

АГРАПНЕ ПРАВО

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FOREIGN EXPERIENCE OF DEVELOPMENT AND LEGAL REGULATION OF THE AGRICULTURAL COOPERATION

The article is devoted to the study of development and legal regulation of the agricultural cooperation in foreign countries. Despite the adoption of the Law of Ukraine «On agricultural cooperation» in the new edition the development of agricultural cooperation continues to be restrained, that indicates the presence of shortcomings in the legislative base.

The relevance of the chosen topic is determined by the fact that nowadays in the conditions of European integration Ukraine needs an urgent solution to solve the problem of modernizing the Ukrainian cooperative legislation, taking into account the world experience, which will ensure the development of Ukrainian agricultural cooperatives.

This article highlights proposals for modernizing the Ukrainian cooperative legislation by using international experience.

The positive experience of Georgia in the field of monitoring the activities of the agricultural cooperatives is proposed to be received by Ukraine. The need to pay attention to the issue of gender equality in the agricultural cooperatives using the example of the Kingdom of Spain is emphasized. The author's concept of «the principle of gender equality and gender integration in the agricultural cooperative» is formed in the article, which is proposed to supplement the cooperative legislation of Ukraine in order to ensure the equality of women and men in the agricultural cooperatives. The article provides the main directions for achieving gender equality and gender integration in agricultural cooperatives (cooperatives). Several approaches or models of the legal regulation of the creation and activity of cooperatives in the world are singled out. The expediency of introducing a model of general legal regulation of the cooperation in Ukraine, which will be based on a single conceptual codified act - the cooperative code of Ukraine, is substantiated.

Keywords: agricultural cooperation, agricultural cooperatives, cooperatives, cooperative legislation, development, principles, gender equality, gender integration, cooperative code, foreign countries.

Problem statement. The development of the agricultural cooperatives in Ukraine continues to be restrained. Not all of the registered agricultural cooperatives in practice carry out economic activities. In our opinion, the main reasons for restraining the development of agricultural cooperation in Ukraine are: weak material base;

shortcomings of the legislative base; insufficient attention to ensuring compliance with gender equality in agricultural cooperatives; low level of the cooperative education of Ukrainians; unbranched system of agricultural advisory services; lack of proper state support for the cooperative sector of the economy; the spread of the coronavirus disease pandemic on the territory of Ukraine; introduction of martial law in Ukraine. In the conditions of the European integration, Ukraine needs an urgent solution to the issue of improving Ukrainian cooperative legislation taking into account world experience, adapting national agricultural producers to working conditions in a globalized economic environment. In this regard, in our opinion, at the current stage, one of the most promising and important areas of research for the development of agricultural cooperation in Ukraine is the study of the experience of development and legal regulation of agricultural cooperation in foreign countries, as well as the further possibility of using this experience to improve the acts of cooperative legislation of Ukraine, which determines the relevance of the chosen research topic.

Analysis of recent research and publications. A contribution to the study of various aspects of the foreign experience of development and legal regulation of the agricultural cooperation was made by O. Sakovska, A. Revutska, L. Smolii, M. Pokalchuk, V. Chorna, Moraru Radu-Adrian and others.

At the same time, the proposed topic is not enough developed in the modern science of land and agricultural law, because the issue of the development and effective functioning of the agricultural cooperation in Ukraine is still unresolved. Ukraine needs an urgent solution to the issue of improving Ukrainian cooperative legislation taking into account world experience.

The purpose of the article is to study the experience of development and legal regulation of the agricultural cooperation of foreign countries and to identify the best world practices for their further application in Ukrainian realities, aimed at the effective development of the system of agricultural cooperation.

Presentation of the basic material. Western Europe is traditionally considered the birthplace of the cooperative movement, as the first production cooperatives arose in France, consumer cooperatives – in England, and credit cooperatives – in Germany.

T. Panevyk rightly notes that «cooperation contributed to the development of many countries of the world, especially Germany, Sweden, Denmark, Holland, Ireland, Italy, Austria, Switzerland, the USA, Japan» [1, p. 275].

It should be emphasized that in 2015 the Federal Republic of Germany nominated the cooperative idea to be added to the Intangible Cultural Heritage of Humanity under UNESCO, which was officially accepted in 2016 [2], which indicates the significance of this phenomenon in the global space.

In the annual report of Cooperatives Europe, the European regional office of the International Cooperative Alliance, for June 2022 - May 2023, there are 250,000 cooperatives in Europe. These cooperatives have a total of 141 million members and employ 5 million people [3].

«The activities of cooperatives in the EU countries are based on the principles of economic democracy, transparency and solidarity with each other and with local rural communities» [4, p. 119].

In most of the developed countries of the world, one of the important factors in the successful development of the agricultural sector of the economy is developed agricultural cooperation.

It is necessary to emphasize that agriculture is a developed and efficiently organized sector in France, which, in particular, involves economic organizations that «include cooperatives, private businesses supplying farmers with inputs and collecting outputs, farmer organisations and interbranch organisations...» [5].

«After the Second World War, the General Law on cooperatives of 1947 had a large impact on shaping the variety of cooperative types in France and provided a general framework to build on the initial legal provisions that had gradually developed in sectors including agriculture, low-cost housing cooperatives, production, worker cooperatives and consumer cooperatives» [6].

2,200 agricultural cooperatives were registered in France as of 2020 [7]. According to the indicators of the World Cooperative Monitor project, created at the initiative of the International Cooperative Alliance, in 2021 French cooperatives were well represented in the Top 300 largest cooperatives in the world, of which 16 are agricultural cooperatives, such as, for example: Agrial (73rd place), In Vivo (84th place), Sodiaal Union (88th place) etc [7].

It is important to highlight that agricultural cooperatives are exempt from income tax in France.

The agricultural cooperation in Finland has quite a significant position. It occupies an important place in the leading sectors of agricultural production of the state.

The main sector of agricultural production is dairy farming, as well as relatively developed poultry farming, fruit and vegetable production, grain farming, etc.

The cooperative movement in Finland took root after the adoption of the first law on cooperatives in 1901. At the same time, the first cooperative in the country was created in 1897 (it was a dairy cooperative).

In Finland, as noted by A. Revutska and L. Smolii: «cooperatives, uniting almost all farmers, provide them with the necessary conditions for production, lending, sales of products and the application of scientific and technical progress achievements in the economic practice» [8, p. 89].

Currently, the activities of cooperatives in Finland are regulated by the special Act on cooperatives 14.6.2013/421, the Act on cooperative banks and other credit institutions in the form of cooperatives 28.12.2001/1504, and the Act on European cooperatives 19.10.2006/906.

The ideas of cooperation do not lose their relevance in Sweden.

Despite the fact that the role of domestic cooperatives in Sweden is gradually decreasing, due to the processes of international consolidation, the influence of the international market, it is important to note that positions of the agricultural cooperatives still remain strong.

Radu-Adrian Moraru emphasizes that «the agricultural cooperative system from Sweden borrowed a great part of the Danish model of agricultural cooperative system, that was modified during time...» [9, p. 44].

«The development of cooperation in Sweden takes place mainly in the field of production supply, agriculture and product storage with a high degree of centralization

and unites 13 national sectoral cooperative associations. This system is headed by the Swedish Agricultural Union...» [1, p. 275].

In Sweden there is a special law on cooperatives, while there is no specific law on agricultural cooperatives.

It is necessary to note the experience of development of the agricultural cooperation in Poland.

On October 29, 1920, the Act on cooperatives was adopted, which in the opinion of Krzysztof Pietrzykowski was «was one of the most outstanding achievements of Polish legislation during the era of the Second Polish Republic and was likely the best cooperative act in the world at the time» [10, p. 54].

The above-mentioned regulatory act was repealed by the Cooperative Law Act of September 16, 1982, which was amended several times.

At the current stage of the functioning of the Polish cooperation «the cooperative...can be exempt from taxes or get a reduction in the tax rate for the construction of new, as well as the reconstruction of existing buildings, improvement of the material and technical base, which are used within the scope of activities defined by the company's charter. Such benefits are granted for a period of up to 5 years from the date of entry of the cooperative into the state register of groups of agricultural producers» [11, p. 342]. Also it should be stressed that a feature of modern agricultural cooperatives in Poland is the active practice of providing informational and advisory services to members of cooperatives regarding procedural issues, changes in legislation, etc. by public officials.

1,122 agricultural cooperatives of various profiles were operating in Georgia as of 2022. In Georgia cooperative legislation consists of the Law of Georgia «On Agricultural Cooperatives» № 816-RS, separate norms of the Law of Georgia «On Entrepreneurs», as well as norms of the Civil Code of Georgia. In particular, in 2013, Resolution № 254 of Georgian government on Rules for granting and revoking the status of an agricultural cooperative was adopted.

It is necessary to note the positive experience of Georgia in the field of monitoring the activities of the agricultural cooperatives.

In 2013, by the order of the Minister of Agriculture of Georgia № 2-206 (currently revoked), the Agricultural Cooperatives Development Agency of Georgia was established in the state as a legal entity under public law in the system of the Ministry of Agriculture of Georgia, which grants the status of an agricultural cooperative and controls its activities in the state.

The goals of this institution included supporting the development of agriculture in Georgia through agricultural cooperatives; social and economic development of the rural areas; implementation of the state aid programs for the agricultural cooperatives and others.

In 2019, Agricultural Cooperatives Development Agency of Georgia was reorganized into the National Agency for Sustainable Rural Development and Agriculture.

In our opinion, for the successful development of the agricultural cooperation, it is advisable for Ukraine to adopt the above-mentioned experience of Georgia.

Cooperatives also play a significant role in the agriculture of the Kingdom of Spain, that is confirmed by the regulation of cooperation on the constitutional level.

Part 2 of Article 129 of the Constitution of Spain provides that «state authorities will effectively promote... through the relevant legislation, cooperative societies» [12].

In 1999, the General Law on Cooperatives 27/1999 was adopted. At the same time, the autonomous communities of Spain, in addition to the autonomous community of the Canary Islands, have also adopted relevant regulatory acts in the field of cooperation, such as the Law on Cooperatives of Andalusia 14/2011, the Law on Cooperatives of Cantabria 6/2013, etc.

In Spain considerable attention is paid to the issue of the agricultural insurance, which is characterized by the effective consolidation of insurance companies, agricultural producers and, above all, the country's government, as well as to the issue of gender equality between women and men in agriculture.

On March 22, 2007, Constitutional Act of Spain 3/2007 for effective equality between women and men was adopted, Article 30 «Rural Development» of which aimed at ensuring effective equality between women and men in agriculture, in particular by introducing «measures designed to enhance women's educational level and training and in particular their employability and inclusion in companies' and associations' management bodies» [13].

It is necessary to emphasize that regulatory acts of Ukraine dedicated to cooperation, in particular agricultural cooperation, do not contain discriminatory norms based on gender, «because they uphold the principles of open membership and equal rights for their members» [14, p. 97], at the same time in practice in the agriculture of Ukraine, in particular in the field of agricultural cooperation, there is a considerable gender gap between women and men.

Recommendation № 193 of the International Labour Organization on Promotion of Cooperatives, which was adopted in 2002, affirms that «Special consideration should be given to increasing women's participation in the cooperative movement at all levels, particularly at management and leadership levels (paragraph 7(3))» [15].

The section «Multiple discrimination and women's rights» of the State strategy for ensuring equal rights and opportunities for women and men for the period until 2030 establishes that «the results of the study «Gender aspects, development of the agriculture and rural areas – Ukraine» conducted in 2021 by the Food and Agriculture Organization of the United Nations, indicate limited access to many services, employment and justice for women living in rural areas» [16].

It should also be noted the low level of access to education and employment, limited access to the latest digital technologies, resources, etc.

Lyudmila Shemelynets, Deputy Minister of Agrarian Policy and Food of Ukraine, notes that «in rural areas, the problem of inequality of salaries for women and men is urgent. Women earn 15% less than men for the same work. Due to a number of factors, including limited access to the vast majority of resources, it is difficult for women to realize themselves in the professional sphere» [17].

With the adoption of the Law of Ukraine «On Agricultural Cooperation» in the new edition, the content of the principles of the formation and operation of agricultural cooperatives, which correspond to international cooperative principles, was fixed and disclosed at the legislative level.

At the same time, in our opinion, the above-mentioned legal act in general, and Article 4 «Basic principles of agricultural cooperation» in particular, do not fully reflect the importance of the issue of gender equality in agricultural cooperatives.

Part 2 of Article 4 of the Law of Ukraine «On Agricultural Cooperation» establishes the principle of voluntariness and open membership in an agricultural cooperative, an agricultural cooperative association, which includes «the right to join freely the agricultural cooperative, the agricultural cooperative association by any person who... is ready to assume all the responsibilities associated with membership in such a cooperative, cooperative association, non-discriminatory on gender, social, racial, political, religious or other grounds, as well as the right to freely leave such a cooperative, cooperative association» [18].

In our view a one-time mention in the context of the responsibilities of cooperative members of non-discrimination on the basis of gender within the principle of voluntariness and open membership indicates an insufficient level of legislative attention to the issue of gender equality in agricultural cooperatives in Ukraine.

However, it should be emphasized that certain positive changes in cooperative legislation have finally occurred, since the previous edition of the Law of Ukraine «On Agricultural Cooperation» dated July 17, 1997 did not contain a separate article devoted to the basic principles of agricultural cooperation, only a reference to the fact that general principles in such cooperatives and cooperative associations are regulated by the Law of Ukraine «On Cooperation», which, in turn, still does not contain provisions on gender equality or the prohibition of discrimination on the basis of gender.

We propose to update the cooperative legislation of Ukraine in order to ensure the equality of women and men in agricultural cooperatives (cooperatives) by amending Article 4 (Basic principles of agricultural cooperation) of the Law of Ukraine «On Agricultural Cooperation», as well as Article 4 (Basic principles of cooperation) of the Law of Ukraine «On Cooperation» and legislative consolidation of a separate principle of gender equality and gender integration in an agricultural cooperative (cooperative) in order to emphasize its significance in today's realities, the content of which is detailed below.

In our opinion, the principle of gender equality and gender integration in an agricultural cooperative (cooperative) provides for the prevention of discrimination based on gender, ensuring equal rights and opportunities for women and men - members of the agricultural cooperative (cooperative), equal participation of women and men in decision-making, equal pay, equal access to management positions and cooperative education, which will contribute to the realization of gender democracy, justice and parity in agricultural cooperatives (cooperatives).

Unfortunately, as the experts point out, despite the presence of specific laws of Ukraine «On ensuring equal rights and opportunities of women and men», «On the principles of prevention and counteraction of discrimination in Ukraine»... etc., their norms remain mainly declarative.

De Schutter emphasizes that «states must develop and implement gender-sensitive agricultural policies in order to promote real and substantial equality» [19, p. 4].

In our opinion, the main directions for achieving gender equality and gender integration in agricultural cooperatives (cooperatives) should be the development

of an effective action plan to ensure the equality of men and women in agricultural cooperatives (cooperatives); development and implementation of effective state, regional, local programs and projects in the field of agricultural cooperation with mandatory consideration of the issue of gender equality; conducting information and clarification campaigns among members or potential members of agricultural cooperatives on issues of ensuring equal rights and opportunities for women and men at the local, regional, and state levels; providing women with qualified assistance in gaining experience in the field of agricultural cooperation through coaching, mentoring, etc.; increasing the level of awareness of women and men about their rights, ways and tools to combat discrimination based on gender, provided by national legislation, as well as about international standards in the field of protection against gender discrimination, etc.

The legal framework of foreign countries and Ukraine in the field of regulation of agricultural cooperation was formed in different ways.

It should be emphasized that, nowadays, several approaches or models of legal regulation of the creation and operation of cooperatives in the world can be distinguished, namely:

1) unified legislation regulating the creation and activity of all legal entities, including agricultural cooperatives. This approach (model) is not characterized by the presence of a separate legal act dedicated to cooperation and agricultural cooperation in particular. The source of legal regulation in this case is civil codes or acts regulating the activities of legal entities of various organizational and legal forms. In Germany, for example, the source of legal regulation of agricultural cooperatives is the Law «On Industrial and Provident Cooperative Societies» (Genossenschaftsgesetz, GenG). In the Netherlands the activity of agricultural cooperatives is regulated by the provisions of the Civil Code;

2) general legal regulation of cooperation. The specified approach (model) does not provide the existence of a separate profile regulatory act dedicated to the activities of agricultural cooperatives. The legal framework in the field of agricultural cooperation is represented by the Cooperative Code (for example, Portugal) or the Law on Cooperatives/Cooperation (in particular, Poland, Hungary, Lithuania);

3) differentiated legal regulation of cooperation. Sources of legal regulation are represented by separate regulatory acts that regulate the creation and operation of cooperatives depending on their species and branch affiliation (for example, Moldova, Armenia);

4) a comprehensive approach, which is based on a combination of general legal regulation of cooperation with special legal regulation of agricultural cooperation. This approach is used in Ukraine.

The aforementioned gives grounds to conclude that currently there is no uniform approach (model) of legal regulation of cooperation in general and agricultural cooperation in particular in the world.

At the same time, in our opinion, one of the significant shortcomings of the modern legal regulation of agricultural cooperatives in Ukraine is a certain unsystematic nature, because cooperative legislation is not codified, the norms that provide legal regulation of cooperative activities, in particular, agricultural cooperatives, are scattered among many normative acts.

We believe that in order to streamline and improve the legal norms that regulate the creation and operation of cooperatives, in particular, agricultural cooperatives, it is advisable to introduce a model of general legal regulation of cooperatives in Ukraine, which will be based on a single conceptual codified act.

The advantages of the codified act of cooperative legislation of Ukraine, as A. I. Brintsov rightly emphasizes, are «full, comprehensive, detailed and direct regulation... of relations, which eliminates the need to detail its provisions in other legislative acts..., reducing the number of agrarian regulatory acts to a minimum , giving the structure of agrarian legislation a holistic, logically ordered, systemic character...» [20, p. 13].

We emphasize the need for the systematization of legal acts, the norms of which regulate cooperative relations in Ukraine: initially the development of the draft, and later the adoption of the Cooperative Code of Ukraine, which will contain a section filled with legal norms that are of general importance for the creation and operation of all types of cooperatives in Ukraine, and separate sections devoted to the special legal regulation of certain types of cooperatives, in particular, agricultural cooperatives. This act should become the foundation for the further effective implementation of agrarian policy in Ukraine, as it will ensure the completeness, clarity and effectiveness of the normative regulation of cooperative relations, as well as eliminate the unsystematic, which, as V. M. Masin rightly notes, is «the most significant flaw of modern cooperative legislation» [21, p. 39].

Conclusions and proposals. Thus, based on the conducted research, it can be concluded that the agricultural cooperation is actively developing in France, Sweden, Finland, Poland, Georgia, Spain and other states and also characterized by effective legal regulation. At the same time the development of the agricultural cooperatives in Ukraine continues to be restrained. In order to ensure the development of the agricultural cooperation in Ukraine, in our opinion, the national legislation should be improved taking into account the positive world experience.

We propose to provide such measures as:

1) transposition of the positive experience of Georgia in the field of monitoring the activities of the agricultural cooperatives in Ukrainian cooperative legislation;

2) updating the cooperative legislation of Ukraine in order to ensure the equality of women and men in agricultural cooperatives (cooperatives) by amending Article 4 (Basic principles of agricultural cooperation) of the Law of Ukraine «On Agricultural Cooperation», as well as Article 4 (Basic principles of cooperation) of the Law of Ukraine «On Cooperation» and legislative consolidation of a separate author's principle of gender equality and gender integration in an agricultural cooperative (cooperative);

3) development and implementation of the directions for achieving gender equality and gender integration in agricultural cooperatives (cooperatives) such as effective state, regional, local programs and projects in the field of agricultural cooperation with mandatory consideration of the issue of gender equality, providing women with qualified assistance in gaining experience in the field of agricultural cooperation through coaching, mentoring, increasing the level of awareness of women and men about their rights etc.

4) development of the draft, and later the adoption of the Cooperative Code of Ukraine, which will contain a section filled with legal norms that are of general

importance for the creation and operation of all types of cooperatives in Ukraine, and separate sections devoted to the special legal regulation of certain types of cooperatives, in particular, agricultural cooperatives.

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ЗАРУБІЖНИЙ ДОСВІД РОЗВИТКУ ТА ПРАВОВОГО РЕГУЛЮВАННЯ СІЛЬСЬКОГОСПОДАРСЬКОЇ КООПЕРАЦІЇ

Резюме

У статті проведено комплексне дослідження розвитку та правового регулювання сільськогосподарської кооперації у зарубіжних країнах. Незважаючи на прийняття Закону України «Про сільськогосподарську кооперацію» в новій редакції, розвиток сільськогосподарської кооперації продовжує стримуватись, що свідчить про наявність недоліків у законодавчій базі. Актуальність обраної теми зумовлюється тим, що сьогодні в умовах євроінтеграції Україна потребує невідкладного вирішення проблеми модернізації українського кооперативного законодавства з урахуванням світового досвіду, що забезпечить розвиток української сільськогосподарської кооперації. У статті висвітлено пропозиції щодо модернізації українського кооперативного законодавства з використанням міжнародного досвіду. Запропоновано реціпіювати позитивний досвід Грузії у сфері моніторингу діяльності сільськогосподарських кооперативів. Наголошено на необхідності приділення уваги питанню гендерної рівності у сільськогосподарських кооперативах на прикладі Королівства Іспанія. У статті сформовано авторське визначення «принципу гендерної рівності та гендерної інтеграції в сільськогосподарському кооперативі», яким пропонується доповнити кооперативне законодавство України з метою забезпечення рівноправності жінок і чоловіків у сільськогосподарських кооперативах. Сформовано основні напрямки досягнення гендерної рівності та гендерної інтеграції в сільськогосподарських кооперативах (кооперативах). Виокремлено декілька підходів або моделей правового регулювання створення та діяльності кооперативів у світі. Обґрунтовано доцільність запровадження моделі загального правового регулювання кооперації в Україні, яка базуватиметься на єдиному концептуальному кодифікованому акті – кооперативному кодексі України.

Ключові слова: сільськогосподарська кооперація, сільськогосподарські кооперативи, кооперативи, кооперативне законодавство, розвиток, принципи, гендерна рівність, гендерна інтеграція, кооперативний кодекс, зарубіжні країни.