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New legislation on agricultural cooperation

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The article provides a scientific and theoretical analysis of the trends in the development of Ukrainian legislation in the field of agricultural cooperation. The author notes that the Law of Ukraine dated July 21, 2020 "On Agricultural Cooperation" (the new Law), on the one hand, sets out in detail the basis for the functioning of these business entities, but, on the other hand, its content almost completely eliminates the basic principles of agricultural cooperation established by national legislation and also contradicts the principles of the cooperative movement. There is a general negative trend in the development of legislation on agricultural cooperation. It can be seen already in the Law of Ukraine of November 20, 2012 "On Amendments to the Law of Ukraine "On Agricultural Cooperation", which is characterized by a "truncated form" (only 16 out of 38 articles remain), a considerable number of reference provisions, and the establishment of advantages

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for the development of agricultural service cooperation. With the adoption of the new Law, this trend has deepened and consists in the artificial separation of agricultural cooperation from the cooperative system and the gradual loss of its social orientation. This approach is unacceptable and will have a negative impact on the further development of not only agricultural cooperation as a social and legal phenomenon, but also agricultural production and the social sphere of rural areas

Keywords: cooperative principles, agricultural cooperative, agricultural service cooperative, agricultural production cooperative, agricultural cooperative for profit, agricultural cooperative without profit

Introduction

Agricultural cooperation is a traditional form of management of the Ukrainian peasantry. Its massive development dates back to the late 1890s and early twentieth century [1]. At that time, agricultural artels founded by M. Levytskyi in the Kherson region appeared, which are considered the first form of agricultural cooperation [2]. Unfortunately, today the share of agricultural cooperatives (hereinafter referred to as ACs) in the total number of enterprises operating in rural areas is insignificant. This is in contrast to a number of foreign countries where the cooperative movement is actively developing. Thus, India is the leader in terms of the number of active CAs, followed by the USA, France, Sweden, Germany, Morocco, and Canada. In England, about 40% of agricultural products are sold through cooperatives, and in France, where more than 90% of farmers are members of the SC, – 50% of such products [3]. In most of these countries, government policy is aimed at providing tax, financial, credit, investment, and other types of support to such organizations. In Ukraine, despite a considerable number of

regulations that provide for state support measures for these business entities, according to the State Statistics Service of Ukraine, as of February 1, 2021, only 1000 agricultural production companies (hereinafter referred to as APCs) and 1200 agricultural service cooperatives (hereinafter referred to as ASCs) were registered [4]. The adoption of the new Law of Ukraine of July 21, 2020 “On Agricultural Cooperation” (hereinafter – the new Law) should be a turning point in the development of the CA. Accordingly, it is of particular relevance to analyse the provisions of this legal act, which establishes fundamental changes in the legal status of the above-mentioned business entities.

The article is based on scientific research by leading Ukrainian agricultural lawyers: V.I. Fedorovych [1], V.M. Yermolenko [5], A.M. Stativka [6], V.Y. Urkevych [7].

In addition, the research was based on the scientific work of the classics of cooperative theory: O.M. Antsiferov [8], M.I. Tugan-Baranovsky [9], O.V. Chayanov [10].

The purpose of this article is to conduct a scientific and theoretical analysis of trends

in the development of Ukrainian legislation in the field of agricultural cooperation.

Results and Discussion

The revival of agricultural cooperation in independent Ukraine should be associated with the adoption of the Law of Ukraine “On Agricultural Cooperation” on July 17, 1997. This fact indicated a change in the state’s attitude to the cooperative form of agricultural production, which in practice was often identified with the former collective farms. However, further development of legislation in this area has seen a number of negative trends. Thus, the adoption of the Law of Ukraine of November 20, 2012 “On Amendments to the Law of Ukraine “On Agricultural Cooperation” [11], as rightly noted by V.M. Yermolenko [5], narrowed the scope of the agrarian legal regulation mechanism, giving priority to economic regulation. In addition, this law was “truncated” (only 16 out of 38 articles remained). Accordingly, it established that the general principles, concepts and norms of formation, functioning, management and liquidation of CAs and cooperative associations, control over their activities, rights and obligations of their members, formation of property, funds, prices and tariffs for products and services, as well as labour relations in such cooperatives and associations are regulated by the Law of Ukraine of July 10, 2003 “On Cooperation” [11] (clause 2, Article 2 of the Law of Ukraine “On Agricultural Cooperation” (hereinafter – the old Law). Of course, this approach of the legislator did not contribute to taking into account all the peculiarities of the legal status of the CA, and the presence

of a considerable number of reference provisions complicated the application of this law. Another negative feature of this legal act, which has been pointed out in the agrarian law literature, is the legislator’s attitude to CAEs. Thus, V.Y. Urkevych [7] noted that the law was biased towards the spread of agricultural service cooperation, and the development of production cooperation was practically not supported. A.M. Stativka [6] saw in it a steady tendency to liquidate agricultural production cooperatives.

As for the new Law, on the one hand, it sets out in detail the basis for the functioning of these business entities, but, on the other hand, its content almost completely eliminates the basic principles of agricultural cooperation established by domestic legislation. In this article, we will consider only some of the controversial provisions of this legal act. Thus, the said law amended Article 5 of the Law of Ukraine “On Cooperation” [11], according to which the latter’s provisions do not apply to the regulation of relations in the agricultural cooperative. As rightly noted in the remarks of the Main Legal Department of the Verkhovna Rada of Ukraine, such an approach to legislative regulation of social relations related to the establishment and operation of ICs, which provides for the non-extension of the Law of Ukraine “On Cooperation” [11] to them, is incorrect from a legal point of view. After all, these business entities are one of the types of cooperatives, and accordingly, the regulation of relations that arise, change, and terminate in the course of their activities should be conducted on the basis of the framework law.

It should also be noted that the drafters of the new Law use terminology that is not typical for the sphere of cooperation in general and agricultural cooperation in particular. The result of this approach was the practical identification of the IC and business associations. At the same time, the “new” categories are not filled with different content, they only formally replace the old ones. Thus, such concepts as authorized capital and share fund (Art. 2, Art. 20 of the Law of Ukraine “On Cooperation” [11]); contribution (additional contribution) and share contribution (additional share contribution; share in the authorized capital (Art. 1 of the new Law) and share (Art. 2, Art. 21 of the Law of Ukraine “On Cooperation” [11]); dividends and payments on shares; patronage dividends and cooperative payments are almost identical. The new Law retains the only feature that distinguishes cooperative-type enterprises from corporate ones – the right of membership.

Moreover, today we have a single organizational and legal form of a legal entity – a joint stock company, which can be of two types: A non-profit cooperative (hereinafter referred to as a non-profit) and a for-profit cooperative (hereinafter referred to as a for-profit). It should be noted that the analysis of the new and old cooperative laws allows us to draw an analogy between the CCA and the CCA and the CCAp. Thus, the following features are common to the CCA and the CCAp: their members can be both individuals and legal entities – agricultural producers; they provide services exclusively to their members; they do not aim to make a profit; they provide various types of services

(processing, procurement, procurement, storage, marketing, sale of agricultural products, etc.); they do not acquire ownership of agricultural products produced, grown, fattened, caught or harvested by its members – agricultural producers. The owners of agricultural products harvested, processed, supplied, marketed (sold) by such a cooperative are its members, etc. The main difference between the two is that the CBCP does not provide for associate membership and the possibility of distributing the income (profits) of the cooperative during the fiscal year. This is exactly what creates the conditions for recognizing such business entities as non-profit organizations.

As for the UCP and the SPC, they have in common the following: the goal of making a profit, the presence of associate membership, and the possibility for members to receive appropriate payments from their income (profits). However, the differences are quite significant. Firstly, agricultural production companies were created by uniting only individuals. This requirement is due to the fact that the members of such a cooperative are obliged to participate in its activities by working. Thus, this type of cooperative played an especially important social role in rural areas. After all, it helped to create jobs and provide the rural population with employment. The legislation gives the right to provide for mandatory labour participation of individual members in its activities in the charter.

Second, CAEs were created primarily for the purpose of producing agricultural products. Such activities are not prohibited for CAEs, but they are not mandatory

either. Thus, we can talk about the gradual transformation of CAs into business entities whose activities are mainly aimed at providing several types of services. The beginning of this process, associated with the adoption of the above-mentioned Law of Ukraine of November 20, 2012, was aptly called by V. Yermolenko [5] as a re-profiling of agricultural cooperation from direct production of agricultural products to servicing agricultural activities. It is interesting that the legislation restricts the right of the CAQ to provide services and conduct business transactions with persons who are not its members (associate members). In particular, it is established that their total value cannot exceed 20% of the cooperative's revenue for the year. In our opinion, such a provision violates the right of a business entity to freedom of entrepreneurial activity and puts the CGPA in unequal competitive conditions with other business entities.

Thirdly, it should be noted that the principle of distribution of net profit of a cooperative among its members in the CCA is similar to the process in business companies. Thus, members of this type of cooperatives are entitled to receive dividends and patronage dividends. The former means a part of the financial result (profit) of the cooperative remaining after payment of taxes, fees and other mandatory payments provided for by law, distributed among its members, associate members in proportion to the size of the share of each member, associate member. Their total amount may not exceed 80 percent of the net profit intended for distribution. Accordingly, at least 20 percent of such profit is reserved for patronage dividends

(determined in proportion to each member's share of turnover with the respective cooperative and/or in proportion to their labour participation (Article 26 of the above law). In the case of SOC and ASC, the total amount of payments for shares was strictly limited and could not exceed 20% of the income determined for distribution. In addition, the charters of the cooperatives could specify that these payments are made only for additional shares and for shares of associate members. Thus, CCAs are close to business companies in the following ways: 1) the majority of their net income is distributed among members; 2) the number of dividends received by members of such cooperatives directly depends on the size of their property participation. In other words, conditions are created under which the owner of a larger contribution will be able to receive a larger profit, while the member's personal labour participation or participation in the cooperative's business activities will be practically discouraged. This contradicts the very essence of cooperation, as evidenced by the statements of the classics of the cooperative movement. In particular, O.V. Chayanov [10] drew attention to the fact that in "cooperation capital is a servant, not a master". According to O.M. Antsiferov [8], the profit received as a result of business operations of a cooperative is not used to remunerate capital. And M.I. Tugan-Baranovsky [9] emphasized that the main purpose of the cooperative is to meet the material and other needs of its members. According to his definition, a cooperative is an economic enterprise whose purpose is not to obtain the highest profit on the capital invested, but to increase

the labour income of its members through the general management of the economy or to reduce the expenses of these members for their consumer needs [9].

The new Law stipulates that one of the principles of the IC is the principle of democracy, according to which members have equal rights in decision-making regardless of the size of the share, according to the rule that one member of the IC has one vote (“one member – one vote”), which is also in line with the Law of Ukraine “On Cooperation” [11]. However, the former establishes exceptions to this rule. Thus, the Charter of the IC may provide that during decision-making its members receive an additional number of votes proportional to their participation in the cooperative (the share of each of them in the turnover with the cooperative and/or labour participation in its activities). The question arises whether such an approach will not lead to the establishment of a direct correlation between the number of votes at the general meeting and the property participation of members in the activities of the cooperative?

Conclusions

In our opinion, the content of the Law of Ukraine of July 21, 2020 “On Agricultural Cooperation” contradicts the basic principles of the cooperative movement. Its significant shortcomings include: the non-extension of the Law of Ukraine “On Cooperation” to the CAs, the use of terminology not inherent in this area, which gives grounds (by external signs) to identify CAs and business entities; the gradual transformation of CAs into business entities whose activities are mainly aimed at providing various types of services rather than producing agricultural products; reduction in the number of jobs, as labour participation in CAs (including CAEs) becomes optional. Thus, there is a general negative trend in the development of legislation on agricultural cooperation. This is primarily due to the artificial separation of agricultural cooperation from the cooperative system and the gradual loss of its social orientation. This approach is unacceptable and will negatively affect the further development of not only agricultural cooperation as a social and legal phenomenon, but also agricultural production and the social sphere of rural areas.

References

- [1] Fedorovych, V. (1998). Legal basis of creation and activity of agricultural cooperatives in Ukraine. Lviv: Atlas.
- [2] Marochko, V.I. (2021). *Agricultural cooperation*. Retrieved from http://www.history.org.ua/?termin=Silskohospodarska_kooperatsiia.
- [3] Sakovska, O.M. (2019). The role of agricultural cooperatives in the development of the agricultural sector of the economy: the comparative aspect. *Agrosvit*, 21, 66-73.
- [4] Number of legal entities by organizational and legal forms of the economy. Official website of the State Statistics Service of Ukraine. (2021). Retrieved from <http://www.ukrstat.gov.ua/>.
- [5] Yermolenko, V.M. (2013). Problematic innovations of modern agrarian legislation. In *Modern achievements of the sciences of land, agrarian and environmental law* (pp. 19-20). Kharkiv: Yaroslav Mudryi National Law University.
- [6] Stativka, A.M. (2015). On the trends and prospects for the development of agricultural cooperation in Ukraine: legal aspects. In *Modern trends and prospects for the development of agrarian, land and environmental law* (pp. 73-75). Kyiv: National University of Life and Environmental Sciences of Ukraine.
- [7] Urkevich, V.Yu. (2013). Reforming the legislation of Ukraine on agricultural cooperation. In *Actual problems of reforming land, ecological, agrarian and economic legal relations* (pp. 352-355). Khmelnytskyi: Khmelnytskyi University of Management and Law.
- [8] Antsiferov, A.N. (1915). *Essays on cooperation: Collection lectures and articles 1908-1912*. Moscow: Association of printing house A.I. Mamontova.
- [9] Tugan-Baranovsky, M.Y. (1989). *Social foundations of cooperation*. Moscow: Economy.
- [10] Chayanov, A. (1925). *Short course of cooperation*. Moscow: Cooperative Publishing House.
- [11] Remarks on the draft Law of Ukraine on agricultural cooperation No.0856. (2019, August). Retrieved from http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=66529.

Новели законодавства про сільськогосподарську кооперацію

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Анотація

У статті проведено науково-теоретичний аналіз тенденцій розвитку законодавства України у сфері сільськогосподарської кооперації. Автор зазначає, що у Законі України від 21 липня 2020 р. «Про сільськогосподарську кооперацію» (новий Закон) з одного боку, докладно прописані основи функціонування вказаних суб'єктів господарювання, але, з іншого – його зміст практично повністю нівелює основні засади сільськогосподарської кооперації, встановлені вітчизняним законодавством, а також суперечить принципам кооперативного руху. У розвитку законодавства про сільськогосподарську кооперацію спостерігається загальна негативна тенденція. Вона прослідковується вже у Законі України від 20 листопада 2012 р. «Про внесення змін до Закону України «Про сільськогосподарську кооперацію», який характеризується «усіченою формою» (із 38 статей залишилося лише 16), значною кількістю відсилочних положень, встановленням переваг для розвитку сільськогосподарської обслуговуючої кооперації. Із прийняттям нового Закону, вказана тенденція поглибилася і полягає у штучному виокремленні сільськогосподарської кооперації із кооперативної системи та поступовій втраті її соціальної спрямованості. Зазначений підхід є неприпустимим і таким, що негативно впливатиме на подальший розвиток не тільки сільськогосподарської кооперації як соціально-правового явища, а й сільськогосподарського виробництва та соціальної сфери села

Ключові слова: кооперативні принципи, сільськогосподарський кооператив, сільськогосподарський обслуговуючий кооператив, сільськогосподарський виробничий кооператив, сільськогосподарський кооператив з метою отримання прибутку, сільськогосподарський кооператив без мети отримання прибутку
