



PROPERTY RIGHTS IN BULGARIAN AGRICULTURAL CO-OPERATIVES

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ABSTRACT

The aim of this paper is to study and analyze the legal and normative framework regulating the property rights over land use and land tenure in Bulgarian agricultural co-operatives, to analyze some behavioral aspects of land relations in agricultural co-operatives in Bulgaria, arising from the (non-)implementation of property rights, to draw conclusions and recommendations for the functioning and sustainability of co-operative structures.

Methods. The main methods of research and analysis are: systemic analysis, logical approach, comparative normative method, synthesis, etc.

Results: Through the research and analysis of the regulatory framework, significant difficulties in the functioning and sustainability of co-operative structures were identified. Guidelines for changes are provided to assist in solving specific problems.

Conclusions: The analysis of the normative provisions regulating land use and land tenure reveals the need for a regulation-making initiative to overcome gaps and contradictions in the legislation in this area, in order to fully protect the rights and interests of legal subjects.

Keywords: cooperation, land use, land dividend, legislation, enforcement and analysis

INTRODUCTION

The property rights to land use and land tenure in Bulgaria are mainly regulated in two normative sources: the Law on Ownership and Use of Agricultural Land (1) and the Law on Tenancy in Agriculture (2). The legislator has regulated these rights in other normative acts, which are subsidiary to them.

The analysis of these two basic normative acts, in a historical aspect, establishes that the Law on Ownership and Use of Agricultural Land has been amended more than forty times (last amended in State Gazette No. 70 of 20 August 2024 (3)), whereas the Agricultural Tenancy Act has been amended over fifteen times (last amended in State Gazette No. 102 of 8 December 2023 (4)).

concerning the exercise of property rights over On the basis of this large-scale legislative initiative to amend the cited normative acts land use and land tenure in Bulgaria, it can be

justified to conclude that at the present time a balance of interests has not been achieved between the interested parties in these legal relations: state and municipal administration, owners and users of agricultural land (sole traders, commercial companies, agricultural co-operatives, agricultural holdings, leasehold farms).

The aim of this paper is to study and analyze the legal and regulatory framework regulating the property rights over land use and land tenure in Bulgarian agricultural co-operatives, to analyze some behavioral aspects of land relations in agricultural co-operatives in Bulgaria and to draw conclusions and recommendations for the functioning and sustainability of co-operative structures.

The main methods of research and analysis applied in this work are: system analysis, logical approach, comparative normative method, synthesis, etc.

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Nature of Property Rights in Bulgarian Agricultural Co-operatives

The main characteristic feature of the

agricultural co-operative, as the successor of the former collective farms, is the common ownership of resources. The distribution of property rights in an agricultural co-operative should be seen in the ongoing interrelationships arising between the principals transferring the rights to use and dispose of the resources.

The examination of the issue of property rights in Bulgarian agricultural co-operatives is inextricably linked to the clarification of the nature of the agricultural co-operative as a subject and object of land relations and the rights of land use and land tenure arising in this connection.

The agricultural co-operative is a subject of public relations, according to the law on co-operatives (5) related to land use and land tenure, with the status of a legal entity, and its establishment, existence and termination are mainly regulated by the provisions of the Co-operative Law. By its nature, it is a co-operative of individuals who, through mutual assistance and cooperation, carry out activities to satisfy their economic, social and cultural interests. These member co-operators form a membership constituting the General Assembly of the Co-operative, from the membership of which a Steering Committee is elected to implement the decisions of the General Assembly and direct the activities of the Co-operative. The Co-operative is represented by a Chairman who is elected by the GA and is a member of the SC.

The main activity of the agricultural co-operative is to carry out agricultural production on agricultural land and to market the produce obtained from the cultivation of the land. From the point of view of the title holder, the agricultural land cultivated by the Co-operative can be of two types: 1. owned / with the title holder being the Co-operative / and 2. rented / on the basis of a lease or rental agreement /. For the purposes of this article, the second hypothesis will be considered, namely when the Co-operative cultivates not its own land but rented land. As a result, a legal relationship regarding the use and tenure of agricultural land arises between the Co-operative on the one hand and the landowner on the other.

The source of the basis on which the Co-operative may farm leased land rather than its own is the Contract. Depending on the duration of the use of the land, the LOUAL is applied /if it has a duration of up to 2 years/ or in the LTA

- if it is intended that the duration of the lease and use of the land will be five years or more.

In cases where a member-cooperator is a party to this agreement, the following arise between the Co-operative on the one hand and the landowner on the other. Herein emerges the question of property rights in Bulgarian agricultural co-operatives.

In Bulgaria, the right to land use and the right to land tenure are absolute rights, as the right to property is the main guarantee for the use and disposal of land. The right of ownership incorporates [into one](#) the right of the holder to possess, the right to use and the right to dispose of agricultural land within the limits of the law, as well as the right of the holder to require conduct from others to refrain from acts that infringe his right of ownership.

By its nature, the right to land use and land tenure of agricultural land includes the following sub-rights:

- The right of use;
- The right to keep the profit from it;
- The right to change its form and content;
- The right to transfer ownership to another party.

In the case of agricultural co-operatives, however, the rights are usually distributed among several persons, the property rights are "diluted" and it is difficult to exercise them. First: in agricultural co-operatives, all member cooperators have a share in the acquisition of assets, but asymmetry in its use is identified. In other words, in the governance structure of a traditional co-operative, common ownership per se does not bring benefits; rather, it is the cause of contradictions concerning co-operative identity on the one hand, and whether the co-operative respects property rights on the other.

Internationally, individual authors (6) have focused on the right to control in addition to property rights. Following the distribution of property rights, the authors present the different co-operative organizational forms with a characterization of the interface structure - ownership structure, politics, voting rights, governance structures with residual claim rights (returns), income distribution and organizational strategy. They argue that alternative co-operative models are defined on the basis of distributed property rights among economic agents: members, stakeholders and investors. A typology of different models is

proposed in which the traditional co-operative governance structure and the Investor Oriented Firm (IOF) is polarized.

In the early 1970s, so-called New Generation Co-operatives (NGCs) emerged in the Midwestern United States. These gained wider support in the 1990s.

What distinguishes them from traditional co-operatives?

This model introduces property rights in the form of delivery rights that are tradable between the group of member-consumers. Property rights are limited to members. Membership is closed, and they are obliged to invest in supply rights in proportion to consumption. In order to distribute supply rights among members and to raise capital, the co-operative sells shares or supply shares. The whole process is controlled through marketing agreements. The main advantage for members is to strengthen their motivation to invest risk capital in the co-operative. The success of this model depends on the demand for delivery rights and the implementation of rules for the proper functioning of the delivery market. These are co-operatives representing the efforts of the younger generation of farmers to liberalize agricultural markets and niche markets.

The right to receive a dividend refers to a resolution of the General Assembly. In a co-operative structure there are usually members with different shares of land in the co-operative property. For those who own a significant amount of land, it is not irrelevant whether they will receive a dividend and what it will be. If it is voted not to pay rent, the owners are left in the situation of calculating how much they have lost from their membership of that structure. Usually, some members cannot exercise their rights and are at odds with the agents over the need to set aside money for the Investment Fund, which can prevent important and forward-looking decisions about the future of the co-operative from being implemented.

Researchers (7-9) typically focus on two main points: residual return rights and residual control rights. The former are defined as rights over net income, which in most cases is uncertain, indeterminate, and carries residual risk from the organization's activities. A residual right of control is the right to make decisions about the use of an asset that are not defined by, but are not inconsistent with, a legal statute.

Ownership of assets must be regulated in a way that motivates investment and return.

The next point is the relation to the right to change the form and object of the activity. It is entrusted to the General Assembly, which can take decisions on the future of the association. Depending on the legislation, the rights to transfer ownership are within the jurisdiction of the General Assembly or the will of the members. A reasonable question arises - who will benefit from the goods created in the co-operative and how?

First and foremost, the SC members are in a priority position. Their duty is to reward the members of the co-operative. It is the result of their property rights and their due share of the profits for the property they participate in as share capital. In order for co-operative members to be able to make a proper judgment about whether or not this is happening, they still need to have information about the objectives of the co-operative that the governing bodies are obligated to fulfill. Those of them living in more remote locations are prevented from actively participating in important management decisions because their benefit from membership is minimized when such participation occurs. These benefits thus pass to those with a more favourable benefit-cost ratio. In this way, property rights pass into the hands of the governing bodies, who use them skillfully to transfer ownership to another.

Property rights have behavioural significance, the distribution of which influences the choices of owners. Although co-operatives put forward a formal set of values and principles that distinguish them from other organizational structures, hardly anyone doubts their respect in practice. A key difference in the governance structure between co-operatives and corporate structures is the principle of democracy, manifested by 'one member, one vote'. Cases where some members are more privileged than others is not new in practice. They occur in situations where better bargaining conditions are created or in a more convenient position for certain transactions. In both cases there is a neglect of the less well-off and socially excluded, with those with more share capital, ignoring legislation, usually trying to dominate the co-operative. Members' disinterest and weak financial dependence on the co-operative's activities lead to a lack of motivation regarding the functioning of the management

structure and management decision-making (10). In this case, the reasonable question is: To what extent would this organisational form of land management give stability and financial security to members? The problems of monitoring and consolidation manifest themselves mainly due to the weak control towards the agents, whose actions very often result in destabilizing the co-operative structure.

Land relations are undoubtedly one of the complex social relations, given the fact that not all agricultural land is subject to restoration under the LOUAL. In cases where the property has not been co-operated by virtue of a membership relationship, has not been expropriated - for example, pursuant to Article 12, paragraph 2 of the LTA /repealed/ (11), has not been de facto confiscated, has retained its status of private property and has been possessed within real boundaries, it should be assumed that such property is not subject to restitution under the LOUAL. In this case, no ownership rights can arise over agricultural land.

CONCLUSION

The research carried out on the regulatory framework has identified significant contradictions and weaknesses in the legislation that hinder successful cooperation in agriculture in the country. At this stage, there are significant legislative gaps regarding the regulation of social relations arising in connection with the use and tenure of agricultural land. The law on lease and lease relations is not synchronized with Western European legislation, where the state is directly involved in the regulation of lease relations, which means that state social policy is pursued aimed at achieving social justice and social equalization of the two parties to the contract. On the other hand, the Law on the Ownership and Use of Agricultural Land (2) and the legal analysis of the legal provisions regulating the cooperation in agriculture reveal the need for a normative initiative to overcome gaps and contradictions in the Bulgarian legislation in order to achieve and guarantee better protection of the rights and interests of the legal subjects, respectively the member-cooperators.

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