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Legal Aspects of Cooperative Governance and Alternative Dispute Resolution under Polish Cooperative Law

ABSTRACT

The Author takes into consideration the similarities and differences between the intra-cooperative dispute resolution system and the arbitration clause. The intra-cooperative dispute resolution system is specific only to Polish cooperative law. Therefore, the analysis is carried with reference to the Polish legal system. Also, the comparison between the intra-cooperative dispute resolution system and the arbitration clause is considered with reference to the internationally recognized cooperative principles. In Author's opinion two of those principles: democratic governance and autonomy and independence give grounds for the cooperative governance model. This model complies with the rules of intra-cooperative dispute resolution system and arbitration clause.

Keywords: intra-cooperative dispute resolution system, arbitration clause, cooperative principles, Poland

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I. Introduction

Cooperatives around the world follow a set of agreed-upon principles that define the essential characteristics of this form of organization. These cooperative principles date back to 1844,¹ when the Rochdale pioneers founded their consumer cooperative based on them. These principles are as follows:

1. Open and voluntary membership
2. Democratic member control
3. Member economic participation
4. Autonomy and independence
5. Education, training and information
6. Cooperation among cooperatives
7. Concern for community.²

In 1937, 1966, and 1995, the Rochdale pioneers' cooperative principles were recognized by the International Cooperative Alliance as fundamental for cooperatives.³ Today, the cooperative principles are a part of the Declaration of Cooperative Identity, and are included in the articles of association of the International Cooperative Alliance (Appendix A).⁴

In Europe, the cooperative principles influenced many countries' national legislation on cooperatives, with Portuguese and Spanish laws written to include the cooperative principles as legal provisions.⁵ However, this phenomenon is not limited to Western Europe, as the Vietnamese Law on Cooperatives, of 20th of June 2023, also included in Article 8 cooperative principles as legal provisions.⁶

In my view, two of the cooperative principles can be directly linked to alternative dispute resolution (ADR). These principles shape the particular features of ADR when applied to disputes between a cooperative and its members. Specifically, the principle of democratic member control (2nd cooperative principle) and the principle of autonomy and independence (4th cooperative principle) should be taken into consideration. Both of these principles can be recognized as fundamental to the mod-

¹ Rhodes, 2012, 25-30.

² Articles of Association of International Cooperative Alliance (ICA), <<https://ica.coop/en/media/library/governance-materials/ica-articles-association>> [05.06.2025].

³ Birchall, 1997, 57-59, 64-71.

⁴ Articles of Association of International Cooperative Alliance (ICA) <<https://ica.coop/en/media/library/governance-materials/ica-articles-association>> [05.06.2025].

⁵ Meira, 2018, 16; Fajardo, 2017, 521; Hagen, 2021, 1-15.

⁶ Compare: Cao Vu, Nguyen and Cao, 2025, 251-277.

el of cooperative governance. Under Polish cooperative law, cooperative governance should be recognized in the provisions on intra-cooperative dispute resolution and arbitration clauses included in the cooperative charters.

This paper seeks to explain the legal concept of cooperative governance, and to describe ADR involving cooperatives and their members under Polish law. The uniqueness of Polish cooperative law in this regard justifies this research purpose. In Poland, cooperative law uniquely incorporates provisions establishing an intra-cooperative dispute resolution system. No other cooperative legislation worldwide contains a comparable mechanism. It is designed to resolve disputes between a cooperative and its members in accordance with democratic principles. At the same time, Polish civil procedure includes general provisions governing arbitration clauses.

The research thesis argues that the concepts of cooperative governance and ADR converge within two legal frameworks: the intra-cooperative dispute resolution system, which is exclusive to Polish cooperative law, and the arbitration clause, which represents a general ADR mechanism. The article was prepared using the dogmatic method of legal analysis.

II. Cooperative Governance

Cooperative governance should be regarded as a concept reconstructed from the principles of democratic member control and cooperative autonomy. Under the second cooperative principle, members govern their cooperative in a democratic manner: every member has one vote at the general assembly, regardless of their contribution to the cooperative by asset or number of transactions.⁷

Democratic control within a cooperative is also reflected in the election of its management and supervisory bodies. Every member may stand as a candidate for these bodies, and all members participate equally in the voting process. Moreover, democratic governance extends to decisions concerning the admission of new members and the exclusion of existing ones, for example when bylaws, statutory law, or equity principles are violated (Article 17, paragraph 1 and Article 24 paragraph 1-3 of the 1982 Cooperative Law).

One of the fundamental characteristics of a cooperative is that members may join and leave it throughout the course of its legal existence. This is reflected in the first cooperative principle, which is the principle of open and voluntary membership. The

⁷ Draperi, 2012, 15-16.

first cooperative principle reflects the ideology of the cooperative movement, which is based on freedom to contract and freedom of association⁸. Everyone, eligible under the cooperative incorporation act, should be able to join the cooperative and benefit from it. No one can be forced to become a cooperative member. On the other hand, anyone who no longer wishes to associate in the cooperative can leave its structure by terminating their membership. The application of the first cooperative principle requires democratic governance. It is because the applying members can appeal to the general assembly in the case of denying their membership declaration by the board (Article 17, paragraph 4 of the 1982 Cooperative Law).

These ideas are recognized by cooperative legislations worldwide. However, under Polish law, the scope of members' democratic control extends further, encompassing not only governance, but also the conditions of transactions with the cooperative (Article 18, paragraph 7 of the 1982 Cooperative Law).⁹ Such transactions (esp. *actos cooperativos*, Germ. *Zweckgeschäft*), are contracts made by the cooperatives with their user members to achieve the economic objective of the cooperative¹⁰. This economic objective is essentially connected with the economic betterment of the members of the cooperative. By bettering the economic situation of members, cooperatives make a positive impact on society. Their social mission is not merely an addition to their economic objectives, but is fully aligned and coherent with them.

As disputes can arise between members and a cooperative in the course of relations governed democratically, the principle of cooperative autonomy and independence allows cooperatives to include provisions on intra-cooperative dispute resolution and arbitration clauses in their charters. This principle establishes that cooperatives must remain free from undue influence by third parties, including government bodies. Polish legal doctrine also emphasizes that disputes between members and a cooperative should, wherever possible, be resolved internally within the organization.¹¹

Both the principles of democratic governance and cooperative autonomy can be regarded as meta-norms that guide the application of other cooperative principles. It means that other cooperative principles should be interpreted in accordance with the democratic and autonomous structure of the cooperative. For example, economic participation of members should not be cherished over ensuring their democratic control which is guaranteed regardless of the size of capital provided by the member.

⁸ Bierecki, 2021, 65-72.

⁹ Bierecki, 2022, 195-196.

¹⁰ Münker, 2016, 6, 17; Fici, 2017, 40-45.

¹¹ Wrzolek-Romańczuk, 2020, 170.

Moreover, in my opinion, the principle of autonomy should take precedence over the principle of democratic member control: true democracy can only be realized in an autonomous organization or society. Cooperative autonomy ensures that cooperatives are controlled by their members, and remain independent from the state, its agencies, and external contractual parties, such as investors.¹² Without preserving autonomy, cooperatives cannot fulfill their primary purpose of serving the needs of their members, as external interests – whether of the state or investors – could override member priorities.

This is what happened in Poland. Under the communist regime, cooperatives were controlled by the state. The cooperative definition in effect at the time explicitly required cooperatives to carry out: 1) economic activities in accordance with the national economic plan, and 2) social and educational activities for the benefit of the Polish People's Republic (Article 1 of the Act of 17th February 1961, On Cooperatives and their Associations).

Today, Polish cooperative law emphasizes the significance of the principle of cooperative autonomy over democratic member control. For instance, second-tier cooperatives can derive from the “one member–one vote” principle (Article 36, paragraph 2 of the 1982 Cooperative Law). In Polish law, such possibility also exists in the case of farmers' cooperatives, even though this is a type of first-tier cooperative (Article 5 point 10 of the 2018 Farmers' Cooperatives Law). However, no cooperative may relinquish the principle of autonomy, as it is essential to ensuring that the organization serves its members' interests above all else.

III. The Intra-Cooperative Dispute Resolution Procedure

Both of the principles of cooperative autonomy and democratic member control are manifested in the intra-cooperative dispute resolution process. This procedure allows disputes to be resolved autonomously within the cooperative, while ensuring that decisions are made democratically, typically through a resolution of the general assembly following the “one member – one vote” principle.

The application of the intra-cooperative dispute resolution process requires explicit provisions in the cooperative's charter. According to Article 32, paragraph 1 of the 1982 Cooperative Law, the charter may provide that in matters specified therein, a member has the right to appeal a resolution of the cooperative body to another

¹² Novkovic, 2015, 45-47; Ferraz Teixeira, 2024, 89; Meira and Ramos, 2019, 135-170.

cooperative body specified in the statute, within the framework of intra-cooperative proceedings. In such cases, the charter should specify the principles and procedures of intra-cooperative process, including, in particular, the deadlines for filing and considering an appeal.

However, in cases involving exclusion from a cooperative, statutory law itself provides a procedure for challenging the resolution on exclusion (Article 24, paragraph 6 of the 1982 Cooperative Law). This procedure allows a member to appeal to the general assembly regardless of the charter's provisions on intra-cooperative dispute resolution. It applies only when the supervisory board issues the exclusion decision, and is referred to in the literature as a *quasi* intra-cooperative dispute resolution proceeding.¹³

Under Article 32 paragraph 1 of the 1982 Cooperative Law, both pecuniary and non-pecuniary disputes may be resolved through the intra-cooperative dispute resolution procedure. These cases must be connected either to membership in the cooperative, or to transactions conducted with the cooperative. In practise, the most common disputes concern admission to the cooperative or exclusion from it.

However, disputes over admission may be resolved internally only if the person seeking admission has a legally protected claim to become a member. Such a claim exists when the person has already acquired a share in the cooperative prior to requesting admission. Acquisition of a share may occur, for instance, through inheritance (Article 16a of the 1982 Cooperative Law), or, in the case of the European Cooperative Society (*Societas Cooperative Europea*) by contract, in accordance with Article 4 section 11 of the Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute of the European Cooperative Society (SCE).¹⁴

Polish law also provides an exception for farmers' cooperatives: a person who has submitted a declaration of intent to join a cooperative may acquire a share by contract even before being formally admitted (Article 11 section 6 of the 2018 Farmers' Cooperatives Law). Therefore, a law sometimes links a claim of admission with acquisition of a share, but the general rule in global cooperative legislation is that, despite the principle of open membership, a person joining a cooperative does not have a legal claim to admission.¹⁵

It should be emphasized that disputes regarding exclusion from a cooperative are of significant importance both for cooperative members and also the coopera-

¹³ Bierecki and Pałka, 2024, 108-109.

¹⁴ Bierecki, 2017, 272.

¹⁵ Fici, 2013, 55-57.

tive itself. Accordingly, the intra-cooperative dispute resolution procedure provides a useful forum in which the alleged fault of a member can be assessed by fellow members.

In the judgment of 29th of February 2024,¹⁶ the Polish Supreme Court clarified the interpretation of Article 24 paragraph 2 of the 1982 Cooperative Law. It states that a member may be excluded from a cooperative if, due to their intentional fault or gross negligence, their continued participation is incompatible with the provisions of the statute, or with the principle of good practice. The basis for adopting a resolution to exclude a member from the cooperative may only be events resulting from the cooperative member's fault, qualified by intentional fault or gross negligence.

Intentional fault means that a person intends to achieve a certain state and takes actions to achieve it. Negligence, on the other hand, is a form of unintentional fault, occurring when a person does not intend to achieve a certain state or bring about a certain result, but fails to exercise due diligence. Gross negligence refers to negligence bordering on intentional fault. In light of the aforementioned regulation, it is therefore insufficient to attribute unintentional guilt in the form of recklessness or negligence to a cooperative member if it is not gross in nature. The line between negligence and gross negligence must be drawn based on the specific circumstances of each case. Matters concerning admission to, or exclusion from, a cooperative have a non-pecuniary character, because under Polish law, membership in a cooperative is not a commercial relationship but a personal one. Membership cannot be sold or otherwise transferred, nor can any *iura in re aliena* burden it.

However, in its judgements of 6th of December 2000¹⁷ and 30th of April 1985,¹⁸ the Polish Supreme Court explained that membership can be a basis for a pecuniary right under certain conditions. This exception concerns dividends granted on the basis of the personal legal relationship of membership; although rooted in this personal status, the right to a dividend is unquestionably pecuniary. Disputes over dividends may be resolved through intra-cooperative dispute resolution procedures. This mechanism offers a legal means of circumventing statutory rules on challenging resolutions of the general assembly, since the decision granting dividends is adopted by that body.

However, even when applying the intra-cooperative dispute resolution procedure, a member can still challenge the resolution by filing a lawsuit to the court. In

¹⁶ Case no. II CSKP 2374/22, published in Legalis no. 3056003.

¹⁷ Case no. III CKN 1040/98, published in Legalis under no. 315841.

¹⁸ Case no. II CZ 47/85, published in Legalis under no. 24755.

such a case, the intra-cooperative proceeding is discontinued (Article 42 paragraph 3, and Article 32 paragraph 3 of the 1982 Cooperative Law). This not only regards disputes on dividends, but also on exclusion from the cooperative, as a member can file a lawsuit challenging the resolution on exclusion directly to the court, regardless of the intra-cooperative and quasi intra-cooperative proceedings (Article 24 paragraph 6 p. 1-2 of the 1982 Cooperative Law). Disputes on admission to the cooperative can also be submitted directly to the court, but only if the plaintiff had acquired a share in the cooperative before demanding the admission.

By contrast, cases not related to the personal status of membership, but arising from cooperative transactions, are pecuniary in nature. A cooperative transaction constitutes an economic relationship between the member and the cooperative, even when it is governed by labor law – for example, in workers' cooperatives, where the cooperative transaction takes the form of a cooperative employment contract.

IV. The Arbitration Clause

The arbitration clause is not tied to the idea of resolving disputes internally within the organization in the same way that intra-cooperative dispute resolution procedures are. Nevertheless, because the law, namely Article 1163 paragraph 1 and 3 of the 1964 Code on Civil Procedure, allows this clause to be included in the cooperative's charter, its application ultimately stems from principles of democratic member control and the cooperative's autonomy and independence – in other words, from the concept of cooperative governance. The charter's provisions are introduced in a democratic manner, and only under the autonomous decision of the members of the cooperative. The key difference, compared to intra-cooperative dispute resolution, is that arbitration does not involve resolving the dispute by a democratic vote of the cooperative's members (who themselves constitute one of the parties to the dispute).

The charter is a specific type of contract which binds the members and the cooperative itself. Therefore, the charter is a fundamental agreement for the arbitration clause. The clause binds the cooperative and its bodies, and the members (Article 1163 paragraph 1 and 3 of the 1964 Code on Civil Procedure). Because the arbitration clause has an autonomous character, the invalidity of the cooperative's charter does not render the arbitration clause defective or invalid.¹⁹

Article 1163 paragraph 1 and 3 of the 1964 Code on Civil Procedure states that the arbitration clause applies to disputes arising from membership in the cooper-

¹⁹ Bierecki, 2023, 48-54.

ative. It creates confusion due to the non-pecuniary character of the membership, and because cooperative transactions create legal relations separate from membership. Non-pecuniary cases may be submitted to an arbitration court for a decision only if a court settlement can be reached in them (Article 1157 paragraph 2 of the 1964 Code on Civil Procedure). Since the 1982 Cooperative Law enumerates the grounds for termination of membership, including exclusion, no judicial settlement can be reached with respect to the very existence of membership.²⁰ For the same reason, a judicial settlement is also impossible in disputes concerning admission to a cooperative, given the continuous and personal nature of membership. Only disputes over dividends satisfy the pecuniary requirement for arbitration. Therefore, among disputes arising from membership, only those concerning dividend rights qualify for arbitration.

Disputes arising from cooperative transactions are, by contrast, pecuniary in nature, and therefore qualify for arbitration. But can those cases be submitted under the arbitration clause included in the cooperative's charter? Articles 1163 paragraph 1 and 3 of the 1964 Code on Civil Procedure provide that such clauses apply to disputes arising from membership in the cooperative. Although cooperative transactions are based on the member's status – since only members may participate in them – they are, in substance, economic relations. On this basis, disputes arising from cooperative transactions should be regarded as falling within the arbitration clause included in the cooperative's charter.

Yet, under general provisions of arbitration, the application of such a clause would be limited. Employment disputes and disputes with consumers may only be submitted to arbitration if the clause has been made after the dispute has arisen (Articles 1164 and 1164¹(1) of the 1964 Civil Procedure Code). These restrictions protect employers/traders from abusing their dominant position over employees or consumers. Applied to cooperative transactions, these safeguards effectively render the charter-based arbitration clause inoperative whenever a member has the status of an employee or a consumer. This situation typically occurs in workers' (employee) cooperatives and consumer cooperatives. Consequently, only in producers' cooperatives – where the members are traders who supply goods to the cooperative for distribution (e.g., farmers' cooperatives) – can the arbitration clause in the charter be applied broadly and without such statutory limitations.

²⁰ Ibid., 58.

V. Conclusion

Under Polish cooperative law, both the intra-cooperative dispute resolution procedure and the arbitration clause have strong foundations in the concept of cooperative governance. It is very relevant to the importance of these alternative dispute resolutions models for the cooperative's members. It ensures the members influence on these procedure and lack of interference of other entities and governmental bodies. The key difference in these models of alternative dispute resolutions lies in resolving the dispute by a democratic vote of the cooperative's members (who themselves constitute one of the parties to the dispute). This is the case of intra-cooperative procedure. However, democratic control also influences the arbitration clause. This clause is included in the cooperative's charter. Therefore, application ultimately stems from principles of democratic member control and the cooperative's autonomy and independence – in other words, from the concept of cooperative governance. The charter's provisions are introduced in a democratic manner, and only under the autonomous decision of the members of the cooperative.

However, due to civil procedure law and taking into account the types of disputes that arise between a cooperative and its members, the intra-cooperative dispute resolution procedure is better suited to their nature than an arbitration clause. This procedure may be applied to disputes stemming from both membership relations and cooperative transactions, regardless of whether the dispute involves pecuniary or non-pecuniary issues. It also aligns with the enumerated grounds for termination of membership, and is not constrained by the restrictions imposed on employers and traders for the protection of employees and consumers.

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