildings and residential houses: the voltage and frequency of the electric current must constantly meet the requirement of the Russian Federation legislation on technical regulation (GOST 13109-97 and GOST 29322-92); the voltage deviation and (or) electric current frequency from the requirements of the legislation is not allowed. Indicators and quality standards of electrical energy in the systems of power supply in residential buildings are checked according to the requirements of GOST 32144-2013, which establishes required indicators and quality standards in electrical networks of power supply systems for compliance in all operating modes of general-purpose power supply systems and extends its effect to electrical networks of general power supply systems. A general-purpose power supply system is defined as a combination of electrical installations and electrical devices designed to supply various consumers of electrical networks with electrical energy (clause 3.1.1). Violation of the normative level or regime of providing the population with utilities entails the imposition of an administrative fine on officials in the amount of from five hundred to one thousand rubles; on legal persons - from five thousand to ten thousand rubles [15].

3) Violation of the legislation requirements on the transfer of technical documentation of an apartment building and other documents related to the
management of such an apartment building (art. 7.23.2). It is an offense to prevent the management of an apartment building, which is reflected in the refusal to transfer technical documentation for this house and other documents of the management organization, as well as the HOA, a housing complex, HBC or one of the premises owners in the house.

4) Violation of the rules of business activity in the apartment building management (Article 7.23.3). In accordance with the note to Art. 7.23.3 of the Code of Administrative Offenses of the Russian Federation, individual entrepreneurs shall bear administrative responsibility as legal persons. The sanction provides for an administrative fine in the amount of 150,000 to 250,000 rubles. In addition, in part 2 of the article, a special sanction is provided for individual entrepreneurs. That is, an organization is found guilty if it had the opportunity to comply with the norms and rules, but it did not take all measures to comply with it (Part 2 of Article 2.1 of the Code of the Russian Federation on Administrative Offenses). In the general case (when an individual entrepreneur is responsible as officials by virtue of the notes to article 2.4 of the Administrative Code of the Russian Federation), the individual entrepreneur’s guilt in the form of intent or negligence is proved in accordance with Art. 2.2 of the Administrative Code.

The practical significance of the article lies in the fact that its conclusions and recommendations can be used in the area of optimizing the activities of management organizations in the performance of a contract on the apartment buildings management.

In the end of its discussion for the occasion of realization of legal responsibility measures in the sphere of the apartment building, it can be indicated:

– firstly, the obligation of the management organization is to properly provide quality services aimed at meeting the interests of the apartment building owners and keeping common property, and the responsibility of the owners is to pay for housing and communal services, as well to abide the rules of residential premises using;

– secondly, in the case that improper performance of duties, the management organization may be brought to civil-law (in the form of contract termination) and administrative liability. At the same time, the premises owners of the apartment building have the right to demand recalculation of the amount of payment for improper performance (or non-fulfillment) of services, as well as termination of the apartment building management contract on concluded with this organization;

– thirdly, in case of non-fulfillment by the premises owner of the obligation to pay utilities and housing services, he is charged with payment of the penalty for late payment, a claim may be filed against him for the repayment of debt and penalty interest;
– fourth, for committing an administrative offense in the area of property protection, both the management organization and the premises owner can be brought to administrative responsibility.

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