

SCIENTIFIC RESEARCH ON ORGANIZATIONAL AND LEGAL FEATURES OF AGRICULTURAL SERVICE COOPERATIVES' FUNCTIONING IN UKRAINE: INTERNATIONAL COMPARATIVE ASPECT

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ABSTRACT

Aggravation of the socio-economic situation, increasing intensity of competition, encourage agricultural producers to seek various forms of communication, cooperation, mutual assistance, which led to the intensification of the cooperative movement in Ukraine and the creation of different types of agricultural cooperatives. Such cooperation is especially relevant in the context of the formation of a free market (circulation) of agricultural land, which poses certain threats from landlessness to loss of competitive position and even cessation of activities, especially for small agricultural producers. Another challenge for smallholder farmers has been the signing of an Association Agreement, which provides both opportunities and challenges to increase both domestic as well as foreign agricultural and commodity

producers. Taking into account the difficult political, economic and social situation in the country as well as in rural areas, a special attention demands the comparative study of organizational and legal features of the establishment, operation and prospects of agricultural service cooperatives (hereinafter – ASC) in Ukraine, taking the international experience. It was done deep study and identified the barriers concerning the development of agricultural service cooperatives and were made suggestions for overcoming them.

Key words: comparative analysis, international experience, agricultural service cooperative, non-profit organization, cooperative, agricultural producers, legal base of cooperatives

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1. INTRODUCTION

The formation of market relations in Ukraine requires agricultural producers, producers of agricultural products to stabilize their positions in agricultural markets, increase competitiveness and production efficiency. Negative phenomena such as the deteriorating socio-economic situation of the majority of the population, increasing competition in a competitive environment encourage agricultural producers to seek various forms of communication, cooperation, mutual assistance, which led to the intensification of the cooperative movement in Ukraine.

The study of organizational, economic and legal aspects of agricultural cooperatives was carried out in the works of Sedik D., Schrader L., Lerman Z., Gayetska-Kolotylo Ya. Z., Gafurova O., Goncharenko V., Demi D., Yermolenko V., Zinovchuk V., Kropyvky M., Kulinicha P., Malika M., Moldavan L., Pogribnoho O., Semchyka V., Stativky A., Titova N., Urkevich V., Churilova T., Shulga M. etc. However, along with this, given the diversity and depth of research, a separate analysis requires a comprehensive, comparative approach to the establishment, operation and prospects of ASC in Ukraine, taking into account comparative international experience.

The purpose of the study is to establish the peculiarities of the creation, operation of ASC in Ukraine, the development of theoretical provisions of organizational and legal measures for their creation and operation; preparation of proposals for improving the legislation in the field of agricultural service cooperatives on the basis of international experience and adopted in foreign countries effective concept of service cooperation. All these will enhance the establishment of ASC, effective operation and development, increase the competitiveness of cooperative members.

2. METHODS

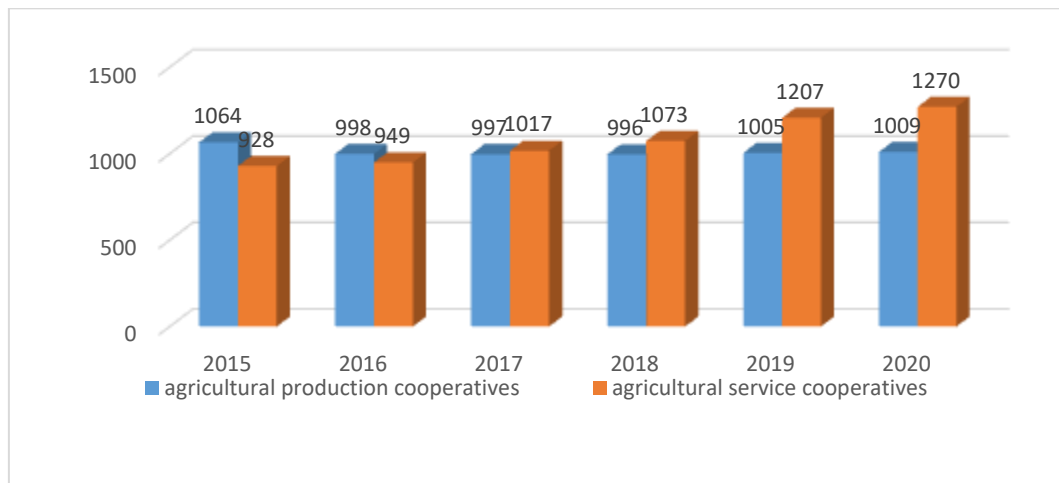
While working on the study, the following methods were used: *analysis and synthesis*, that allowed to investigate the theoretical and practical provisions of ASC, to identify organizational and legal problems of their creation and operation. *The system-structural method* made possible to establish the value of ASC for agricultural producers. *The comparative legal method* was used to conduct a comparative analysis of domestic and

foreign legislation, experience in organizing activities and effective functioning, which made it possible to provide proposals for improving domestic legislation. *Statistical method* was used to analyse statistics concerning the number of agricultural cooperatives.

3. RESULTS AND DISCUSSIONS

3.1. Legal Status of Agricultural Service Cooperatives as Non-profit Organizations in Modern Conditions

One of the problems of low incomes of agricultural producers is that they are engaged, for the most part, not in the procurement and processing of their products, improving quality, but in its sale to processing entities of the agro-industrial complex, or intermediaries. The way out of this situation in order to ensure the formation and increase the competitiveness of agricultural enterprises is to unite agricultural producers in agricultural service cooperatives. At the same time, strengthening the competitive position of agricultural producers contributes to increasing the level of food security of the state. After all, food security is the basis of existence and functioning in the conditions of independence of any state, including Ukraine [1]. As scientists Klietsova N., Pylypenko N., Stoianenko I. showed in their scientific research that recent changes in the agricultural sector in Ukraine indicated that there were negative trends in the number of enterprises, the number of employees employed in agriculture and a significant reduction in the production of agricultural products. This is due to a number of factors: the significant monopolization of the agrarian sector has led the large producers to concentrate on growing only certain highly profitable crops whose production process is almost completely mechanized. More than ever, the problem of food security and the provision of agricultural products to the population is appeared. Small-scale farmers who can solve these problems are unable to compete with large agricultural holdings that have large areas of agricultural land in their use, and are more efficient and competitive due to the significant cost and production benefits of export-oriented crops [2]. Thus, an indisputable advantage for agricultural producers is their association, which is aimed at cooperation, mutual support, protection of their economic interests, minimization of costs, increase their income, which is an incentive to intensify the creation of agricultural service cooperatives, increase their number. According to a study conducted by Polish scientists, cooperatives belong to an important sector of the social economy, which has a particularly important social significance. That's why the social economy protects people from marginalization and even alienation. The social economy is the key to sustainable development [3]. Cooperatives in agriculture are usually created by grassroots farms to overcome market failures, which are manifested in unwillingness of private business entrepreneurs to provide services in areas that they judge unprofitable or, alternatively, in situations where private businesses unfairly exploit farmers through monopolistic practices. Best-practice world experience suggests that service cooperatives provide a very effective way of improving the access of small farmers to market services in both situations [4]. The focus on service cooperatives is fundamental [5]. A special law that determines the legal, organizational, economic and financial features of the formation and operation of agricultural cooperatives is the Law "On Agricultural Cooperation" # 469/97- BP of July 17, 1997 (hereinafter – the Law # 469/97- BP). At the same time, the general principles, concepts and norms of formation, ensuring the functioning, management and liquidation of ASC are regulated by the Law of Ukraine "On Cooperation" # 1087 of July 10, 2003 (hereinafter - the Law # 1087). According to the above mentioned legislation, cooperatives are divided by the type into production and service. Today there are 1,270 of ASC's have been registered in the Unified State Register of Enterprises and Organizations of Ukraine. Instead, in 2019, 1207 of them were registered, which increased by 63 units [6]. So, this indicates a positive trend towards increasing the number of ASC (fig. 1.).



Source: done by the authors according to the data of State Statistics Service of Ukraine [6].

Figure 1 Dynamics of the number of agricultural cooperatives in the agricultural sector of the economy of Ukraine, units, on the beginning of the period 01.01

However, despite the statistical tendency to increase the number of existing cooperatives, the dynamics of actually existing cooperatives in Ukraine, shows their reduction [7].

During our research the restraining barriers to the development of ASC were identified, which are illustrated in Fig. 2.

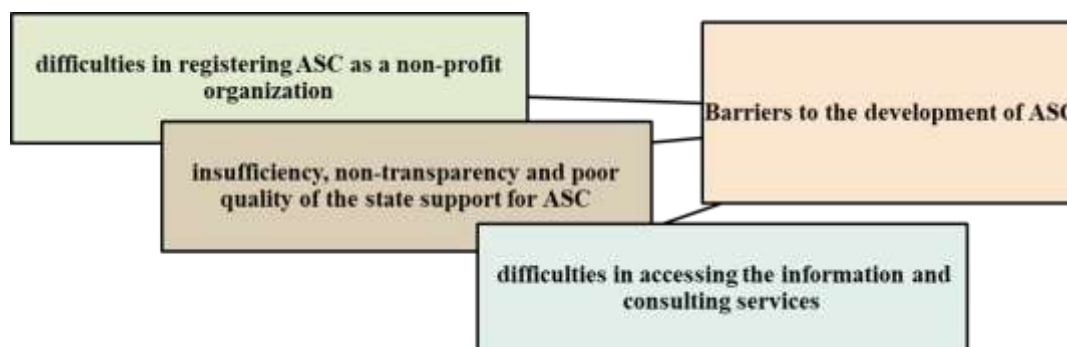


Figure 2. Restraining Barriers to the Development of ASC

Source: done by authors based on their own research

For a long time ASC had significant difficulties in registering as non-profit organizations due to the imperfection of the legislation, namely the contradiction between Laws # 469/97, # 1087 and the Tax Code of Ukraine #2755-VI of 20.10.2019 (hereinafter – TCU) , The Procedure for maintaining the Register of non-profit institutions and organizations, inclusion of non-profit enterprises, institutions and organizations in the Register and exclusion from the Register, approved by the Resolution of the Cabinet of Ministers of Ukraine # 440 of July 13, 2016 (hereinafter – the Register). At present, in our opinion, the issue of obtaining the non-profit status of ASC remains relevant. The non-profit status of ASC was studied in detail by Churylova T. M., the non-profit nature of this type of cooperatives is substantiated, which is embodied in its main purpose – providing members-owners with the necessary services for supply, processing, marketing, etc. And the members provide appropriate funding for the cooperative, for which it is a kind of tool for expanding economic opportunities. It is the very understanding of the essence of the legal nature of the agricultural service cooperative gives all the grounds for consolidating at the legislative level of its non-profit status [8]. In addition,

by its nature, ASC is a non-profit organization, as the main purpose of its activities is to serve its members, not to make a profit. The non-profit status of ASC is a special status due to the nature of service cooperation in market economies [9]. Zinovchuk V. [10] notes that the agricultural cooperative is a non-profit organization, the status of non-profit activities does not relate to the efficiency of the cooperative, and the distribution of funds, which in non-cooperative organizations is considered a profit. Separately, it was found that in itself ASC does not aim to make a profit, but seeks to increase the profits of the farms of its members [11]. In addition, in the international cooperative doctrine, a cooperative is an enterprise that is voluntarily owned by its client members, which carries out its activities in their interests and efforts on a non-profit basis. The cooperative provides services and benefits to its members to the extent that they use the services of the cooperative, and does not aim to simply generate income to pay customers. Cooperative – an integral part of the system of competitive free enterprise. The main purpose of the cooperative is to meet the needs of its members by economic methods, while the purpose of other private enterprises is to maximize the income of their owners [12]. The question arises concerning the international experience in the field of taxation and determining the status of agricultural cooperatives, in particular, ASC, as non-profit. Thus, the researchers found that the most favourable development of cooperatives is observed in those countries where agricultural cooperatives are exempt from many taxes, as non-profit organizations in Italy, Spain, France, Greece, Portugal, Poland, Switzerland, as well as Canada and the United States there are special tax regimes for the payment of cooperative tax. In particular, French agricultural cooperatives are released from income taxes [13]. An additional confirmation of the non-profit economic nature of the cooperative is the return to the members of the cooperative of the difference between income and expenses (financial result) in the form of cooperative payments in proportion to the amount of services received from the cooperative. It should be noted that, at first glance, this looks like a distribution of profits. However, this is not a distribution of profits in the classical sense. First, these funds were received from the owners of the cooperative and distributed by them by joint decision. Secondly, this distribution is carried out not in proportion to the invested capital (shares), but in accordance with the volume of use of the cooperative's services. Therefore, it is in fact a refund to customer members of overpaid funds for services received. This non-profit economic mechanism of the cooperative is fundamentally different from various organizational and legal forms of entrepreneurial activity. Therefore, in many countries, cooperatives are legally classified as non-profit organizations [14]. Thus, on the basis of the systematization and study of scientific research, we came to the conclusion that it is necessary to take into account the non-profit nature of ASC both in special legislation and in tax when registering ASC as non-profit organizations.

An important problem of ASC in its creation is the vagueness of the legislation on the grounds for inclusion in the Register. Article 9 of the Law # 469/97-BP establishes the peculiarities of economic activity of ASC, where in part 1 of Article 9 its non-profit status is fixed. However, there are common cases of non-compliance of the constituent documents and activities of ASC with the requirements of tax legislation, which prevents the non-profit status of ASC in accordance with the TCU, and therefore can not be in the Register, or may be excluded from the Register. That's why income tax in the manner prescribed by Section III and Subsection 4 of Section XX of the TCU, which results in a significant slowdown in the establishment of ASC. In particular, in accordance with p. 133.4.1 p. 133.4 Article 133 TCU are not payers of corporate income tax non-profit enterprises, institutions and organizations that simultaneously meet the requirements specified in this subparagraph of the TCU, among which is the prohibition of distribution of income (profits) or part thereof among the founders (participants) and determination in the constituent documents of the non-profit organization of

the order of assets' transfer in case of termination of the non-profit organization as a legal entity [15].

However, Laws # 1087 and # 469/97-BP provide for the possibility of distribution by the general meeting of the financial result of the cooperative's economic activity for the formation of cooperative funds and cooperative payments to its members, accruals per share. In this case, in accordance with the Law 97469/97-BP, ASC are non-profit organizations, in the presence of signs that exist in the aggregate and recorded in Part 1. Art. 9 of the Law # 469/97-BP: 1) the cooperative provides services only to its members; 2) members of the cooperative are responsible for the obligations made to the cooperative regarding their participation in the economic activities of the cooperative; 3) services are provided in order to reduce costs and/or increase the income of members of the cooperative [16]. Thus, on the basis of the above justification of the non-profit nature of ASC and international experience, we propose the provisions of para. 3 p.p. 133.4.1 § 133.4 art. 133 of the TCU on the requirements for the presence in the constituent documents of the ASC prohibit the distribution of income (profits) or part thereof, including the liquidation of such cooperatives, not to apply to the ASC.

3.2. State Support as an Important Factor in the Functioning and Development of Agricultural Service Cooperatives

Another problem is the lack of proper transparent and high-quality state support for ASC. The problem lies not only in the amount of state, including financial support, but primarily in the organizational and legal aspect. In general, state support for agricultural producers should be based on the foundation of legal, economic, managerial, organizational conditions, the stability of which must also be constantly stimulated by the state, which will improve food security and create appropriate working conditions in rural areas. That encouraged the formation, provision and achievement of competitiveness of domestic agricultural products and their producers [17]. To implement this Concept to the Concept of Development of Farms and Agricultural Cooperation for 2018-2020, the Resolution of the Cabinet of Ministers of Ukraine # 106 of February 7, 2018 approved the Procedure for using funds provided in the state budget to provide financial support for farm development (hereinafter – Order). Thus, in accordance with paragraph 5 of the Procedure, financial support is provided to agricultural service cooperatives; partial compensation of the cost of purchased agricultural machinery and equipment of domestic production; cheaper loans [18]. It should be noted that according to the Procedure, ASC must meet the established criteria to receive financial assistance and, unfortunately, not all agricultural cooperatives can meet them. Recently, the Decree of the President of Ukraine # 837/2019 of November 8, 2019 “On urgent measures to reform and strengthen the state” recorded the introduction of measures in various areas, including mechanisms of state support to increase the financial capacity of farmers and small farmers, namely the creation of a pilot project of an electronic farmer's register, a program to reduce the cost of lending and loan guarantee mechanisms, programs of technological support and advisory [19]. Thus, according to Deputy Minister of Development of Economy, Trade and Agriculture of Ukraine Inna Meteleva, a pilot project on the formation of the State Agrarian Register has being implemented within the framework of the reform plan. The Agricultural Register will operate on the principles of a single information centre. The electronic system is also more transparent, and reduces the risk of errors or loss of documents. So far, 6 regions of Ukraine are involved in the pilot project: Lviv, Volyn, Odesa, Mykolaiv, Cherkasy and Kyiv [20].

We came to know that the creation of an agricultural register will be a significant positive impetus to strengthen the position of small agricultural producers. We consider it's necessary

the quick development of a legal act – the Law on the Agrarian Register of Ukraine, which would comprehensively, on the basis of transparency, integrity and efficiency should carry out legal regulation of public relations to obtain state support. In addition, it should be provided for the inclusion of agricultural cooperatives in the users of this register, which in turn will significantly accelerate their activation, creation and development.

Separately, we consider it expedient to focus on state aid to the participants of ASC in the conditions of COVID-19. After all, as a result of the pandemic crisis, there must be a public interest of the state in the development of food security of the country. For example, in scientific research held by Klietsova N., Zhang Shikai [21] as to the international investigation concerning the optimisation of the violation of the persons' rights in conditions of "2019-nCoV" it was revealed that, for example in China, people of agricultural enterprises demanded the compensation from the state in conditions of COVID-19 the sum of money that according to the living cost of the country was not less than 70% of the local minimum wage. So we consider that the state aid should exist in Ukraine for the participants of the ASC in case of inability to function and develop during the pandemic period. More over, it should be fixed recently in the legislation of the country.

3.3. Updating Access to Information and Consulting Services

No less important problem for agricultural producers is the lack of information, inaccessibility to information, in other words, the information vacuum to some extent. Thus, one aspect of state support from public authorities and local governments may be the systematic provision of information on such opportunities, funding of advisory services, consultations, etc. In particular, an important area in providing information is to advise producers of SG products on the prospects and effectiveness of the association in ASC. We agree that the underestimation of the problems of forming the system of information support of agricultural cooperatives is a mistake on the part of the authorities. It is educational work can restore the confidence of peasants in service cooperatives, help revive the ancient Ukrainian cooperative traditions, form a powerful modern cooperative network in Ukraine. A significant role in the organization of such work should be played by advisory services through the organization and training of the rural population, promotion of cooperative advantages, consultations and support of cooperatives at the stage of creation and further activity [22].

In order to eliminate the information vacuum, we propose to intensify close cooperation between advisory agencies and agricultural cooperatives, which could provide advice on economics, technology, management, marketing, accounting, taxes, ecology, including the legal field, providing funding for services. advising also from local and state budgets. Aristova I. V. and Urkevich V. Yu. note that advisory activities and advisory services are comprehensive, include various activities, the main purpose of which is to increase the profitability of agriculture, improve the welfare of the rural population, rural development through the provision of appropriate services [23]. It should be noted that at the national level, agricultural cooperatives were informed and consulted on the possibility of receiving grants, in particular, in accordance with the United Nations Development Program (UNDP). Thus, some cooperatives purchased technical equipment through the UNDP program. However, according to the Deputy Head of the Sumy Regional Administration, unfortunately, "some of them (authors' notes of agricultural cooperatives) stopped immediately after the end of grant funding" [24]. This means that it is necessary to continue the intensity of funding for advisory activities in order to maintain access to information ASC. Thus, the provision of advisory services, state support will contribute to the material and technical base of agricultural cooperatives, which in turn will increase the production of competitive agricultural products by creating added value, expand employment in rural areas.

4. CONCLUSIONS

In the process of studying the organizational and legal features of the creation, operation of ASC and prospects for their development, taking into account comparative international experience, came to the conclusion that national legislation in this area needs improvement, significant addition, given the undeniable social significance for rural population, preservation of rural areas and increasing the competitiveness of agricultural producers. During the analysis of the legal status of ASC as non-profit organizations in modern conditions, on the basis of systematization and study of scientific research, came to the conclusion that it is necessary to take into account the non-profit nature of ASC in state registration in both special legislation and tax. Therefore, one of the steps to overcome the problem we propose the provisions of para. 3 p.p. 133.4.1 § 133.4 art. 133 of the TCU, which contain the requirements of the mandatory presence in the constituent documents of ASC prohibition of distribution of income (profits) or part thereof (if ASC is planned to register as non-profit), including the liquidation of such cooperatives, do not apply to ASC.

The next proposal is the formation of appropriate transparent and high-quality state support for ASC, which consists not only in the need to increase financial support, but also in bureaucratic access to it, in the transparency of channels for receiving, monitoring and control over the use of support. In addition, guided by the principles of transparency, integrity, efficiency, timeliness, we consider it appropriate to create an agricultural register, develop and adopt a law on the Agrarian Register of Ukraine, which will regulate public relations for state support, which in turn will positively strengthen the position of small producers of agricultural products. Also, we propose to provide access and inclusion in the register and agricultural cooperatives, in particular ASC, which will increase their intensification of creation and development.

Another effective direction will be to continue the intensity of funding for advisory activities in order to maintain the availability of ASC information. Thus, the implementation of the above measures, the adoption of relevant regulations and amendments to the existing legislation will encourage the intensification of cooperation between agricultural producers and their unification in ASC, which in turn will strengthen the position of each of the agricultural producers – members of ASC.

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