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DEFINITION AND FEATURES OF THE AGRICULTURAL COOPERATION: THEORETICAL AND LEGAL ASPECTS

Khrishcheva O.G.,*PhD student at Department of the Civil Law Disciplines
Odesa I.I. Mechnikov National University*

Хрищева О.Г. Поняття та ознаки сільськогосподарської кооперації: теоретико-правові аспекти.

У статті проводиться дослідження поняття «сільськогосподарська кооперація», а також «кооперація» та «кооператив», запропонованих в науковій літературі та закріплених у національному законодавстві. Визначено ознаки, які відображають сутність категорії «сільськогосподарська кооперація».

Аналізуючи поняття «кооперація» було встановлено, що в науковій літературі сформувалося декілька підходів до визначення цього поняття. Кооперація розглядається як суспільне явище; як економічне явище; як процес співпраці; як форма спільної діяльності; як сукупність специфічних організаційно-правових форм – кооперативів (вказаного підходу дотримується законодавець).

В роботі висвітлено, що інколи поняття «кооперація» помилково застосовується як тотожне із поняттям «кооператив». Як наслідок це спричиняє певне термінологічне непорозуміння.

Встановлено, що наявні наукові трактування вказаної категорії не повною мірою розкривають сутність кооперації. Визначення поняття «кооперація», закріплене в Законі України «Про кооперацію» є доволі поверховим, абстрагованим від сутнісних властивостей цього багатогранного поняття, та потребує доопрацювання. На основі проведеного аналізу сформовано авторське визначення поняття «кооперація».

Визначено, що у системі кооперації особливе місце займає сільськогосподарська кооперація. Станом на сьогодні, в умовах дії Закону України «Про сільськогосподарську кооперацію» від 21 липня 2020 року № 819-IX спостерігається певний спад наукового інтересу до проблеми визначення поняття «сільськогосподарська кооперація». При цьому нормативне визначення вказаного поняття є доволі вузьким, таким що недостатньо розкриває сутність сільськогосподарської кооперації, яка є провідною категорією профільного кооперативного законодавства України, що є суттєвим недоліком.

У статті наведено авторські ознаки поняття «сільськогосподарська кооперація». Запропоновано внести зміни до національного законодав-

ства України та закріпити на законодавчому рівні у частині 1 статті 1 Закону України «Про сільськогосподарську кооперацію» авторське визначення поняття «сільськогосподарська кооперація», з урахуванням наведених ознак.

Ключові слова: сільськогосподарська кооперація, кооперація, кооператив, сільськогосподарський кооператив, сільське господарство.

Khrishcheva O.G. Definition and features of the agricultural cooperation: theoretical and legal aspects.

The article considers the concept of «agricultural cooperation», as well as «cooperation» and «cooperative», which are proposed in the scientific literature and enshrined in the national legislation. Also the article identified the features, which reflect the essence of the category «agricultural cooperation».

By analyzing the concept of «cooperation», it turned out that several approaches to the definition of this concept have been formed in the modern scientific literature: cooperation as a social phenomenon; as an economic phenomenon; as a process of partnership; as a form of joint activity; as a system of specific organizational and legal forms – cooperatives (this approach is supported by Ukrainian legislator).

In article notes that sometimes the concept of «cooperation» is mistakenly used as the same as the concept of «cooperative». As a result, this causes a terminological misunderstanding.

It has been established that definition of the concept of «cooperation» fixed at the legislative level does not reflect the specifics of this phenomenon and needs to be revised. Based on the analysis, the author's definition of the concept of «cooperation» was formed.

It was determined that to date, under conditions of operation of the Law of Ukraine «On Agricultural Cooperation» in the new edition, there is a certain decline of the scientific interest in the problem of defining the concept of «agricultural cooperation».

At the same time the normative definition of the concept of «agricultural cooperation» is quite narrow and does not fully reflect the essence of agricultural cooperation, that is a significant shortcoming of the current legislation.

The author's features of the concept of «agricultural cooperation» are given in the article. It is proposed to amend national legislation and enshrine in the Law of Ukraine «On Agricultural Cooperation» the author's definition of the concept of «agricultural cooperation».

Key words: agricultural cooperation, cooperation, cooperative, agricultural cooperative, agriculture.

Formulation of the problem. Agricultural cooperation is of fundamental importance for the social and economic development of our country. Agricultural cooperation is the most important factor of the sustainable development of the rural areas, as it is a link between measures of state influence on the social development of the village and the villagers with their traditions, skills and aspirations [1, p.49].

At the present stage theorists of the cooperative movement continue to debate about the definition of the concept of «cooperation», while the concept of «agricultural cooperation» is still relatively poorly studied in the modern science.

With the adoption of the Law of Ukraine «On Agricultural Cooperation» in the new edition (entered into force on November 15, 2020), a new definition of the concept of «agricultural cooperation» was established at the legislative level, which, in our opinion, is quite narrow and does not fully reflect the essence of the agricultural cooperation, that is a significant drawback, since «agricultural cooperation» is the leading category of the specialized cooperative legislation of Ukraine.

We agree with the opinion of O. Bryntsev that «it is impossible to perceive the definition of the concepts as the main goal of the regulatory acts... At the same time, by revealing the main thing in a subject, the definition of the concept allows to highlight it, distinguish it from other subjects, prevent mixing of the concepts, confusion in reasoning, in the legal regulation. And this is the great value of definitions in the cognition and practical activity» [2, p. 63].

That is why, in our opinion, a thorough and detailed study of the concept of «agricultural cooperation», the identification of its main features in the context of the various scientific approaches, in particular to the definition of the concepts of «cooperation» and «cooperative», is of great practical importance for improving the cooperative legislation of Ukraine, and as well as for development of the agrarian and legal science.

The state of research of the topic. Some aspects of the problematic of definition of the concepts of «cooperation» and «agricultural cooperation» considered in the scientific works of such scientists as M. Tugan-Baranovsky, V. Chayanov, V. Mykolayev, V. Goncharenko, A. Panteleymonenko,

V. Golubnychiy, D. Stechenko, A. Grigorovich, V. Masin and many others.

However, from the moment of the adoption of the Law of Ukraine «On Agricultural Cooperation» in the new edition there is a certain decline of scientific interest in the problem of defining the concept of «agricultural cooperation».

In such conditions the concept of «agricultural cooperation» needs further development of revealing the essence of this phenomenon and defining its features.

The aim of the article. Considering the abovementioned, the presence of problematic in the understanding of the concept of «agricultural cooperation», the aim of the article is to study the existing views on the concept of «agricultural cooperation», as well as «cooperation» and «cooperative» in the scientific literature, to analyse the definitions, that enshrined in the national legislation, and to identify features, which reflect the essence of the category «agricultural cooperation».

Presentation of the main material. Before starting the study of the concept of «agricultural cooperation», in our opinion, it is necessary to analyze the definition and essential features of the concept of «cooperation», given that this category is fundamental in relation to the concept of «agricultural cooperation».

Scientific literature is full of significant variety of interpretations of the concept of «cooperation», which is a complicated systemic phenomenon. Cooperative scientists endow this category with quite different features, which indicates the absence of a unified approach to the definition of the concept of «cooperation».

E. Levin rightly noted that «the lack of a clear and precise definition of the concept of cooperation is not a trifle in our cooperative knowledge, but a fact that is a source of great misunderstandings, mutual incomprehension and chaos» [3, c. 63].

It is important to note that sometimes the concept of «cooperation» is mistakenly used as the same as the concept of «cooperative». As a result, this causes a terminological misunderstanding.

A. Panteleymonenko rightly emphasized that «by operating with the mentioned concepts, the fact that cooperative is only a special form of cooperation should be considered» [4, p. 300].

In the Declaration on Cooperative Identity, adopted by the XXXI Congress of the International Cooperative Alliance (ICA) in 1995, basic definition of the concept of «cooperative», that, in our opinion, expresses social and economic essence of this organizational and legal form, was formed.

A cooperative is an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise [5].

H. Schultze-Delich drew attention to the social essence of the cooperative. A cooperative is «an association of low-income representatives, mainly of the working classes, who seek to combine small individual efforts to achieve the economic advantages of a large power» [6, c. 5].

In turn, V. Golubnychiy considers an economic essence in cooperatives and notes that «cooperatives are special associations that, by conducting a joint enterprise, try to either save the expenses of their members or increase their income from their labor» [7, c. 1125].

The definition of the term «cooperative» is fixed in § 1 of the Genossenschaftsgesetz. Cooperatives are defined as follows: (1) Societies with a variable number of members for the purpose of promoting their members' personal economic and business interests, or their social or cultural interests, by means of a jointly-owned enterprise (cooperatives), acquire the rights of a «registered cooperative society» under this Act [8].

Therefore, according to the German legislation, that definition also applies to the agricultural cooperatives.

Article 2 of the Cooperative Code of Portugal establishes that «cooperatives are autonomous legal persons, united voluntarily, of variable capital and composition, which, through cooperation and mutual assistance of its members and in accordance with the cooperative principles, aim, without lucrative purposes, to satisfy the economic, social or cultural needs and aspirations of said members» [9].

In the legal definition of the term «cooperative», that is enshrined in the legislation of Portugal, attention is focused on important cooperative principles.

The concept of «cooperative» is legally enshrined in Article 2 of the Law of Ukraine «On Cooperation» and is understood as a legal entity formed by individuals and/or legal entities that have voluntarily united on the basis of membership to conduct joint economic and other activities in order to meet their economic, social and other needs on the basis of self-government [10].

Ukrainian legislator, in contrast to German and Portuguese, highlights the features of the subject structure of the cooperative.

It should be noted that the main characteristics of the concept of «cooperative» are reflected in the scientific approaches to the definition of the concept of «cooperation», which will be analyzed further, while the definition of the concept of «cooperation», that established at the legislative level, is, unfortunately, quite superficial, does not reflect the specifics of this phenomenon and needs to be revised.

Turning to the scientific definition of the concept of «cooperation», first of all it is necessary to define the dictionary meaning of the term.

In the Great Explanatory Dictionary of the Modern Ukrainian Language, the concept of «cooperation» is

explained as «a special form of work organization, in which many people participate together in the same process or in different, but interconnected work processes; partnership» [11, p. 331-332].

In the Economic Encyclopedia the concept of «cooperation» is identified as a voluntary collective association of property (of various objects and forms) and/or labor to achieve common goals in various spheres of economic activity [12, p. 75].

K. Pazhitnov points out that cooperation is any manifestation of partnership and mutual assistance [13, c. 13].

This approach of the scientist to the definition of the concept of «cooperation» narrows the essence of the specified category, because it does not fully reflect its purpose.

D. Stechenko and A. Hryhorovych note that cooperation is primarily an organizationally organized voluntary collective association of property and (or) labor in various branches of the economic activity [14, p. 225].

It is necessary to pay attention to the fact that the theoretical and methodological content of the concept of cooperation is much broader and is not limited to just partnership, since cooperation covers not only partnership. Cooperation combines labor, financial, material and technical resources in order to achieve the final result, for which they are cooperate. In the conditions of cooperation, there are not only organizational, but also economic relations.

In turn, M. Politylo, L. Bondarenko, and O. Didukh provide their own definition of the studied concept: «cooperation is a specific integrating, synthesizing, structural, system-forming element of the system of the social and economic relations, that is designed to ensure partnership and interaction of subjects of the various economic and legal forms of economic activity to achieve a common goal with cost minimization» [15, c. 75].

In our opinion, this definition is a rather cumbersome due to overuse of the adjectives and, as a result, is difficult to perception.

Scientist-cooperator A. Mykolaev saw in cooperation a unique mechanism of combining intellectual and material resources, that are available in different infrastructural layers of the national economy. The main goal is to achieve general economic results. The basic principle of cooperatives' building is the demographic and labor beginning [16, c. 96].

Indeed, cooperative principles are the basis of the cooperative movement [17, c.4]. However, in our opinion, the stated position of A. Mykolayev does not reveal the nature of the main principles of the organization of cooperatives. Considerable attention is paid by the scientist to partnership, that significantly narrows the meaning of the category «cooperation».

V. Goncharenko notes that the term «cooperation» is «used when cooperation concerns as a process of combining labor, material, intellectual and other resources for unified work and achieving a certain goal, and when it is about «cooperation as a form, to denote set of specific organizational and legal forms – cooperatives» [18, p. 12].

From an economic point of view, cooperation is a process of voluntary pooling of efforts and resources of subjects interested in achieving certain social and economic results, that can be obtained only with the help of group actions. That is, the essence of the cooperation process consists in purposeful actions of a group of people united by the common economic interests [19].

Article 1 of the Law of Ukraine «On Cooperation» defines that «cooperation is a system of cooperative organizations, that are created to meet the economic, social and other needs of its members» [10].

Unfortunately, the given normative definition is abstracted from the essential features of this multifaceted concept.

System analysis allows us to establish that the following main approaches to defining the concept of «cooperation» are highlighted in the scientific literature:

- 1) cooperation as a social phenomenon (H. Kholai);
- 2) cooperation as an economic phenomenon (R. Owen, S. Fourier);
- 3) cooperation as a form of joint activity (F. Staudinger, K. Paavo);
- 4) cooperation as a process of partnership (K. Pazhitnov, N. Gibner);
- 5) cooperation as a system of specific organizational and legal forms – cooperatives (this approach is supported by legislator).

Having analyzed various approaches to the definition of the concept of «cooperation» identified by foreign and domestic cooperative scientists, none of which has found a universally recognized, legally established definition, taking into account their shortcomings, we can conclude that the existing interpretations of the specified category do not fully reveal the essence of cooperation. Therefore, we consider it necessary to propose an author's definition of the concept of «cooperation».

In our opinion, the concept of «cooperation» can be defined as a set of cooperative organizations, members of which are united by financial, material and technical resources, that operate on the basis of voluntariness and equality and are aimed at increasing the economic efficiency of production, increasing the incomes of the cooperation members on a proportional basis, as well as at meeting other needs of its members.

Agricultural cooperation, that is the most important factor in the sustainable development of rural areas, because it is able to solve a number

of social and economic problems and prevent the decline of certain regions of the country, occupies a special place in the cooperation system.

It should be noted that, to date, under conditions of operation of the Law of Ukraine «On Agricultural Cooperation» in the new edition, unfortunately, there is a certain decline of scientific interest in the problem of defining the concept of «agricultural cooperation».

At the same time, in our opinion, the normative definition of the concept of «agricultural cooperation» is quite narrow and does not fully reflect the essence of agricultural cooperation, that is a significant shortcoming of the current legislation.

S. Maslov, who was an outstanding theoretician of agricultural cooperation, saw the social and economic mission of cooperation in the rural areas in the protection of the peasant's interests from the exploitation of middlemen traders [20, p. 68].

O. Chayanov understood agricultural cooperation as a «union of farms», that are not destroyed by this, but continue to remain small labor farms and receive the appropriate profit [21, p. 6].

The Law of Ukraine «On Agricultural Cooperation» of 17 July 1997, which was repealed on 15 November 2020 in relation to the adoption of the new edition of the law, considers agricultural cooperation as a system of agricultural cooperatives, their associations, created in order to meet economic, social and other needs of the cooperative members [22].

The specified definition was formed by the legislator by analogy with the definition of the concept of «cooperation», which contained in the Law of Ukraine «On Cooperation», that, in our opinion, does not fully reflect the essence of agricultural cooperation.

According to part 1 of Article 1 of the Law of Ukraine «On Agricultural Cooperation» in the new edition, agricultural cooperation is considered as a system of agricultural cooperatives and agricultural cooperative associations [23]. This definition of the concept of «agricultural cooperation» does not contain any significant signs, that determines the necessity to consider its components - the categories «agricultural cooperative» and «agricultural cooperative association».

An agricultural cooperative is a legal entity formed by individuals and/or legal entities that are producers of agricultural products and voluntarily united on the basis of membership and self-government to conduct joint economic and other activities to meet economic, social and other needs [23].

An agricultural cooperative association is a legal entity formed by agricultural cooperatives that have voluntarily merged on the basis of membership and on the basis of self-government to conduct joint economic and other activities to meet economic, social and other needs [23].

In our opinion, part 1 of Article 1 of the profile Law of Ukraine «On agricultural cooperation» should contain more detailed and voluminous definition of the main category, which at the same time will be accessible and understandable to ensure adequate perception by ordinary citizens, who do not have special knowledge in the field of jurisprudence, and will reflect the essence of agricultural cooperation.

Therefore, we consider it necessary to propose an author's approach to the definition of the concept of «agricultural cooperation».

Firstly, it is necessary to start with the fact, that we do not share the approach chosen by the legislator to define the concept of «agricultural cooperation» as a system. We think that agricultural cooperation is a set.

L. von Bertalanffy, the founder of the theory of systems, determined that «system can be defined as a complex of interacting elements» [24, p. 134–165].

A set, in turn, is considered in particular as a total amount, sum of something [25].

In general, in the theory of systems, such main features of the concept of «system» are distinguished: the elements are relatively indivisible, ordered, interconnected, have a hierarchical structure, regularities of functioning and development, etc., that significantly distinguishes it from the concept of «set».

In our opinion, the above-mentioned features of the system are not fully reflected in the concept of «agricultural cooperative», since each agricultural cooperative or agricultural cooperative association is an independent legal entity. Article 4 of the Law of Ukraine «On Agricultural Cooperation» specifies that one of the main principles of agricultural cooperation is autonomy and independence [23], therefore it is advisable to amend Article 1 of the Law of Ukraine «On Agricultural Cooperation» and fix that agricultural cooperation is a set, not a system.

Secondly, we see that the legislative definition of the concept of «agricultural cooperation» should fix the main features of this category in order to reflect its essence.

The concept of «agricultural cooperation», which is special in relation to the category «cooperation», should contain the general features of cooperation and, at the same time, reflect agricultural specifics.

Taking into account the specifics of agricultural cooperation, its goals and principles, we propose to highlight such features of agricultural cooperation:

- autonomy and independence;
- availability of unified financial, material and technical resources;
- voluntariness, democracy and equality;
- involvement in unified agricultural and other activities;
- membership nature of relations;

- aims at improving the economic efficiency of the agricultural production, increasing the incomes of cooperative members on a proportional basis;

- geared toward the needs of mainly members of agricultural cooperative organizations.

Thus, taking into account the above, based on the features we have given, we propose to enshrine at the legislative level in Part 1 of Article 1 of the Law of Ukraine «On Agricultural Cooperation» the author's definition of the concept of «agricultural cooperation»: an agricultural cooperation is a set of autonomous and independent cooperative organizations (agricultural cooperatives and agricultural cooperative associations), the members of which are connected by financial, material and technical resources, that operate on the basis of voluntariness, democracy and equality for the purpose of carrying out unified economic and other activities, improving the economic efficiency of the agricultural production, increasing the income of cooperative members on a proportional basis, as well as to meet other needs of its members.

Conclusions. Thus, based on the conducted research, it can be concluded that definition of the concept of «cooperation» fixed at the legislative level does not reflect the specifics of this phenomenon and needs to be revised. Based on the analysis, the author's definition of the concept of «cooperation» was proposed. It was determined that nowadays under conditions of operation of the Law of Ukraine «On Agricultural Cooperation» in the new edition there is a certain decline of scientific interest in the problem of defining the concept of «agricultural cooperation». At the same time the normative definition of the concept of «agricultural cooperation» is quite narrow and does not fully reflect the essence of agricultural cooperation, that is a significant shortcoming of the current legislation. The author's features of the concept of «agricultural cooperation» are given in the article. Therefore, we propose the scientific community to understand agricultural cooperation as a set of autonomous and independent cooperative organizations (agricultural cooperatives and agricultural cooperative associations), the members of which are connected by financial, material and technical resources, that operate on the basis of voluntariness, democracy and equality for the purpose of carrying out unified economic and other activities, improving the economic efficiency of the agricultural production, increasing the income of cooperative members on a proportional basis, as well as to meet other needs of its members.

The proposed definitions of the terms «cooperation» and «agricultural cooperation» can be taken into account in the further improvement of the cooperative legislation of Ukraine.

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