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**LEGAL PROBLEMS OF DEVELOPMENT  
OF AGRICULTURAL COOPERATION:  
NEW APPROACHES AND PROSPECTS**

This article discusses the legal problems of the development of agricultural cooperation in the Republic of Kazakhstan on the basis of a comparative legal analysis of the legislation of foreign countries. The object of this study is social relations in the field of agricultural cooperation. The subject of this study is the legislation of the Republic of Kazakhstan and foreign countries in the field of agricultural cooperation. The purpose of the study is a comparative legal analysis of agricultural cooperation; study of MCO requirements, identification of legal problems and gaps in the legislation of the Republic of Kazakhstan, development of specific proposals for its improvement of the legislation. In 2014, the OECD made recommendations aimed at the further development of agricultural cooperation in Kazakhstan. They dealt with three main directions. The first is the improvement of the legal framework in this area. The second direction in the reform of agricultural cooperation in the Republic of Kazakhstan is the strengthening of information and educational services, including the organization of the state registry and the statistical monitoring system. The third is financial support. This article explores the process of implementing the OECD recommendations.

**Key words:** International Cooperative Alliance (ICA), principles of cooperation, agricultural activity, agricultural cooperative.

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**Ауыл шаруашылық ынтымақтастығын дамытудың  
құқықтық мәселелері: жаңа тәсілдер мен перспективалар**

Бұл мақалада шет елдердің заңнамаларын салыстырмалы құқықтық талдау негізінде Қазақстан Республикасындағы ауылшаруашылық саласындағы ынтымақтастықтың құқықтық мәселелерін талқылайды. Зерттеудің объектісі – ауыл шаруашылығы саласындағы ынтымақтастықтың әлеуметтік қатынастары. Зерттеудің тақырыбы – Қазақстан Республикасының және шет елдердің ауыл шаруашылығы саласындағы ынтымақтастық туралы заңнамасы. Зерттеудің мақсаты – аграрлық ынтымақтастықтың салыстырмалы құқықтық талдауы; МҚҰ талаптарын зерделеу, Қазақстан Республикасының заңнамасында құқықтық мәселелер мен кемшіліктерді айқындау, заңнаманы жетілдіру бойынша нақты ұсыныстар әзірлеу. 2014 жылы ЭЫДҰ (Экономикалық ынтымақтастық және даму ұйымы) Қазақстандағы ауылшаруашылық кооперация ынтымақтастығын одан әрі дамытуға бағытталған ұсыныстар жасады. Олар үш негізгі бағытта ұсынылды. Біріншіден, кооперация саласындағы құқықтық базаны жетілдіру. Қазақстан Республикасындағы ауылшаруашылығы саласындағы ынтымақтастықты реформалаудың екінші бағыты ақпараттық

және білім беру қызметтерін, оның ішінде мемлекеттік тіркеуді ұйымдастыруды және статистикалық мониторинг жүйесін ұйымдастыруды күшейту болып табылады. Үшіншісі – қаржылық қолдау. Бұл мақалада ЭЫДҰ ұсыныстарын іске асыру жағдайы зерттелген.

**Түйін сөздер:** Халықаралық кооперативтік альянс (ICE), ынтымақтастық принциптері, ауылшаруашылық қызметі, ауылшаруашылық кооперативі.

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### **Правовые проблемы развития сельскохозяйственной кооперации: новые подходы и перспективы**

В данной статье рассматриваются правовые проблемы развития сельскохозяйственной кооперации в Республике Казахстан на основе сравнительного правового анализа законодательства зарубежных стран. Объектом данного исследования являются общественные отношения в сфере сельскохозяйственной кооперации. Предметом настоящего исследования является законодательство Республики Казахстан и зарубежных стран в области сельскохозяйственной кооперации. Целью исследования является сравнительно-правовой анализ сельскохозяйственной кооперации; изучение требований МКО, выявление правовых проблем и пробелов законодательства РК, выработка конкретных предложений по совершенствованию законодательства. ОЭСР в 2014 году были даны рекомендации, направленные на дальнейшее развитие сельскохозяйственной кооперации в Казахстане. Они касались трех главных направлений. Первое, это совершенствование правовой базы в данной области. Вторым направлением в реформе сельскохозяйственной кооперации в Республике Казахстан является усиление информационно-образовательных услуг, в том числе организации государственного реестра и системы статистического мониторинга. Третье, это финансовая поддержка. В данной статье исследован процесс реализации рекомендаций ОЭСР.

**Ключевые слова:** Международный кооперативный альянс (МКО), принципы кооперации, сельскохозяйственная деятельность, сельскохозяйственный кооператив.

## **Introduction**

The development of cooperation in the agricultural sector of our country today requires the understanding of new approaches in legislation, the study of world practice. On October 29, 2015, Kazakhstan adopted the Entrepreneurial Code, which in the main part has been put into effect from January 1, 2016. In general, the new Code is aimed at improving and developing legislation in the field of interaction between business entities and the state, supporting entrepreneurship, eliminating gaps and contradictions in the legal regulation of business relations (Entrepreneurial Code: st.5). It is aimed at the implementation of the National Plan – 100 concrete steps to implement five institutional reforms and comprehensive regulation of public relations in the field of entrepreneurship, including those arising in connection with the interaction of entrepreneurs and the state, issues of state regulation and sup-

port of entrepreneurship (Message of the President, 2012: 2).

The law of the Republic of Kazakhstan of October 29, 2015 “On agricultural cooperatives” defines the legal status, rights and obligations of members of agricultural cooperatives, as well as the legal status, procedure for the establishment, operation, reorganization and liquidation of agricultural cooperatives and their associations (unions) (On agricultural cooperatives, 2015: 10).

An agricultural cooperative is one of the most widespread forms of doing business in agriculture in the world. When determining some promising forms of cooperative management, it is useful to study the world experience. The world experience of agricultural cooperatives is extensive and is of great interest for the study and use in the practice of our Republic, which indicates that cooperatives operate in almost all major sectors of agriculture. In our republic own experience and world practice are

widely used in creation of cooperatives. In the special literature there is no fully scientifically based methodological approach to assessing the effectiveness of legal support of agricultural cooperation in the conditions of modern economic modernization. Theoretical and methodological bases of information support of business activity have not been sufficiently worked out. At the same time, effective management of business processes in the region requires research-based study and the formation of effective tools for stimulating entrepreneurship, and the formation of theoretical and methodological foundations of modernization of the economy (Moroz, 2008: 308). Cooperatives are of particular interest to economists because of their unique ownership structure and the incentives this structure creates. In addition to the so-called property rights problems (e.g., free-rider, horizon, and portfolio problems), the analysis of agricultural cooperatives has focused on issues of market power, agency, product quality, and increasingly producer and consumer heterogeneity. These last three elements are important features of the industrialization of the agrifood system (Murray 2013: 61).

It should be noted that in the Republic of Kazakhstan there are no research based studies of legal problems of agricultural cooperation in the context of principles of cooperation, new legislation and practice of its application in the field under study that are recognized and tested in the practice of developed countries. The relative literature does not fully reflect a research based methodological approach.

The above mentioned shows that the problems of agricultural cooperation require close attention from the legal science, which should theoretically comprehend the role of the state and law in the process of forming a conceptually new model of cooperation in rural areas and land reform, and offer effective legal tools for its implementation in modern conditions. The current stage of development of society requires rethinking many postulates of socialist theory and practice in the field of agricultural cooperation, substantiation of new priorities, and revision of conceptual provisions. This circumstance requires the establishment of an optimal ratio of the constitutional and sectoral regulation of legal mechanisms that ensure the effective implementation of these relations, which, in turn, necessitates both the analysis of the current regulatory framework and the need to develop theoretical models of its possible improvement.

The International Cooperative Alliance (ICA) defines a cooperative as “an autonomous associa-

tion of individuals who have united on a voluntary basis to meet their common economic, social and cultural needs and aspirations and have established a jointly owned and democratically controlled enterprise”. This definition was first introduced in the ICA «Declaration on Cooperative Identity» in 1995 and was subsequently recognized in two important international instruments: the United Nations Guidelines (2001), which are aimed at creating a favourable environment for the development of cooperatives (Hagen 2012: 431).

In 2014, the OECD made recommendations aimed at further development of agricultural cooperation in Kazakhstan. They concerned three main directions. The first was to improve the legal framework in this area. Until 2016, there were two forms of cooperatives in agriculture in Kazakhstan: in the form of an agricultural production cooperative and a rural consumer cooperative. The activity of an agricultural production cooperative was regulated by the Law of the Republic of Kazakhstan of October 5, 1995 «On a production cooperative» (On rural consumer cooperation: 1995, Art. 19). With regard to the agricultural sector, the following features of the agricultural production cooperative could be distinguished. First, the main focus of its activities is the production of agricultural products. Second, it was established only by individuals, the number of which should have been at least two people. Third, in order to join an agricultural cooperative, an individual had to make a property share (contribution). And finally, a member of the cooperative had to take personal labor participation in its activities. Unlike the agricultural production cooperative, the rural consumer cooperative was a non-profit organization. Its activity was regulated by the following laws: of July 21, 1999 «On rural consumer cooperation in the Republic of Kazakhstan»; of December 25, 2000 «On agricultural partnerships and their associations (unions)»; of April 8, 2003 «On rural consumer cooperative of water users» (On a production cooperative: Law, 1999, Art. 15-16).

Since 2015, Kazakhstan has undergone reforms in the field of agricultural cooperation, including in the legislative sphere. First of all, it is the adoption of the Law of the Republic of Kazakhstan dated October 29, 2015 «On agricultural cooperatives» (On agricultural cooperatives: Law, 2015: 5).

The repeal of previous laws on cooperatives, legislative consolidation of tax benefits, simplification of registration procedures are the consequences of legal reforms in the field of agricultural cooperation. According to the statistics, as of June 30, 2018, in the Republic of Kazakhstan a total of 2872 agricul-

tural cooperatives and 62 825 of their members were registered. However, the degree of involvement of farmers in cooperative enterprises remains limited: the number of cooperative members, divided by the total number of farms, made only 3.4%. Low levels of cooperative development are also observed in some countries whose economies were planned in the past, such as Romania (0.3 per cent), Georgia (1.3 per cent) and the Czech Republic (3.5 per cent) (OECD 2019:20).

The second direction in the reform of agricultural cooperation in the Republic of Kazakhstan is the strengthening of informational and educational services, including the organization of the state register and the system of statistical monitoring. The third is financial support. According to OECD analysts, it is ineffective and does not stimulate the cooperative movement in Kazakhstan. For example, in 2009-2011 the state support of agriculture in Kazakhstan on average reached 200 billion tenge (or 1.36 billion US dollars). This represents 11 per cent of the value of agricultural production, and is below the average in OECD countries. And 82% of this amount is accounted for trade-distorting measures linked to prices and volumes of production (10 «The financial support is provided without enough focus: about 60% of newly registered cooperatives are inactive or «fictional» cooperatives that are organized primarily to receive state subsidies» (OECD 2019:20).

The study of Kazakhstan's legislation in the field of agricultural cooperation shows that our country is taking steps towards the implementation of internationally recognized principles of cooperation. In his definitions of an agricultural cooperative, the Kazakh legislator tries to embrace not only the concept of "agricultural activity", that is, production, processing, storage, and marketing of agricultural products, but also the production of aquaculture products (fish farming), and the supply of means of production and material and technical resources, credit granting, water supply or other services to members of a cooperative, as well as associated members of the cooperative.

The next feature is the non-obligatory labor participation of the members of a cooperative in its activities, which raises many issues. The question arises, what is the difference between SEC (Social and Entrepreneurial Corporation) and other forms of commercial entities? Moreover, according to the old legislation, only natural persons (individuals) could be members of a cooperative, and now legal entities can. In Azerbaijan, at least 70% of the total amount of work in production cooperatives must be performed by their members. Production cooperatives

can employ workers. The number of such employees (with the exception of employees engaged in seasonal work) should not exceed 30 per cent of the total number of members of the cooperative. Workers of production cooperatives may not simultaneously work in another production cooperative with the same type of activity" (On agricultural cooperatives, 2016: 45).

The current model of agricultural cooperatives originated in Europe and spread to other states in the late 19th century as a form of mutual aid and to counter extreme poverty conditions (Hoyt A., 1989: 97). The greatest influence on the functioning of agricultural cooperatives was made by the formation in 1844 of the Rochdale Society of Equitable Pioneers. It was a consumer cooperative set up in Rochdale, England, by a group of workers representing different professions who formulated a set of basic work rules based on a two-year study of cooperatives, including some that were not successful.

At that time, the objectives of the cooperative were to meet the needs of its members to improve housing, employment, food, education and other social needs. Another important development with regard to cooperatives as banking institutions was the establishment of the first savings and credit cooperatives in 1864 by Friedrich Wilhelm Raiffeisen in Germany. The purpose of Raiffeisen Bank was to provide savings and credit services in urban and rural areas based on the idea of «self-aid» (Ingalsbe G. & Groves F.W. 1989: 67). The development of cooperatives over time has been driven by many factors and influences. Ingalsbe and Groves (1989) group the three main types (all interrelated):

- (1) economic conditions (caused by war, depression, technologies, state economic policy, etc.);
- (2) farmers' organizations (including the quality of their leadership, their motivation and enthusiasm to promote cooperatives, influence public policies, etc.);
- (3) public policy (in accordance with the public interest, legislative initiative and judicial interpretation).

Since 1988, there have been two phenomena in the organization of agricultural cooperatives in the United States: (1) the restructuring and consolidation of conventional cooperatives and (2) the emergence of new (NGC) (Cook 1995: 35). NGCs retain many of the characteristics of conventional cooperatives, but they focus on value-added activities. The contributions of the members of the capital are linked to product delivery (marketing) rights which attain value and can be transferred, and membership is closed or restricted.

Cropp states, «Cooperatives in the US are being developed to become a significant force in agriculture and play an increasingly important role in politics»(Cropp R. & Ingalsbe G.1989: 120).

It should be noted that the legal regulation of cooperation in the post-Soviet countries has advanced and effective solutions that should be adopted by the Kazakh legislator. I think that the experience of Georgia is of interest to us, because the legislation of this country takes into account the recommendations of the ICA and the peculiarities of agricultural activities as the main focus of activity of agricultural cooperatives. In particular, according to the Law «On agricultural cooperation», an agricultural cooperative is a legal entity of private law in the organizational and legal form of a cooperative, which carries out agricultural activities and which, according to this Law, has been granted the status of an agricultural cooperative (On agricultural cooperation, 2013: 12 ).

This definition implies such features of an agricultural cooperative as, firstly, it is a legal entity of private law; secondly, the main activity is agricultural activity. The Georgian legislator emphasizes that this is any economic activity carried out on agricultural purpose land or in relation to property related to land and related services, covering the production, processing, packaging, storage, transportation and sale of plant and animal products (including birds, fish, silkworms, bees, etc.). According to some analysts, “Georgia is the only country in the post-Soviet space that has established a special procedure for obtaining the status of an agricultural cooperative, for which it, as a private law enterprise, is obliged to submit an application to a legal entity of public law – the Agency for the Development of Agricultural Cooperatives. The Agency is authorized to monitor the activities of a legal entity having the status of an agricultural cooperative. The results of the monitoring will serve as the basis for the suspension or termination of the status of an agricultural cooperative as a legal entity” (Legislative regulation of cooperation in post-soviet countries, 2013: 31).

Another feature of agricultural cooperatives in Georgia is the labour participation of cooperative members. For example, Article 60 of the Law «On entrepreneurs» emphasizes that «a cooperative is a society based on the labor activity of members or created for the purpose of developing the economy and increasing the income of members, whose tasks are to satisfy the interests of members. It is not aimed at receiving pre-emptive profit». Art. 1509, Statement 2 “g” of the Civil Code of Georgia recognizes

cooperatives as «Legal entities of private law», and, therefore, the provisions of the Code and other legislation regulating the legal status of such persons also apply to cooperatives (Legislative regulation of cooperation in post-soviet countries: 2013, 31).

More research is certainly needed to explore the causal relationship of strategy to cooperative survival and longevity. It is also worth exploring which strategies form an optimal response to external developments without sacrificing member ownership and member control. As there is no single explanation for business survival or longevity (Napolitano 2015, 57), external adaptation ought to be considered in addition Sustainability 2018, 10, 652 11 of 15 to other variables. Useful theories and frameworks may include transaction cost theory, agency theory, and the dynamic capabilities view of the firm, among others. Regardless, considering the poor availability of non-aggregated data on farmer cooperatives, the case study method may prove the best option to further our understanding of cooperative survival (Jasper Grashuis).

## Conclusion

Summarizing our research, we came to the following conclusions.

The main constraining factors of development of cooperatives in Kazakhstan are: the imperfect mechanism of stimulation of farmers association in agricultural cooperatives; lack of coordinating management bodies for the development of cooperation in the country and locally in the form of associations (Unions) of agricultural cooperatives at the district, regional and local levels that protect their interests, and also control the activity of agricultural cooperatives for observance of the basic principles of cooperation on financial activity, distribution of the income between members of cooperative, accounting, registration, etc.; high level of distrust of agricultural producers, especially small forms of management to new structures, fear of losing the main means of production – land; low level of legal culture in rural areas, lack of awareness of farmers about the benefits of agricultural cooperatives.

For the purposes of development of agricultural cooperation in the Republic of Kazakhstan it is recommended to implement measures in the following areas:

1. Improvement of legal support of business activity in the field of agricultural cooperation.
2. Introduction and use of economic instruments with the aim of stimulation of the activities of agricultural cooperatives.

3. Organizational, information and consulting support of agricultural cooperatives, including the participation of organizations that form the infrastructure to support businesses.

4. Measures aimed at educating, training and retraining of personnel.

5. Help to the subjects of agricultural cooperatives in the sale of their products.

6. Development of a mechanism to protect the rights and legitimate interests of agricultural cooperatives.

One of the further strategic directions of development of agricultural cooperation in Kazakhstan is the formation of the system of state financial and credit support of agricultural cooperatives. The implementation of this activity is confirmed by the development of a new State Program of development of the agro-industrial complex of Kazakhstan for 2017-2021, one of the main tasks of which is the involvement of small and medium-sized farms in agricultural cooperation. However, as the practice of foreign countries shows, economic instruments to support agricultural cooperatives should be updated annually as profits in the agricultural sector depend on natural conditions. Therefore, in our case it is necessary to develop comprehensive, objective and modern tools for the development of agricultural cooperatives.

One of the factors of effective development of agricultural cooperation is the provision of information and consulting services. For the purpose of formation of information consulting service and scientific support of agricultural cooperatives, we propose a two-level model of information and consulting service for the development of cooperation. The link of the first (higher) level can be the Republican educational and methodical center for the development of small business patterns in the agro-industrial complex and agricultural cooperation, responsible for the content, methodological support and development strategy of the entire cooperative system.

The successful development of agricultural cooperation requires constant training and professional development of cooperative personnel.

To this end, the state provides non-financial support measures, in particular:

- development of educational and methodology materials for agricultural educational institutions for the training of managers and specialists of cooperatives and centers of their professional development;

- introduction in the program of agricultural universities and colleges of Economics and Organization of Agricultural Cooperatives as a mandatory discipline;

- inclusion of owners of personal subsidiary and peasant farms in the program of information support of agribusiness entities free of charge as students of courses and seminars on professional development. Continuous professional development of managers and specialists of agricultural organizations, central and local executive bodies on agricultural cooperation through the system of training at agricultural educational institutions, general purpose universities and centers of knowledge sharing.

The establishment of a unified system of agricultural cooperation, the association in unions (associations) of cooperatives at different levels of management is one of the main directions of the Strategy of development of agricultural cooperatives. The system is seen as a set of cooperatives of different types and levels, in organizational, legal and functional relations, united at the state, regional and district levels.

It is recommended to gradually form a multi-level system of agricultural cooperatives, that acts in conjunction with the state (local) bodies through the formation of the Coordination Council and working groups of consultants on the organization of forms of agricultural cooperation at the district level, as well as their interaction with financial, public and other organizations.

The main tasks of the district coordination Council are as follows:

- definition of a strategy for the establishment of a system of agricultural cooperatives;

- development and submission for approval to the legislative and Executive bodies of normative documents on the establishment of a system of agricultural cooperatives;

- organization of information activity at the district level, organization of training seminars for coordination councils, working groups, specialists of agricultural cooperatives;

- providing advice to the working group on the issues of the establishment of a system of agricultural cooperatives, participation in the main activities for the development of this system;

- ensuring interaction and coordination of participants;

- compilation and dissemination of experience in the establishment of a system of agricultural cooperatives.

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