DEVELOPMENT OF THE LEGAL REGULATION OF THE COOPERATIVE IN SLOVAKIA

VÝVOJ PRÁVNEJ ÚPRAVY DRUŽSTIEV NA SLOVENSKU

Zuzana ILKOVÁ – Zuzana LAZÍKOVÁ – Anna BANDLEROVÁ – Jarmila LAZÍKOVÁ*

I. Introduction

Emphasizing the historical development and importance of agriculture for the national economy, it can be argued that social relations in the area of regulating the forms of farming on land have always been in the focus of the whole society. The social interest aimed at regulating the legal relations of entities farming on agricultural land has been reflected in many legislative adjustments in recent decades. Since the end of 1940s, “The cooperative legal standards” have become the basic formal sources of the rights and obligations of entities active in the field of agriculture.

However, it should be stressed that the development of formal sources of law, as well as the subject of their regulation, reflects and materializes the social conditions in which the relevant legislation is created, i.e. in the material sources of law.

II. Material and Methods

Legal form of the cooperative underwent complicated development. At present, according to the applicable legislation, the cooperative is a business entity traditionally active mainly in

the field of agricultural business.

The aim of the paper is to point out, on the basis of a legal analysis, the development of the cooperative law from the end of the 1940s and on the basis of the comparison and logical method of cognition point out the positives and negatives in the development of agricultural cooperatives and the advantages of current legislation. The paper uses logical methods, formal legal methods, and sociological methods, especially the methods of examining various documents that preceded or accompanied the creation of normative legal acts. The basic material on which the paper is based is legislation, legislative documents accompanying their creation, and professional articles and publications of experts focusing on the history of agricultural cooperatives in Slovakia.

On the basis of available statistical data on the development of the structure of agricultural cooperatives and on the basis of legal analysis of legal regulations, which were the basic starting point for the regulation of cooperatives, we would like to emphasize in this paper the legitimacy of the cooperative business form in Slovakia under current market conditions.

Abstract (EN)

The paper analyzes the development of the legislation of cooperative law since the late 1940s. It points out the positives, but also the negatives in the development of agricultural cooperative in Slovakia. The number of cooperatives, as well as the area of their farmed land decreased significantly after 1989 and the number of legal entities operating on the land has expanded. In spite of this, however, according to the collected data, it can be stated that in 2018, cooperatives managed 34,25% of agricultural land in Slovakia. Based on the available statistical data on the development of the structure of agricultural cooperatives and on the basis of legal analysis of the legislation, the authors wish to emphasize the merits of the cooperative form of business as well as the advantages of the cooperatives as a separate form of business under current market conditions. The cooperative, as a separated form of business, is still advantageous for all areas of business including the agricultural business. The advantage of a cooperative form of business is highlighted by its flexibility, relative simple and more liberal than other legal form of business.

Keywords (EN)

cooperative, legal form, legal relations, development of legislation, agriculture

Abstrakt (SK)

Príspevok analyzuje vývoj legislatívy družstevného práva od konca štyridsiatych rokov, pričom poukazuje na pozitívne, ale aj negatívne stránky vývoja poľnohospodárskych družstiev na Slovensku. Počet družstiev, ako aj rozloha nimi obrábanej pôdy, sa po roku 1989 výrazne znížili, avšak počet právnických osôb hospodáriacich na pôde sa zvýšil. Napriek tomu však podľa zozbieraných údajov možno konštatovať, že v roku 2018 družstvá spravovali 34,25% poľnohospodárskej pôdy na Slovensku. Na základe dostupných štatistických údajov o vývoji štruktúry poľnohospodárskych družstiev a na základe právnej analýzy príslušnej legislatívy by autori chceli zdôrazniť podstatu družstevnej formy podnikania, ako aj výhody družstiev ako samostatného podniku za súčasných trhových podmienok. Družstvo ako samostatná forma podnikania je stále výhodné pre všetky oblasti podnikania vrátane poľnohospodárstva. V porovnaní s ostatnými formami podnikania majú družstvá výhodu najmä v ich flexibilitě, relatívnej jednoduchosti a liberálnosti.

Kľúčové slová (SK)

družstvo, právna forma, právne vzťahy, vývoj legislatívy, poľnohospodárstvo

* Slovak University of Agriculture in Nitra, Slovakia

III. Results and Discussion

Historical development of cooperatives in Slovakia

In 2019, we commemorate the 174th anniversary of the beginning of the cooperative movement in Slovakia with the foundation of the Association *Gazdovský spolok* in the village Sobotište (founded on February 9, 1845), which was the first credit cooperative in the world and it was initiated by teacher Samuel Jurkovič. The guiding principles of this Association were voluntary entry, self-help, reciprocity and self-government. According to its model, other cooperatives and associations were established in almost all of Slovakia. Although, due to the complex socio-political relations in the Austro-Hungarian Monarchy, this Association only operated for 6 years (its activity ceased on January 28, 1851), it had far-reaching significance for the beginnings of the cooperative movement and the realization of cooperative ideas. Credit cooperatives were the holders of the basic ideas of the cooperative movement, namely self-help and mutual support. They were non-profit associations aimed at solving the social and economic problems of their members, which spontaneously arose from the initiative of the founders and not by the top-down normative regulation of the state.

One of the first legal regulations of cooperatives in our territory, as stated by, can be considered the Hungarian Commercial Code, legal article XXXVII/1875, supplemented by the Cooperative Law, the legal article XXIII/1898 on economic and trade credit cooperatives⁽¹⁾. The general regulation of cooperatives was enshrined together with trading companies in the first part of the Hungarian Commercial Code (§1 – 257). A cooperative has been set up as a form of trading company, consisting of an indefinite number of members, created for the purpose of joint business management or other economic purpose. The regulation distinguished the founding of the cooperative, the creation of the cooperative statutes and the creation of the cooperative by registration in the register court, further differentiated cooperatives with unlimited liability – solidarity liability of members through the entire property beyond the possibilities of cooperative assets, if it was not enough to cover debts, and cooperatives with limited liability, members are only liable to the extent of their business share. The Hungarian Commercial Code remained valid in Slovakia even after the establishment of the Czechoslovak Republic on the basis of Act no. 11/1918 Coll. (Reception Law) of 28.10.1918, according to which: “in order to maintain the continuity of the existing legal order with the new situation, to avoid confusion and to adjust the undisturbed transition to a new state life, orders the National Committee on behalf of the Czechoslovak nation, as executor of state sovereignty (Article 2), preservation of all existing provincial and imperial laws and regulations at that time”.

In addition to the Hungarian Commercial Code for legal regulation of cooperative, the Act no. 210/1919 Coll. on regulation of cooperative conditions in Slovakia has been adopted. Section 2 of this Act imposed an obligation on all cooperatives established under legal article XXIII/1898 or according to the legal article XXXVII/1875, by resolutions of the General Assembly adopted by the end of July 1919, to terminate member-

ship in *Országos központi hitelszövetkezet* in Budapest, or any other cooperative headquarters located outside the territory of the Czechoslovak State.

Despite the unification efforts in the period of the first Czechoslovak Republic, the commercial law failed to unify⁽²⁾. During the entire existence of the first Czechoslovak Republic, the second Czechoslovak Republic and the Slovak State, the former Austrian Commercial Code of 1863 still applied in the Czech lands and the Commercial Code of 1875 still applied in Slovakia. This means that the legislation of the cooperative was also split into two commercial codes. The legal situation lasted until 1950, when the Civil Code no. 141/1950 Coll. has been adopted, which repealed both commercial codes, except for the provisions governing cooperative law. Figure 1 is an overview of the number of cooperatives in the mid-1920s throughout the Czechoslovak Republic. From most of the total number of 14 924 cooperatives, 3 479 were agricultural, purchasing, selling and production cooperatives and 5 852 were agricultural credit cooperatives⁽³⁾.

The legal norms adopted at the end of the 1940s and the beginnings of the 1950s are a reflection of the socio-economic changes that took place in the Czechoslovak Republic⁽⁴⁾, which means in the material sources of law. The constitutional development after “February 1948” was influenced by the political conditions of its origin and the changes that occurred in all areas of the state’s social life. The Constitution of the Czechoslovak Republic, established a people-democratic establishment where the people are the source of all power in the state. In particular, cooperatives concern Article IV, Section 3 of the Constitution: “*For procurement of the public things and for the exercise of its democratic rights, the people create voluntary organizations, in particular political, trade union, cooperative and cultural, women’s and youth organizations and sports organizations*”.

In Chapter 8, Section 146, the Constitution enshrines an economic establishment in which the means of production are either of national property or property of people’s cooperatives, or are privately owned by individual producers. The Constitution of the Czechoslovak Republic regulated people’s cooperatives (§157 Section 1 and Section 2) as associations of working people to work together in order to increase the standard of living of members and other working people, but not to achieve the highest possible profit from invested capital. According to the Constitution, the state supports people’s cooperatives in the interests of developing the national economy and general welfare. Furthermore, the Constitution declared the private ownership of small and medium-sized enterprises up to 50 employees (§158), the private ownership of land by farmers who work on it up to 50 hectares (§159), adding that the details will be regulated by the special law. The state constitutionally undertook to govern agricultural policy (§ 160) with the involvement of the farmers in order to gradually increase the technical and technological level of the villages and to balance the social and cultural differences between the urban and the rural areas.

⁽²⁾ Gábriš (2012)

⁽³⁾ Demo et al. (2001)

⁽⁴⁾ Constitutional Act no.150/1948 Coll., approved and issued on May 9, 1948

⁽¹⁾ Šubertová (2004)

Figure 1: Overview of cooperatives in the Czechoslovak Republic in early 1924

Source: own processing at the Department of Law according to Demo et al.: *History of Agriculture in Slovakia* (Table 12.1 p. 444)

The empowering provisions laid down in the Constitution of the Czechoslovak Republic concerning the ownership of agricultural land were elaborated in Act no. 69/1949 on Common Agricultural Cooperatives (hereinafter referred to as the CAC Act or the Act). On 23 February 2019, there was the 70th anniversary of the adoption of the aforementioned Act by the National Assembly of the Czechoslovak Republic. The CAC Act constituted and established a normative regulation of the rebuilding of agriculture by the association of individual farmers. From a formal point of view, it was a simple framework regulation that within 14 paragraphs enshrined and brought substantial changes in the life of farmers and substantial changes in land management. The Regulation of the Ministry of Agriculture no. 75/1949 Coll. with effect from 26 March 1949 has been issued to implement the CAC Act. The aim of the legal regulation was to eliminate the existing fragmentation of cooperative activities in agriculture, to unite various agricultural cooperatives by voluntary establishment of common agricultural cooperatives. The subject of the activities of the common cooperative pursuant to § 2, Section 1 was in particular:

- land consolidation;
- mechanisation of agricultural work (pursuant to Act no. 27/1949 Coll. on Mechanisation of Agriculture);
- cooperation in establishing, scheduling and fulfilling production tasks in agriculture, in particular the conclusion of contracts on manufacturing of agricultural products;
- cooperation in establishing, timing and delivering of agricultural products, in particular the conclusion of contracts on the purchase and supply of agricultural products;
- participation in the purchase of agricultural products and in the acquisition of agricultural needs;
- taking care of the improvement of crop and livestock production;
- taking care of the organization of work to increase the production of agriculture;
- taking care of increasing the cultural and social level of the countryside;
- taking care of facilitating the work of a rural women.

According to the Act, the activities of CAC cannot be the activities that are the tasks of financial institutions, i.e. the activities of a credit cooperative. However, consumer, craft, trade and housing cooperatives could continue to operate in municipalities.

In the provisions of §4, §5, §6, the Act stipulated the method of establishing an common cooperative, either by establishing a new cooperative in a given municipality, or by transforming an existing cooperative into an common cooperative, or by merging multiple cooperatives existing in the municipality. The Act was based on the regulation that only one common cooperative would be established in each municipality. In addition to the CAC Act, the internal legal relationships of the founding cooperatives were regulated by the Model CAC Statutes, the Rules of Procedure and the Operating Rules, which regulated differentially the legal relations of the four types of cooperatives. In the first type there was a simple cooperation in some seasonal work; in the second type the boundaries of land plots were ploughed; in the third type, besides crop production, they also carried out livestock production; and in the fourth type they were rewarded according to work merit and not according to associated land⁽⁵⁾.

The first stage of searching for a suitable type of cooperative and collective founding of common cooperatives represented by Act no. 69/1949 Coll. ends with the adoption of Act no. 49/1959 Coll. on CAC (with effect from 1 October 1959), by which begins the second stage of development of agricultural cooperatives, namely the stage of consolidation and development of common agricultural cooperatives (§1 of the Act). By its modification and content, the second CAC Act is the holder of all socio-economic conditions for the development of Czechoslovak society at that time. The matter of act formally embedded in 63 paragraphs is divided into twelve parts. The first part of the guiding principles of the agricultural cooperative provides the principles such as voluntary establishment, cooperative democracy, the joining of interests of farmers, cooperative and whole society, the principle of planning of cooperative's activity, cooperatives as an inseparable part of the socialist establishment. In the second part (§8 - 16), the establishment of the cooperative and its nature are regulated: the cooperative is formed by a resolution of the establishing membership meeting; is approved by the council of the district national committee; the cooperative is a people's cooperative and a socialist legal entity whose main activity is socialist large-scale agricultural production and forestry and taking care of cooperative's members. In the third part, the cooperative bodies are appointed, namely the membership assembly as the supreme body; the board managing the day-to-day activities of the cooperative; and the chairman conducting day-to-day activities and acting on behalf of the cooperative. The review committee is the control body responsible only towards the membership assembly. In the fourth part we can find for the first time the regulation on the association of land and other means of production. The members of the cooperative were obliged to associate the lands, including forest lands, for the cooperative management in the scope and under the conditions determined by the Statutes, while the ownership of the associated land remains intact and the cooperative acquires the right to cooperative use. This legal regulation gave preference to the right of use before the right of the owner. Although the ownership of the land belonging to the cooperative was retained to the members, they lost one significant ownership

⁽⁵⁾ Štefanovič (1982, p.16)

right, namely the right to dispose with the land, because the Act stipulated the restriction of the owner of the associated land to be disposed of or burdened (§23 Section 2). On the other hand, the right of the use by cooperative strengthens the legal status of cooperatives, because the Act transfers from the owners to the cooperative the right to use the land to the same extent as the owner. The cooperative had the right to change the nature of the land, draw on it, construct buildings on it and the cooperative could also rent the land. However, the content of the right of cooperative use was not the right to alienate and burden agricultural land. In addition to land consolidation, the Act in this part provides the regulation of the association of other production means into the cooperative. This means that live and dead inventory, seed, feed and farm buildings have been transferred to the cooperative provided that the amount of compensation and billing should be regulated by Model Statutes. In the fifth part of the Act governing the organisation of work and remuneration for work, the personal conduct of all work by the cooperative's employees was embedded, while the remuneration for work was governed by the quantity, quality and social importance of the work done. The sixth part was focused on the regulation of cooperative funds and the seventh part on the mutual cooperation of cooperatives. Mutual cooperation between cooperatives could be carried out by leaving the use of means of production to another cooperative, or by providing works and services (lower form of cooperation of cooperatives), or by setting up a joint cooperative enterprise by several cooperatives (higher form of mutual economic cooperation of cooperatives). The eighth part on the protection of cooperative management and cooperative assets was based on a precautionary clause by enshrining the obligation to protect cooperative assets, respect for cooperative democracy, regulation of liability for damage caused, modifying an agreement to entrust values to be accounted and regulating disciplinary measures. The ninth part included the regulation of relations between cooperatives and the state by the following regulation: *"socialist cooperative agriculture forms an integral part of our socialist economic system"* (§48 Section 1). *Cooperatives adapt their production and economic activities to the needs of planned economic development, their production and supply of agricultural products ensure increasing supply of food to working people and raw materials to industry* (§ 48 Section 2 and Section 3). The state supervised cooperatives' activities by applying a method of persuasion, approving the statutes and their amendments, approving long-term and year-round plans, financial statements, important resolutions on cooperative measures, granting prior consent to measures required by the applicable regulation, additional review of important cooperative documents after their approval by the cooperative body. In the tenth part of the law, we find the regulation of the extinction of the cooperative only because the cooperative loses permanently the possibility of farming for the loss of the soil base, whereas the consent of the district national committee is necessary for the extinction of the cooperative. The eleventh part was aimed at regulating "property cessation" between a cooperative and a cooperative member when membership ceased to exist. Under this regulation, the cooperative shall bill and terminate all mutual claims within one month of the approval of the annual accounts by 1 April of the following year at the latest with coop-

Figure 2: Establishment of common agricultural cooperatives (CAC) of the type III and IV in Slovakia until 1960

Source: own processing at the Department of Law according to Demo et al.: *History of Agriculture in Slovakia* (Table 12.6 s.462)

erative members who have been withdrawn from the cooperative or have been expelled, or with the heirs who have not become members. Return of land, farm buildings, live and dead inventory, adequate amount of seed and feed will only be carried out after harvesting so that the excluded or expelled cooperative member could carry out the field works in time. The second Act on Common Agricultural Cooperatives (Act no. 49/1959 Coll.) significantly contributed to the development of the cooperative movement in agriculture, to the consolidation of the cooperative form of farming on agricultural land and to the development of legal relations in cooperatives. The legal regulation reflects the then existing political, social and production relations, which were also reflected in the newly adopted Constitution of the Czechoslovak Socialist Republic (Constitutional Act no. 100/1960 Coll.). In addition to the legal regulation itself, cooperative legal relationships significantly influenced other normative acts, in particular the Model Statutes, which were adopted by national CAC congresses and published as government regulations, and according to which each cooperative drew up its own statutes as an important internal rule of the cooperative. Figure 2 is an overview of the common agricultural cooperatives over the ten-year period 1950 - 1960. In 1960, the number of cooperatives increased to 2 683, which were farming on 65.8% of agricultural land.

The CAC Act was effective for 15 years until the adoption of the new statutory regulation by Act no. 122/1975 Coll. on Agricultural Cooperatives, by which starting a new stage of development of agricultural cooperatives, namely the stage of development of agri-food complex and concentration of production based on specialization and merging of cooperatives. It can be said that the Act on Agricultural Cooperatives was a detailed regulation of legal relations in agriculture, which sets out the basic rules for cooperatives' activities in the twelve sections elaborated in 118 paragraphs. The legal regulation emphasized the importance of the socialist agricultural cooperative and its state management and the nature, tasks, subject of activity and management of the cooperative have been established. In the legal regulation of the subject of the cooperative activity, the Act distinguishes the main subject of activity, namely agricultural large-scale production and associated production to ensure year-round employment of members, use of means of production, own and local material resources. The Act regulated in detail the formation and termination of membership

in the cooperative, the organization of the management and administration of the cooperative, the association of land and the association of other means of production.

In the fifth part, working relationships in the cooperative were established. Each member was ordered to work personally in the cooperative, and the rights and obligations between the member and the cooperative in the performance of the work were further regulated by a work agreement. In addition to the Act, the working relations of the members were governed by the Model Statutes ⁽⁶⁾, by the cooperative's work order and, supportively, by the Labour Code. The following parts of the Act provide the regulation of cooperative discipline, liability for damage and settlement of disputes between the cooperative and members by conciliation. The ninth part governed cooperation in agriculture by negotiating cooperative associations and establishing joint agricultural enterprises. The law encouraged merging of cooperatives into larger economic units in favour of further effective development of agricultural production. There were three reasons for the extinction of the cooperative: (1) the transition to the state agricultural organization; (2) the permanent loss of the soil base and (3) the division. The last provisions of the Act provide the regulation of the supervision of state over activities over cooperatives and other organisations.

The effectiveness of the Act on Agricultural Cooperatives lasted until July 1 1988, when the new Act no. 90/1988 Coll. on Agricultural Cooperatives entered into force repealing 21 implementing regulations in addition to the previous Act. The new Act on Agricultural Cooperatives does not bring major changes compared to the previous regulation. It is more transparent in the regulation of the legal status of the members of the cooperative, because in one part it regulates both the member and labour relations of the members, the cooperative discipline and the disciplinary measure. In addition to this Act, the labour relations of the members were governed by an amendment in their own statutes and, supportively, by the Labour Code.

Same as the previous regulation, the Act is based on the regulation of the right of cooperative use of associated land, which provides it for free and in unlimited time and entitles the cooperative to use land for fulfilling all its tasks. The Act no longer mentions the association of other means of production. For the first time, the Act provides for the pursuit of foreign-economic activities and the establishment of a foreign exchange fund when regulating the cooperative's subject of activity.

On 15 May 1990, the third Act on Agricultural Cooperatives (Act no. 162/1990 Coll.) adopted by the Federal Assembly of the Czech and Slovak Federal Republic entered into force. The provisions of the Act reflect the social, economic and constitutional changes of the "velvet revolution". Compared to the previous two Acts, this Act lacks a preamble, a statement on agricultural cooperative as part of the socialist agriculture under the leadership of the Communist Party. In the first and the second part of the legal regulation, in addition to the conceptual definition of the "cooperative", the formation of the cooperative and the requirements of the statutes were modified. The statutes stipulate among the mandatory requirements for the

first time a provision on the amount and manner of determining the amount of a member's share, or basic membership fee or other ownership interest, the types and methods of their creation, use, evaluation or amortization, the method of subscription and their arrangement at cessation of membership (§ 4 Section 1 e). In addition to this regulation, the Act documents the effort to transform existing cooperatives into share cooperatives in § 56, which stipulates: "*Cooperatives that have not yet had membership shares may grant members the rights in their statutes that are related to member shares, based on associated land as well as the performance of work in the cooperative.*"

The legal regulation of membership, its formation and the ways and reasons for its extinction are governed in the Act depending on whether it is a membership with work participation or a membership without work participation. In its third part, the Act obliges the members to associate the land they own at the time of entering the cooperative to the extent determined by the statutes. To these lands, the cooperative acquired the right of cooperative use, which was free of charge and authorized the cooperative to use the associated land for all tasks, in particular to ensure agricultural production. Based on the requirements of the given period, the emerging social and economic relations on the principle of market relations, the Act contains a regulation of an agreement negotiated between the cooperative and members or other citizens on joint production. The Act also allows the establishment of self-help cooperatives of farmers (§54), which can be set up by citizens carrying out agricultural activities. The third Act on Agricultural Cooperatives was repealed by the Commercial Code, which entered into force on 1 January 1992.

Opinions on the development of cooperatives and its legal regulation, especially after 1948, vary and depend on how individual persons or their family members were affected by these changes.

Throughout its existence, the Department of Law of the Slovak University of Agriculture in Nitra in its research activities, in cooperation with practice, consulting and advisory activities, has gained much knowledge on past development from former self-employed farmers, members of cooperatives, cooperatives' managers, students and their family members as well as other citizens for whom the development of agriculture was not indifferent. Opinions and findings can be divided into two groups: (1) the group whose opinions condemning the development and its negative impact on private farmers and (2) the second group of views on the development of the cooperative as well as on the development of the relevant co-operative legislation, which understands this process positively. Critically assessed is the violation of the voluntary principle when entering the cooperative in the first stage of the cooperatives' establishment, either directly, e.g. by criminal prosecution of many resistant farmers, their displacement, various forms of intimidation of family members, or indirectly, by burdening private farmers with high mandatory supplies of agricultural products, so-called contingents in order to provide enough food for the post-war period, which actually forced the farmers to enter the CAC. Negatively assessed are the right of association of agricultural land and the creation of a new original right of cooperative land use, which prevailed over the land ownership right of individual cooperative members. Part of

⁽⁶⁾ Government Regulation no. 137/1975 Coll

the right of use of the land was free of charge. According to the opinions, the cooperatives, in particular in the late 1950s and early 1960s, were economically stabilized and had sufficient funds to pay the rent for land use. From the 1970s, the process of merging agricultural cooperatives violating the principle that one agricultural cooperative should be established in each municipality is critically perceived. Although the large complexes have been created by merging cooperatives, where large-scale technology has been used more effectively, at the same time, the immediate relationship, the daily care of members for “their municipal cooperative”, has disappeared and the merged cooperatives themselves have invested more in the development of the municipality in which they had their seat.

The second group of views on the development of the co-operative as well as on the development of the relevant co-operative legislation understands this process positively. According to these opinions, cooperatives have made a significant contribution to the development of agriculture and thus to rural development. Cooperatives have played a positive role in ensuring self-sufficiency in the production of plant and animal products, and the share of agricultural cooperatives in the development of rural employment is also important.

Development of agricultural cooperatives after 1990

The social and economic changes after 1989 also meant serious property and organizational impacts for cooperatives.

The basic regulation governing the legal status of cooperatives was the Commercial Code adopted in 1991 (Act no. 513/1991 Coll.), which established a common legal form of a cooperative regardless of the subject of activity. In terms of legislation, a cooperative is a business entity, a community of open number of persons, established for the purpose of carrying out business or providing for its members' economic, social or other needs. It differs from trading companies by the special regulation of internal relationships between the cooperative and members and between individual members. In its provision § 765, the Commercial Code imposed on cooperatives that were established prior to its entry into force (1 January 1992) to be converted into companies or cooperatives governed by the Commercial Code by a procedure governed by a separate act. This act was Act no. 42/1992 Coll. on the regulation of property relations and settlement of property claims in cooperatives.

In addition to the Commercial Code, other legislation was gradually approved in the legislative process to implement structural changes in agriculture, through which the transition from a centrally planned economy to a market economy should be carried out. These changes were enshrined in the Constitution of the Slovak Republic no. 460/1992 Coll. as amended.

Land-based business activities have been significantly affected by property restitution: Act no. 403/1990 Coll. on mitigation of some property injustice; Act no. 87/1991 Coll. on Extrajudicial Rehabilitation; Act no. 229/1991 Coll. on regulation of ownership relations to land and other agricultural property as amended (the First Restitution Act); Act no. 503/2003 Coll. on restitution of ownership to land (the Second Restitution Act). The privatization of state-owned enterprises was regulated by Act no. 92/1991 Coll. on conditions of transfer of state property to other persons (Act on Large-Scale Privatization).

Even before the process of cooperative transformation, the cooperative regulation mentioned in Act no. 427/1990 Coll. on the transfer of state ownership of certain entities to other legal entities and physical persons (Small Privatization Act), which blocked cooperatives from obtaining shares in privatized food production and commercial establishments. This avoids the connection between primary production represented by agricultural cooperatives with processors and trade.

The process of transformation of agricultural cooperatives itself was carried out on the basis of Act no. 42/1992 Coll. on the regulation of property relations and settlement of property claims in cooperatives (the so-called Transformation Act), up to now amended by eleven Acts, of which the most significant changes were introduced into the transformation process by Act no. 264/1995 Coll. (In practice referred to as the 1. Amendment to the Transformation Act) and Act no. 3/2005 Coll. (the so-called 2. Amendment to the Transformation Act). The Transformation Act established:

1. Method of regulation of the property relations and settling property claims in cooperatives by designating eligible persons, evaluating cooperative assets, quantifying net worth, determining the ownership shares of beneficiaries, developing and adopting a transformation project.
2. Method of adapting the internal legal conditions of the co-operative to the Commercial Code.
3. Eligible persons could also opt for a different form of business than the cooperative; therefore the Act also stipulated the method of converting cooperatives into other business forms under the Commercial Code.

As a result of the transformation of the cooperative, a transformation project was approved, which included a decision on the further existence of the cooperative or its transformation into a trading company (public company, limited partnership, Limited Liability Company and Joint Stock Company)

If the eligible natural persons did not become participants in the legal entity according to the transformation project and decided to carry out agricultural production, their ownership interest had to be issued within 90 days of the day when the authorized person applied for the extradition (§ 13 Section 2). The Transformation Act ensured to the other owners of the transformation share the issue of this share 7 years after the approval of the transformation project. Relying on available information sources, it can be stated that the number of self-employed farmers grew during this period (e.g. up to 7 572 in 1994). In the following years, the number of self-employed farmers stabilized, so in 2016 the number of registered natural persons engaged in agricultural production was 5 935. The reason for the increase of the number of self-employed farmers in those years was probably also the effort of the beneficiaries to obtain the calculated equity share within ninety days, many of whom tried to exercise their right in court.

The transformation of agricultural cooperatives by adopting a transformation project should be done within the legal one-year period until 28 January 1993. According to the explanatory report to Act no. 264/1995 Coll.: *Since Act no. 42/1992 Coll. did not specify in detail the rights of shareholders of non-members of cooperatives and that the settlement of their property claims by issuing a matter or monetary compensation on a carrier*

Figure 3: Development of agricultural cooperatives

Source: Green Report, MARD SR, 1996 – 2010; Structural Census of Farms 2010; Statistical Yearbook 1970 – 2010; processing: SUA in Nitra, Department of Law

Figure 4: Percentage of cooperatives on land

Source: Green Report, MARD SR, 1993 – 2018; Structural Census of Farms 2010; processing: SUA in Nitra, Department of Law

scale proved to be unrealistic (property claims of eligible persons for settlement after 7 years amounted to SKK 12 290 million), the Act no. 264/1995 Coll. have been adopted, which amended Act no. 42/1992 Coll., according to which it was the duty of agricultural cooperatives to issue cooperative share certificates for the calculated shares as a special type of security. In this Act, the rights of shareholders incorporated in these securities, including their sale on the public securities market, were exhaustively determined.

Against this amendment to the Transformation Act, a group of deputies of the National Council of the Slovak Republic filed a petition for the Constitutional Court of the Slovak Republic to declare non-compliance of §13a, §17a – 17f and § 33b par. 1 and para. 3 second sentence with the Constitution. According to the petitioners, the pending property rights of beneficiaries calculated in the process of transformation have been retrospectively converted into another property right, namely the right to a share certificate as a security. They also objected to the unconstitutionality of the regulation (§17f),

which obliges cooperatives to accept as members the eligible persons, non-members and owners of cooperative share certificates (hereinafter referred to as CSC), if they so request. The Constitutional Court in its judgment published under no. 218/1997 Coll. decides that Section 17f, third sentence of the Amendment to the Transformation Act does not comply with the Constitution of the Slovak Republic: the obligation of the cooperative to accept an eligible person of the CSC owner as a member of the cooperative. The other parts of the petition were not accepted. About 980 agricultural cooperatives were obliged to issue CSCs (Green report, 1999, Securities Centre of the Slovak Republic). As of July 1998, 521 issuers and issues were registered. In 2002, 640 CSC issues were registered, the number of which has not changed significantly in the coming years. Approximately 65% of cooperatives fulfilled the obligation to issue CSCs.

In order to complete the process of transformation of agricultural cooperatives, Act no. 3/2005 Coll. has been adopted,

which obliged the cooperatives that did not issue share certificates to eligible persons to do so by 31 May 2005. If the cooperative fails to comply with this obligation, the calculated shares of the eligible persons become a claim, which the cooperative is obliged to satisfy by 31 August 2005.

Despite the efforts of the legislator to amend and strengthen the legal status of transformed cooperatives and eligible persons by amendments to the Transformation Act, their legal status and entitlements were influenced by other factors, namely internal socio-economic development, state aid to agriculture and the economic results of cooperatives. The chances of many eligible persons to acquire a property transformation were failing in particular in those cooperatives that were not able to economically secure the production tasks in a complex competitive environment, and at the same time capitalizing share certificates. Many transformed cooperatives have been cancelled due to poor economic results, or a bankruptcy for their property have been imposed due to their decline, in which the eligible persons demanded their claims, but generally without any settlement for the lack of assets of the declined cooperative.

There are many contradictory views on the transformation process of agricultural cooperatives. According to remarkable and accepted opinion, there are two groups of cooperatives that exist in Slovakia since the 1990s ⁽⁷⁾. There are (1) cooperatives that have not undergone a transformation process (cooperatives established after 1992), which already have a better starting point for doing business by not having started to act as indebted entities; and (2) cooperatives that have undergone a transformation process (cooperatives established before 1992). A special feature of transformed cooperatives is the fact that property rights in them have persons who are not their members. This situation is disadvantageous for both parties. On the one hand, there are eligible persons who are not members of the cooperative but have property rights in it, but cannot interfere with the management of the cooperative as the members of the cooperative. On the other hand, there are the cooperative members, who are not the exclusive owners of the cooperative's assets.

Over the last almost twenty years, agricultural cooperatives have gone through complex changes, both in terms of normative regulations and structural changes in the agricultural sector. The following Figure 3 shows the development trend of the number of agricultural cooperatives in Slovakia, as well as the development trend of the average area of agricultural land that they farmed in 1970 – 2010.

As can be seen from Figure 3, the average area of agricultural land has declined over the period approximately the same as declined the number of agricultural cooperatives in Slovakia.

After 1994 (Figure 4), the share of trading companies farming on agricultural land started to increase and in 2010 it slightly exceeded the share of agricultural cooperatives.

The current legislation of the cooperative is enshrined in the provisions of §221 – 260 of the Commercial Code (Second Part. Trading Companies. Title First. Trading Companies. Title Second. Cooperative). It is a general regulation applicable to all cooperatives regardless the subject of their activity. There are

three special provisions in the legal regulation applicable to a particular type of cooperative, namely §230, which regulates the transfer of rights and obligations associated with membership in the housing cooperative, §232 Section 2, according to which the board of directors' consent to acquire membership rights and obligations is not required if the member has acquired rights and obligations related to membership in the housing cooperative and §234 Section 2, which regulates the entitlement to return of agricultural land included into the cooperative. Compared to trading companies, the basic conceptual definition of a cooperative implies that a cooperative is a community established for the purpose of doing business or securing the economic, social or other needs of its members. Under such legal regulation, in many cooperatives the entrepreneurial activity, which is the source of income, is linked to social activity, the implementation and scope of which are determined by business income.

The current legal regulation of the cooperative is characterised by openness. New members can join the cooperative and current members can leave without having to change the basic document – cooperative statutes and Business Register entries. The openness of the cooperative is governed by the legal regulation of the capital, which is the sum of all member deposits (§ 223), but only a part of the so-called registered capital is recorded in the Business Register, which must be at least EUR 1,250.

A cooperative must have a minimum membership base both at its establishment and throughout its existence representing by either five natural persons or two legal entities. Establishing a cooperative is easier and is not as formalized as establishing a trading company. In the presence of a notary who draws up a notarial deed, the cooperative shall be constituted by a constituent meeting, which determines the amount of registered capital, approves the statutes, elects the board of directors and the control committee. The persons who have submitted the application to the cooperative have the right to vote at the meeting. A cooperative as a legal entity arises on the date of its entry in the Business Register provided that half of the registered capital is paid. The legal regulation of the cooperative establishes the cooperative as a share cooperative, where the member's share expresses the participation rate of a member in the cooperative, the amount of which is determined according to the ratio of the member's deposit to the registered capital, unless the statutes of the cooperative regulate its amount otherwise. The amount of the membership deposit may be determined differently for individual members, for example for members as natural persons and members as legal entities.

The regulation of the different amounts of membership deposits, as well as the regulation of the payment obligation to cover cooperative losses, which can bind only some members, is enshrined in the statutes of the cooperative and breaks the principle of equality of members. However, in such regulation, attention must be paid not to discriminate the minority, which is prohibited by the Code (§56a) or to prevent abuse of the law (§265). Breaking the principle of equality of members may also be a modification of the voting of members in the statutes of the cooperative. Under the legal regulation (§240), the principle of equal voting rights applies – each member has one vote. It is possible to modify this principle by the statutes in ac-

⁽⁷⁾ Lazíková – Bandlerová (2005 p.130)

Figure 5: Development of cooperative form of business in Slovakia in 2010 – 2018

Source: The selection from the report OSEV 3-01, legal form 205 (cooperative)

Figure 6: Percentage of cooperatives on agricultural land

Source: Research Institute of Agricultural and Food Economics – based on a selection made from the report OSEV 3-01, legal form 205 (cooperative)

cordance with the different amount of members' property participation in the cooperative's registered capital. A member of a cooperative may be a natural or legal person. The formation of membership, its duration and its extinction are governed by the voluntary principle. It depends on the candidate's will to apply for a member, how long he/she stays in the cooperative, or decide to leave it. Membership may be modified in the statutes as a membership with employment relationship – in this case, only a natural person with a labour-law capability may become a member of the cooperative.

In its mandatory provision, the Act provides regulation that membership cannot be incurred prior to payment of the entry deposit. Legal facts that result in the extinction of membership are written agreement, withdrawal, exclusion, bankruptcy of a member's property, rejection of a bankruptcy petition for

a member's lack of assets or the extinction of a cooperative. Membership ceases to exist upon termination of the member's employment relationship. Furthermore, membership is terminated by transfer of membership rights and obligations to another person. Membership of a natural person is terminated by his/hers death and membership of a legal entity is terminated by its extinction. The range of legal facts that result in the termination of membership cannot be extended in the statutes.

In terms of legal regulation, obligatory bodies of the cooperative are: a member meeting, a board of directors and a control committee. The statutes may stipulate and regulate that other facultative bodies shall be established in the cooperative. A member meeting as the supreme body includes all members of the cooperative who decide on the most important issues (exclusive competence of the member meeting). The board of

directors is the statutory and executive body, deciding on the current activities of the cooperative. Although the Act does not provide for a minimum number of members of the board of directors, they must be at least two in order to perform those legal acts for which a written form is required (§243 Section 3). The control committee has at least three members. It is entitled to control all cooperative activities and discusses complaints from members. As regards the regulation of the extinction of a cooperative, the cooperative as a subject of rights and obligations ceases to exist by deletion from the Business Register, which must be preceded by the extinction of the cooperative by liquidation or without liquidation (§254).

By incorporating the legislation of the cooperative into a special Title in the second part of the Commercial Code, its independence and separation from the regulation of trading companies is highlighted. In spite of the differences in the regulation of this business entity, the Act allows to apply on cooperative the general provisions on trading companies appropriately if there is no special regulation for the cooperative.

On the basis of the mentioned facts we can say that the cooperative, as a separated form of business, is still advantageous for all areas of business, it means also for agricultural business. By enshrining the legal form of the cooperative, the current legal regulation extends the range of business entities and offers to those interested in business a wider choice of forms of legal entities. The advantage of a cooperative form of business is highlighted by its flexibility, as there is no need to make changes in the business register every time a membership base is changed. Furthermore, it is the anonymity of members not enrolled in the business register. The cooperative conducts only a non-public list of its members. In comparison with a similar regulation of a limited liability company, the regulation of a cooperative as a business form is simpler and more liberal, given the dozens of dispositive provisions concerning the statutes (about 45 provisions) of the cooperative. The statutes of the cooperative, as the basic document approved by the members of the cooperative during its establishment, deal with the fundamental issues of the internal organization of the cooperative, the mutual relations between the cooperative and its members, the mutual rights and obligations of the members towards the cooperative, the legal status of the cooperative towards third parties. The statutes of the cooperative must contain seven obligatory elements (§226) prescribed by the Commercial Code. In addition, they must specify the other facts arising from the Commercial Code, namely: determining the amount of registered capital, the method of valuation of non-monetary deposits, determining the deadline for member's leaving, determining the time limits for member meeting, determining the manner of decision making and statutory body in the cooperative with less than five legal entities and term of office of cooperative's bodies. The statutes may optionally regulate other facts that the Commercial Code does not regulate sufficiently or does not regulate at all, but they are important for the activity of a particular cooperative, for its internal organization and the regulation of mutual relations.

Figure 5 illustrates the current state of development of agricultural cooperatives as well as the percentage of agricultural and, in particular, arable land for the period 2010 – 2018. In each of the years under review, there was a slight decrease in

the number of cooperatives. Forty agricultural cooperatives ceased to exist in the eight-year period.

The decline in the number of cooperatives between 2010 and 2018 is also reflected in a decline of the share of the agricultural land on which they farm (Figure 6). In 2018, agricultural cooperatives farmed at 657 350 hectares representing 34,25% of total agricultural land in Slovakia.

IV. Conclusion

Based on the analysis of the development of the cooperative legislation, it can be stated that the cooperative as a special business entity has its place in the structure of business entities even under current market conditions. Unlike trading companies, a cooperative as a legal entity was established spontaneously during the history and in several countries almost simultaneously to deal with the economic situation of its members by mutual help and economic self-help of members. In the conditions of the Czechoslovak Republic, especially since 1949, the gradual acceptance of rigorous regulations to the cooperative as a legal entity operating mainly in the agricultural sector (CAC Acts, Acts on Agricultural Cooperatives) has weakened the core ideas of cooperative societies and a directive regulation has started to prevail. The current legislation has united all types of cooperatives. The regulation is uniform, regardless the cooperative's subject of activity, and represents therefore an appropriate form for carrying out business activities in any area, including agriculture.

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Contact address/ Kontaktná adresa

Doc. JUDr. Zuzana Ilková, PhD.

Department of Law, FESRD, SUA in Nitra, Tr. A. Hlinku 2, 949 76 Nitra
e-mail: zuzana.ilkova@uniag.sk

Ing. Zuzana Lazíková

Department of Law, FESRD, SUA in Nitra, Tr. A. Hlinku 2, 949 76 Nitra
e-mail: xlazikova@is.uniag.sk

Prof. JUDr. Anna Bandlerová, PhD.

Department of Law, FESRD, SUA in Nitra, Tr. A. Hlinku 2, 949 76 Nitra
e-mail: anna.bandlerova@uniag.sk

Doc. JUDr. Ing. Jarmila Lazíková, PhD.

Department of Law, FESRD, SUA in Nitra, Tr. A. Hlinku 2, 949 76 Nitra
e-mail: jarmila.lazikova@uniag.sk