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1. Introduction

The formation of the co-operative legislation in the CIS countries is taking place under such conditions, when legal fundamentals are elaborated practically anew by the states with a renewed statesmanship. This situation determines some specific features of their legislation, bearing many traces of the former Soviet system.

State enterprises played a dominant role in the USSR. The co-operative sector was regarded as representing an auxiliary business activity, subject to the amalgamation by the state sector in the future.

The Constitution of the USSR determined, that the basis of the economic system of the country was a “socialist ownership of the means of production in the form of a state (public) ownership and of a kolkhozo-cooperative ownership”. An identification of a state property with a public property was one of the clichés of the Soviet ideology.

It was further declared in the Constitution that “the state shall assist in the development of the kolkhozo-cooperative ownership and in its convergence with the state ownership”. For the term “convergence” the usual implication was that the co-operative ownership was to die off gradually and then be substituted by the state ownership. Private ownership was not recognized.

In Soviet jurisprudence practices, a course to the subordination of economy and civil law relationships to the state was manifested by the adoption of the Civil Codes. During the Soviet history three such codes were adopted in 1922, in 1964 and in 1991.

According to V. Lenin’s directives to the authors of the first Civil Code, “we shouldn’t recognize anything private – for us everything in the economic sphere must be under the public law, not under the private law”. The neglect of the norms of the private law was one of many similar manifestations of the totalitarian regime, which, according to its nature could not create conditions for a free development of a personality, for economic initiatives of citizens, including those in the co-operative sector.

The second Civil Code of 1964 reconfirmed the existence of the “socialist ownership” of the two principal kinds: the state (public) ownership and the kolkhozo-cooperative ownership. Personal ownership was also recognized with a proviso that it should be “earned by labour”. Entrepreneurship was not recognized by the Code.

Legal entities determined by the Civil Code, above state organisations and enterprises, were kolkhozes and their associations, along with “other joint state and cooperative organisations”.

Such legal norms de facto determined pseudo-cooperative character of the organisations, which listed themselves as cooperatives.

The third and the last document of the Soviet period, designed for the regulation of civil legal relations under the name “Basics of the Civil Legislation of the Soviet Union and Its Republics”, was adopted in May 1991, on the eve of the collapse of the Soviet Union. Under the influence of the “perestroika” (restructuring) and certain democratization of public life, initiated by M. Gorbachev, the new code excluded many legal norms reflecting the communist ideology and included some provisions, reflecting the experience of the civil legislation of countries with a developed democracy.

Thus the code excluded the notion of “kolkhozo-cooperative ownership”. A new definition of a cooperative was formulated, which yet remained imperfect, but it was a step forward as compared with the definitions of the previous codes.

In the whole, the last code was imperfect and controversial. To a large extent it was due to the fact that its authors attempted to combine the creation of favorable legal conditions for the development of a market economy with the preservation of the basics of the centrally planned economy and its subsistent legal norms.

For a better understanding of the contemporary practices of the formation of the cooperative legislation in the CIS countries it is expedient to come back to some cooperative laws adopted in the pre-revolutionary Russia and later, in the USSR.

In 1916, the State Duma of Russia passed a general cooperative law, which however was rejected by the Senate. The law was enacted a year later by the Provisional Revolutionary Government soon after the February Revolution of 1917. This law had definite merits, comprising a clear definition of the sphere of regulated relations, procedures and terms for the registration of cooperatives, rules for membership, governance, entrepreneurial activity, distribution of surplus, etc.

Unfortunately, this law existed only for a short period of time. After the October Bolshevik Revolution, the cooperative movement of Russia lost its independence and entered a long period of developing under state control.

During 1918 – 1921 a number of decrees were adopted by the new state authorities, according to which cooperative membership was mandatory for all the citizens. Cooperatives, in their turn, were prescribed to function as distribution tools for distributing food and everyday commodities among people assigned to them as “members”.

Later, in 1923, a new decree was adopted with regard to “the re-organization of the consumer cooperatives based on voluntary membership”. However the cooperatives had not regained their independence. During the whole Soviet history co-operative organisations in the USSR were given directives by the state authorities to fulfil assignments within centrally planned system.

In 1935, a new decree was adopted under the title “On the Activity of the Consumers’ Cooperation in Rural Areas”, according to which the consumer cooperatives were prescribed to suspend their activity in urban areas and move to the country. More than 80 thousand enterprises owned by the consumer co-operatives in cities were taken over by the state.

Also in the 1930-s, agricultural, industrial and credit co-operatives, which served individual peasants’ households, were abolished. They were replaced by collective households (kolkhozes), which forcefully united people deprived of land, cattle, means of production, etc. Kolkhozes were listed as cooperatives by the authorities, despite the fact that they were deprived basic rights inherent to the cooperatives: voluntary membership, democratic participation, etc.

In 1956 –1960 by the decisions of the Soviet Government the producers’ (artisanal) co-operatives were liquidated and their property nationalized

In the period of Gorbachev’s “perestroika”, attempts were undertaken to introduce some elements of market relations and free entrepreneurship into the Soviet economy.

In 1986 the Law on State Enterprises was adopted, which allowed establishing worker cooperatives at the state enterprises, aimed at stimulating a more productive labour. However, soon after it became clear that such steps didn't help the development of true cooperatives, but on the contrary, played in favour of emerging a layer of top managers and their intimates, who profited on the exploitation of cheap working force and raw materials.

The Law on Cooperatives in the USSR, adopted in 1988, was comparatively progressive for that time, although it was based on retaining the ideas of the socialist planned economy. The cooperatives were defined in this law as "public organisations" which, in addition to state enterprises, were recognized as "a basic link of the sole popular economic complex". It was specially mentioned that the cooperatives should function under the leading role of the state form of ownership. The law envisaged "state leadership of the co-operatives in the general public's interests".

Thus, the CIS countries have inherited a controversial legislative environment. Its specific features are as follows:

- Dominant role of the state with regard to the co-operatives, a lawful ratification of cooperatives' dependence from the bodies of state power;
- Absence of legislative guaranties of a stable development of the co-operatives, proved by practices of abolishing cooperatives on the government's initiative;
- Adding to legislative acts on cooperatives ideological elements distorting true co-operative values and principles;
- Dominance in the cooperative movement of one type of co-operatives – consumers'. Other types have not been properly defined in the legislation and presently exist in a conceiving form.

To a certain extent these specific features were reflected in the new legislative acts on cooperatives adopted in the CIS countries over the past decade.

For this study about 50 legislative acts from 12 countries were reviewed: Azerbaijan, Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tadjikistan, Turkmenistan, Uzbekistan, Ukraine.

The main objectives of this study are as follows:

- to identify basic trends of the formation of the co-operative legislation in the said countries;
- to determine deficiencies in the existing laws, including those inherited from the Soviet past;
- to make suggestions for optional legislative environment and more favourable conditions for the cooperative development.

2. General legal foundations of the cooperative legislation in the CIS countries

2.1 Constitutions of the CIS countries

In all the CIS countries the Constitutions have been adopted. In the process of the elaboration of these basic laws commonly recognized international legal acts were used, as well as the experience of democratic countries, with the consideration of the local conditions.

Concerning the attitude towards cooperatives, the constitutions do not contain references to “kolkhozo-cooperative ownership” and to the primary role of the state ownership.

The constitutions proclaim a free development and an equal legal protection of all forms of ownership. In some constitutions the forms of equally existing ownership are specified: state, municipal and private. The constitutions stipulate the right of citizens for the freedom of enterprising and form legal guaranties for the development of their economic activity.

For example, the Constitution of Azerbaijan stipulates the protection by law of the right of private ownership. Every person has the right for free entrepreneurship in the established order, with the use of one’s potential, capabilities and assets.

With regard to the right of citizens for the freedom of associations the constitutions do not clearly stipulate that this right can be enjoyed in the formation of cooperatives. In most cases, only public organisations, parties and trade unions are mentioned in this context.

The Constitution of Georgia, for instance, uses the following wording: “Citizens have the right to create public organisations, including trade unions, and to join them”.

The Constitution of the Russian Federation says as follows: “Everyone has the right to establish associations and to unite in them, including professional unions, for the protection of one’s interests.”

In the Constitution of Ukraine this stipulation has the following wording: “Citizens of Ukraine have the right for the freedom of uniting in political parties and public organisations for the realization and protection of their rights and freedoms and for the satisfaction of political, economic, social, cultural and other interests”.

Under such constitutional provisions co-operatives in some cases have to register themselves as “public organisations”, which wakes up reminiscence of the Soviet past.

The Constitution of Belarus is the only one of the CIS countries, which contains the provision which reads as follows: “The states assists in the development of the cooperation of all types and kinds”. It seems important enough, but as it can be seen below, this provision is used for the interference of the state in the cooperative affairs, thus violating the principle of their autonomy and independence.

A review of the texts of the constitutions of the CIS countries leads to a conclusion that there are no principal legal obstacles contained in them for the development of cooperatives and of their entrepreneurial activity. However, one can regret that the

constitutions of the newly independent states do not recognize the cooperatives as equal actors of a market economy and as important tools of economic and social development.

2.2 Civil codes of the CIS countries

A specific role of the civil codes of the CIS countries adopted during the 1990s is that they are aimed at the reformation of economic life of these countries on new market economy principles. They recognize equality of all forms of ownership, freedom of agreements, the provision of judicial protection of the interests of the actors of civil and legal relationships.

The elaboration of the civil codes in all the CIS countries was carried out with the consideration of legal standards of the highest level, basically of the Roman-German continental system of civil law and of the British system of general law, with the participation of experts from European Union and some other Western countries. At the same time, a great influence on the formation of the civil codes of the CIS countries was exerted through the inheritance of the Russian civil law, including its Soviet period.

The adoption of the civil codes in the newly independent states was an important step towards the transition to the civil society and civilized market relations. Regrettably, the civil codes in these countries were adopted at the time after market reformations (as they were called) had started. In fact, those reformations were often chaotic, not properly prepared and frequently falling out of the legal framework.

Considering a close similarity of the civil codes of the CIS countries, the author of this study reviews examples of 5 countries: Russian Federation, Kazakhstan, Belarus, Armenia and Georgia.

The Civil Code of the Russian Federation, Part One (Enacted from 1995).

General provisions of the Code stipulate the principles of the new civil law, such as inviolability of ownership, freedom of agreements, inadmissibility of arbitrary interference in private affairs, unimpeded realization of civil rights, securing re-establishment of violated rights and their judicial protection, etc. The Code institutes new types of legal entities and legal forms of organisations.

At the same time, the Code retained the principle of sub-dividing legal entities into two groups: commercial organisations oriented for profit as their basic objective and non-commercial organisations, which shall not have such an objective. This principle was initially formulated in the “Basics of Civil Legislation of the USSR and its Republics” mentioned above. According to the Civil Code’s stipulation, producers’ cooperatives are listed as “commercial” organisations, whereas consumer cooperatives – as non-commercial.

In the Civil Code of Russia the same approach is accepted, as in the case with the former Soviet Code. Cooperatives are identified not according to their type, but by an artificial sub-division into two categories with a criterion whether their members make personal labour contribution to their cooperative (producers' cooperatives), or whether they do not contribute their personal labour, using their cooperative’s services alone (consumer cooperatives).

The author is of the opinion that such an approach, attempting to divide co-operatives into groups according to such a criterion, is completely wrong. In international co-operative practice and in basic documents of the ICA and the ILO, clear and precise definitions of co-operatives have been elaborated, as well as the classification of their

types. Regrettably, the authors of the Civil Code of Russia do not seem to have considered international co-operative experience.

The Code also ignores the fact that the cooperative, due to its dual nature, acts as an association of voluntary united persons on the one hand, and as an enterprise with clear economic and social objectives on the other.

In this context, the characteristics of co-operatives' objectives contained in the text of the Code: profit-oriented (producers' cooperatives) and non-profit organisations (consumer cooperatives) seem to be totally incorrect and does not reflect the cooperative's true nature

By this provision, the producers' cooperatives are put in one row with joint-stock companies and other economic societies based on joint capital and the distribution of profit according to the share of each shareholder. Alternatively, the cooperatives classified as "consumers'", are associated with the family of non-profit public, religious, charity, etc. organisations, which do not regard profit as their objective and shall not distribute it among their members. More than that, there is a controversial provision in another article of the text of the Code with regard to "consumer" type cooperatives, which says that the surplus obtained by such co-operatives from entrepreneurial activity may be distributed among their members.

The absence of a due conceptual approach to the definition of a legal status of co-operatives and their members conceived another erroneous provision with regard to economic responsibility of members of a consumer cooperative. It says "members of a consumer cooperative are liable to cover eventual losses by additional fees within a three-month period, after the acceptance of an annual balance. In case such liability is not met, the cooperative can be dissolved by a court decision by its creditors' claim".

Such a legal norm related to members is evidently excessive, because liability for losses must be imposed on the governance bodies and the management of a co-operative in question, i.e. on those who make economic decisions. Members of a cooperative do not have a direct access to current business transactions and should not be liable for losses, occurred not by their fault.

The Civil Code of Russia doesn't provide the right to cooperatives to have their own enterprises (for consumer co-operatives it is stores, warehouses, catering enterprises, etc.) and to secure lawful possession of a related cooperative's property. The Code identifies such enterprises as "commercial organisations, which do not have the right to own property assigned to them, which shall be indivisible". According to the Code, such enterprises are classified as "unitary", which can have only state or municipal status.

In this manner the Code doesn't provide legal opportunities for cooperatives to obtain their objectives through jointly owned and democratically managed enterprises.

One also cannot agree with a principle of unequal terms, when a special legal status can be provided exclusively to state or municipal enterprises, whereas other actors of market are deprived such an opportunity.

Still another provision of the Civil Code of Russia with regard to the establishment of cooperative unions limits to a certain degree the opportunities of co-operatives. It rules that co-operatives can create by agreements their associations and/or unions provided that the latter should be of "non-commercial" character. If, by decision of its affiliates, this organisation starts commercial activity, it shall be subject to the transformation into an economic society or a company.

This provision is thought to be arbitrary, as it doesn't allow co-operatives and their members to decide by themselves what kind of unions of secondary or tertiary level they need to establish.

The Civil Code of the Republic of Kazakhstan (Enacted in 1995).

By its composition and content of legal norms the Civil Code of Kazakhstan is very much alike to that of Russia and it also retains traces of the "Basics of Civil Law of the USSR and its Republics".

Legal entities are rigidly divided into "commercial" and "non-commercial" organisations and cooperatives are sub-divided into producers' and consumers' categories. Correspondingly the producers' cooperatives are defined as commercial organisations, whereas the consumers' – as non-commercial

The Code contains 5 articles related to producers' cooperatives and only one article dealing with consumers' cooperatives. Such an approach, putting aside an issue about a dubious correctness of such a categorization, looks unreasonable and erroneous, being discriminative to one particular group of co-operatives, the consumers' cooperatives in particular. In the case with producers' cooperatives, there are detailed regulations concerning general principles of their formation and functioning, requirements to the content of the by-laws, stipulation of ownership relations, etc. With regard to another group of cooperatives, set up under the consumers' category, the Code limits itself by a general article without a proper clarification of the legal norms, which pertain to this category.

The Code arbitrary sets up a norm depriving consumers' co-operatives the distribution of surplus among its members.

The Code contains a specific indication that "the activity of rural consumers' cooperation is subject to regulation by a special law". By doing this, the legislators try to make the artificial limitation of a scope of activity for the consumers' cooperatives by the rural area look lawful, which was practiced under the Soviet regime. This particular stipulation has already inflicted a great damage to the existing consumers' cooperatives, depriving them an opportunity to compete on equal terms with other actors on the market, both in rural and urban areas.

The Civil Code of the Republic of Armenia (Enacted in 1998).

This document summarizes legal norms related to cooperatives in a special section entitled "Cooperatives", containing the following articles:

- General Provisions
- Property of the Cooperative
- Management of the Cooperative
- Seizing cooperative membership and transfer of shares
- Reorganization and Liquidation of the Cooperative

The Code defines a cooperative as a voluntary association of citizens and legal entities on the basis of membership with the purpose of satisfying material and other needs of members. The Code also says that specific character and a legal status of individual types of co-operatives, in particular, consumers' cooperatives, shall be determined, in addition to the Code itself, by special laws.

The Code's article on cooperative property contains an important provision about indivisible assets, which shall be used for constitutional objectives.

The Code prescribes the following cooperative government bodies: general meeting as the cooperative's highest authority; a board and/or a chairman as an executive body. It is also stipulated that a cooperative numbering more than 50 members may establish a supervisory committee which shall control the executive body.

The Code determines the issues referred to exclusive competence of members and sets up the principle: one member – one vote for decision-making at the general meeting.

Compared to the civil codes of the rest of the CIS countries, the Armenian Code bears much less traces of the former Soviet legislation. With regard to cooperatives it does not sub-divide them into "commercial" and "non-commercial" categories. In the whole, the Civil Code of Armenia provides for a sufficient basis for improving and harmonising the cooperative legislation in the country. At present only first steps are being undertaken towards this end.

The Civil Code of the Republic of Georgia (Enacted in 1999).

The Code determines cooperatives as legal entities of the private law. The activities of the cooperatives are regulated by the earlier adopted Law on Entrepreneurs and by special laws on cooperatives.

The Law on Entrepreneurs, adopted in 1994 and amended in 1997, contains a special section on cooperatives, consisting of nine articles. They give a general definition of a cooperative, stipulate the order of joining and exiting a cooperative, repayment of shares, the establishment and functioning of its governance bodies (general meeting, meeting of representatives, a supervisory council, a board), the order of accounting, distribution of surplus and covering losses. The main objective of the cooperative is indicated as "satisfying needs of its members". It is also said in this context that economic activity of the cooperative shall not be aimed at obtaining profit as a priority objective.

This law allows cooperatives to develop various businesses, including food and commodity production, retail and wholesale trade, housing, etc.

Among the types of cooperatives indicated in the law are agricultural, housing, credit, as well as consumers' (multi-purpose) cooperatives.

The application of an additional definition to consumers' cooperatives as "multi-purpose" reflects an established practice for this type of cooperatives. They are in fact engaged not only in wholesale and retail trade, but also in industrial production, agriculture, tourism, as well as in providing various services to their members and customers.

A specific composition of the Civil Code of Georgia, which included the Law on Entrepreneurs as its component part, pre-supposes the adoption of individual laws on cooperatives. So far only one special law on consumer cooperatives has been passed. Meanwhile, there already exist other kinds of cooperatives in this country – agricultural, credit unions, service cooperatives, etc., which under a more protective legislative support could have better conditions for their development.

The Civil Code of the Republic of Belarus (Enacted in 1999).

A distinctive feature of this Code is the conservation of the norms, characteristic to the past Soviet legislation, determining a "leading" role of the state in the economy and in

fact limiting the freedom of market relations and entrepreneurial activity. Among the principles determining the basics of the civil legislation one is formulated as “Coordination and guidance of the economic activity in state and private sectors is secured by the state”.

This provision serves as a basis for an excessive state dominance, including that in respect to cooperatives, as it can be further seen from the review of the cooperative legislation.

The Civil Code of Belarus contains similar deficiencies in defining a legal status of cooperatives as those of Russia and Kazakhstan, namely, sub-dividing cooperatives into “commercial” and “non-commercial” organisations, a different legal status for producers’ and consumers’ cooperatives, etc.

Above that, this document sets up a rule under which the surplus of consumers’ cooperatives shall not be distributed among members. An important provision with regard to the member’s right for obtaining his/her share in the case of exiting from membership or in the case of the liquidation of the cooperative is not stipulated.

The Code provides for a certain advantage for cooperatives by the provision, which gives them the right to establish “unitary” enterprises (based on the owner’s assets run on trust). This provision relates both to the state and private sectors, including cooperatives.

General remarks

- Enacted during late 1990-s, the civil codes of the CIS countries play a positive role in the consolidation of civil law and in regulating market relations. At the same time they have some deficiencies, in particular with regard to regulating norms of cooperatives’ activity.
- The civil codes of the CIS countries retain the influence of the past legal norms, formed under the administrative command system and the dominant role of the state. It is reflected in particular in the excessive regulation of legal entities’ activity and in the inclusion of such legal norms, which could be determined in their by-laws. It is difficult to recognize as reasonable a rigid sub-division of legal entities into “commercial” and “non-commercial” organisations (those definitions were “borrowed” from “The Basics of Civil Legislation of the USSR and its Republics”). The international legislative practice envisages more flexible statuses of legal entities, like associations with economic interests, economic societies, companies, charitable institutions, non-profit organisations, etc.
- Legal entities, pertaining to state and private sectors of economy, according to the civil codes of a number of CIS countries, do not enjoy equal rights with regard to the opportunity of establishing enterprises for attaining their constitutional objectives. Thus, a “unitary” type of an enterprise may be established only within state and municipal structures (with the exception of Belarus). Private organisations do not have the right to determine a legal status of enterprises (property complexes) in their possession.
- The rights of private organisations (legal entities) are limited by the codes as regards establishing of their apex institutions. The latter are allowed to exist only in the form of “non-commercial” organisations, basically for coordination and providing consultations, but not for carrying out entrepreneurial activity in the interests of their founders.

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- General shortcomings of the civil codes of the CIS countries are reflected in the legal norms directly pertaining to cooperatives. They are put in the procrustean bed of “commercial” and “non-commercial” organisations with an artificial sub-division into “producers” and “consumers” categories. Like other legal entities pertaining to the private sector of economy, they do not enjoy equal rights with those of the state sector.
 - There is a definite distortion of the definition of the cooperatives as ‘non-profit’ organisations. It is not taken into account that contrary to capitalist enterprises, the cooperatives put their basic objective as serving the interest of their members, rather than attaining profit. But at the same time economic activity of any types of cooperatives does not pre-suppose losing business. They have to be profitable in the competitive market environment.

This controversial interpretation of the legal status of cooperatives in the civil codes also caused serious irrelevance in the cooperative laws.

3. Laws and other legal acts pertaining to cooperatives

3.1 Cooperative laws

The laws on co-operatives and other legal acts pertaining to cooperatives in the CIS countries often bear a controversial character. On the one hand, a drive of their authors to use some recommendations of international organisations and practices of countries with a developed market economy was reflected in them. On the other hand, many legislative acts are greatly influenced by the former Soviet legislation, in particular, by the Law on Cooperatives in the USSR adopted in 1988.

A review of the existing cooperative acts was made regarding the following important issues:

- General definition of a cooperative
- Cooperative principles
- Types of cooperatives
- Cooperative membership
- Cooperative management
- Cooperative ownership
- Relations with the state

General definitions of cooperatives

Most of the cooperative laws of the CIS countries use definitions, which bear traces of the past concepts about cooperatives formed in the Soviet period. As a rule, they are rather far from commonly accepted definitions accepted by the world cooperative practices.

For instance, the Law on Consumers' Cooperation (1993) of Armenia gives the following definition: "A consumer society is a voluntary association of at least 30 members, which is formed on the basis of their monetary or other material contributions and which is a legal entity".

This definition has an expedient indication of a voluntary character of the society, of a minimal number of members, as well as of the recognition of a cooperative society as a legal entity. However, an important implication about a dual nature of a cooperative, which is an association of persons on the one hand and an enterprise carrying out economic activity on the other, is just ignored

The presidential decree of Georgia on Consumer Cooperation (1993) defines a cooperative as a public organisation, which is a tribute to the past ideological concept with regard to the nature of the cooperatives. In the Law on Consumers' Cooperation, adopted in 1997, still another definition is given, which reads as follows:

"A consumer cooperative is an association of physical persons and legal entities, which shall unite on a voluntary basis with the purpose of material and cultural satisfaction

of its members' needs through joining material and financial resources and through their efficient use."

This definition is closer to a true nature of a cooperative, but it doesn't yet give a clear explanation of its dual character, specifics of economic objectives, etc.

In the Decree of the President of Republic of Belarus on Consumers' Cooperation (1999), the definition reads as follows:

"The main link of the consumers' cooperation of the Republic of Belarus is a consumers' society, which is established in the form of a consumers' cooperative."

This definition is complemented with a new clause relating to the system of the consumers' cooperation as a whole:

"The consumers' cooperation of the Republic of Belarus is a system of consumers' societies, their unions and legal entities established by them with the purpose of satisfying material and other needs of the population of the Republic of Belarus".

As one can see from these provisions, the nature of the cooperative and its specific features are defined in a very peculiar way, if not to say more.

The definition of a cooperative society contained in the Law on Consumers' Cooperation of the Republic of Kazakhstan (1991) is in fact substituted by a description of some principles of its activity. It reads as follows: "A cooperative society is a basic link of the consumers' cooperation. Its activity is based on the principles of voluntary membership, on the combination of personal, collective and public interests, economic independence, material motivation, social justice and lawfulness."

An attempt to improve the definition of a cooperative is made in the text of the Law on Rural Consumers' Cooperation of the Republic of Kazakhstan (1999). It is formulated as follows: "A rural consumers' cooperative is a voluntary association of citizens and/or legal entities on the basis of membership with the purpose of satisfying material and other needs of its members through joining its members' property (share) contributions.

Putting aside the issue of the expediency of a special law on rural cooperatives, one has to note that the above definition doesn't disclose the tool for "satisfying the needs", namely, economic activity carried out by a cooperative.

The Law on Cooperation of Kyrgyzstan (1991) gives a following definition of a cooperative: "A cooperative is a voluntary association of citizens, including citizens of foreign states. It shall be established on the basis of membership for carrying out business and other activity with the use of the property belonging to it by the right of a collective ownership".

The provision about the opportunity for foreign citizens to participate in consumers' cooperatives, naturally, has remained unrealized. An innermost secret of the inclusion of that stipulation was a naive presumption that foreign investors could be thus attracted. The legislators didn't take into account that cooperatives are supposed to function at a local level, that they are not profit-oriented and that they are not likely to be of great interest to outside investors.

The above law was substituted by the Law on Cooperatives (1999), in which the definition of a cooperative was changed in the following way: "A cooperative is a voluntary association of citizens and legal entities, established on the basis of membership. It is aimed at satisfying material and other needs of its members through democratically

run business enterprise in accordance with the by-laws and through joined members' shares."

Comparing these two laws, one can see that certain positive developments with regard to the cooperative legislation do take place in the CIS countries.

The law of Republic of Moldova on Consumers' Cooperation, adopted in 2000, is the latest among the similar laws of the CIS countries. It contains a preamble, which says: "Recognizing the consumers' cooperation as an important link of the economic system with a deep social character and a diversified scope of business activity, and understanding the need for securing legislative environment for its successful development, the Parliament deems necessary to adopt such law".

The definition of a cooperative is as follows: "A consumers' cooperative is an autonomous and independent association of physical persons, established on the basis of the principle of a voluntary agreement to unite its members' shares and to carry out business activity for satisfying their interests and consumer needs".

This law doesn't envisage joining the cooperative by legal entities, but it recognizes the right of the cooperative to establish "cooperative enterprises" with a status of a legal entity.

In Russia, there are four special laws on cooperatives.

The Law on Agricultural Cooperation (1995) gives the following definition: "An agricultural cooperative is an organisation established by agricultural producers on the basis of a voluntary membership for a joint productive or other business activity by joining property shares, aimed at satisfying the members' material and other needs".

The definition of a cooperative in the Russian Law on Producers' Cooperatives (1996) is as follows: "A producers' cooperative is a voluntary association of citizens on the basis of membership for a joint productive or other business activity through their personal labour participation and through joining property shares. Its founding documents may include the participation of legal entities in the cooperatives' business activity. The cooperative is a commercial organisation and has a status of a legal entity."

The Law on Consumers' Cooperation (Consumers' Societies) in the Russian Federation (1992, amended in 1997 and in 2000) uses the following definition: "A consumers' society is a voluntary association of citizens and/or legal entities. It shall be established, as a rule, on a territorial principle on the basis of membership through joining shares by its members for trading, procurements, production and other business activity, aimed at satisfying material and other needs of its members."

The Law on horticultural, gardening and dacha non-commercial associations of citizens (1998) defines a cooperative of a relative type in the following way: "A horticultural, gardening or dacha cooperative is a non-commercial organisation. It is founded by citizens on a voluntary basis for assisting its members in solving common social and economic objectives in the field of horticulture, gardening and maintaining dacha households."

One can consider all these definitions as self-explanatory.

The Law on Consumers' Cooperation of Turkmenistan (1991) gives the following definition: "A consumers' society is a basic link of the system of the consumers' cooperation. Its activity is based on the principles of voluntary membership, the coherence of personal, collective and public interests, economic independence, material interests,

social justice and lawfulness.” Here one can also see the traces of ideological stamps of the Soviet period. It goes without saying that a cooperative should take care about the members, not about abstract state interests.

The Law on Consumers’ Cooperation in the Republic of Uzbekistan (1991), also passed at an early stage of the reform, is still functional now. It gives a definition of a cooperative as follows: “A cooperative is an autonomous economic actor, bearing a status of a legal entity, which owns, uses and manages its property, which belong to it on the right of a collective ownership.” This definition deserves an additional comment. It can be apprehended as the recognition of equality of a cooperative with other economic actors-legal entities. A reference to the collective ownership in this context, with the consideration of the Soviet experience, is often apprehended as a negation of belonging of a cooperative to the private sector as a subject of private law.

In Ukraine, two special cooperative laws are functional and each law gives its own definition of a cooperative.

The Law on Consumers’ Cooperation (1992) reads: “A primary link of the consumers’ cooperation is a consumers’ society – an autonomous democratic organisation of citizens. They unite for a joint enterprising in local communities or in working places on the principles of a voluntary membership and mutual help with the purpose of improving their economic and social situation.”

The Law on Agricultural Cooperation (1997) gives the following definition: “An agricultural cooperative is a voluntary association of physical persons and legal entities, who form another legal entity based on membership, united shares and joint participation in agricultural production and in providing services pre-eminently to the members”.

A general conclusion from the given examples of the existing definitions of a cooperative can be made with pointing out that these definitions do not reflect to a full extent an understanding of a specific character of the cooperative, its dual nature and economic and social objectives. One of the reasons for it might be that out of 12 CIS countries only two countries – Kyrgyzstan and Uzbekistan – adopted general laws on cooperatives, the latter in 1991, which law for the present time can be definitely regarded as obsolete. As one can see from the examples, definitions of consumers’ cooperatives, very much resembling each another, are dominating. Some definitions pertaining to agricultural, producers’ and other types of cooperatives also cannot be regarded as disclosing a true nature of a cooperative

Cooperative principles

There is a general trend for the cooperative laws adopted in the CIS countries to include the internationally accepted cooperative principles in them, although their description is more of a declarative character, rather than a reflection of a true inclination of legislators to formulate them in an appropriate legal form.

The Law on Consumers’ Cooperation in Armenia does not contain a special article on cooperative principles, except for provisions on voluntary membership and on cooperatives’ autonomy. The law however includes a general provision, indicating that “cooperatives and their unions shall follow the basic principles of the cooperative movement set up by the ICA Rules”.

The Presidential Decree “On Consumers’ Cooperatives in the Republic of Belarus”, determines the principles, on the basis of which a cooperative shall be established and function, namely, voluntary joining and exiting a cooperative society; democratic governance (one member-one vote); mutual help and securing economic interests of

members; creating conditions for member education and professional training; access to information about economic activity of the cooperative society, etc. This list of the “principles” also includes a provision of a “compulsory accountability of cooperative societies to their apex unions”. This prescription has an evident element of administrative-command methods of management “from top to bottom”, typical of the Soviet period.

Georgian Law on Consumers’ Cooperation declares in its preamble that “Consumer cooperatives and their unions shall be based on voluntary membership, democracy and social justice, mutual help and cooperation, mutual responsibility, care for the community irrespective of nationality, religious and political orientation of their members”.

The Law on Rural Consumers’ Cooperation in the Republic of Kazakhstan has a special article on “principles of establishing and functioning of rural consumer cooperatives and their associations (unions)”. It contains such principles as voluntary membership, democratic governance, self-help, protecting interests of the rural population, access to information about activities of cooperatives and their associations (unions).

The Law On Cooperation (1999) of Kyrgyzstan stipulates: “A cooperative shall be established and shall function on the basis of the following principles: voluntary membership and free resignation determined in by-laws; mutual help and securing economic interests of members participating in its economic activity; democratic management (one member-one vote, elected authorities accountable to the general meeting); economic independence of members; creating conditions for education and professional training; access to information about cooperative activity by members.”

Moldavian Law On Consumers’ Cooperation contains a special chapter on the principles of the activity of the consumers’ cooperatives. It contains articles entitled “Voluntary membership”, “Collegiality”,

“Democracy”, “Equality and Non-Discrimination”, “Transparence”, “Mutual Aid”, “Economic participation”, Relations between members and organisations of consumers’ cooperatives”, “Collaboration for development”.

In Russia, the existing special laws on cooperatives formulate the cooperative principles by different ways. For instance, the Law on Producers’ cooperatives doesn’t have special articles referring to this issue. However in a number of articles there are references to voluntary membership, democratic governance, the member’s right for one vote at the general meeting, irrespective of a share contribution to the cooperative.

The Law on Consumers’ Cooperation (Consumers’ Societies and Their Unions) in the Russian Federation formulates the “principles of establishing and functioning of a consumer society”. Among these principles are: voluntary membership, democratic management, access to information, economic interests of members, as well as “wide participation of women in elected management and control bodies”, “care for cultural level of members” and some other, which have very little to do with the cooperative principles proper.

Special laws on consumers’ cooperatives of Tadjikistan, Turkmenistan, Uzbekistan and Ukraine also contain general provisions about voluntary membership, democratic management and control, economic independence without much reference to the commonly accepted cooperative principles.

In the whole, practically all cooperative laws of the CIS countries formulate the first and the second principles contained in the ICA Statement On Cooperative Identity of 1995, i.e. voluntary membership and democratic member control. The third principle – economic participation of members – is only partly reflected in several laws. The fourth principle –

autonomy and independence – is proclaimed in a number of laws, which at the same time contain contradicting provisions (for instance, the mandatory accountability of cooperatives to their unions in Belarus, a prerogative of Russian apex organisations to make decisions compulsory for their affiliated members, etc.). The fifth principle – education, training and access to information is also reflected only in a limited number of laws, not clearly enough as well. The sixth principle – cooperation among cooperatives – is contained only in one law (Moldova). The seventh principle – care for community – is vaguely reflected in some laws by declarations about “combining personal, public and state’s interests.

Cooperative membership

The majority of the cooperative laws in the CIS countries envisage commonly accepted approaches with regard to membership: variable number of members, the absence of a limit for a maximal number. Quite a few of the laws stipulate the opportunity for legal entities in joining a cooperative along with individuals. The common democratic principle, one member – one vote, is applicable both to individuals and to legal entities.

In a number of laws there is a numerical limit for minimal membership. Thus, according to the laws, the minimal number of members in Kazakhstan is 2 persons; in Kyrgyzstan and Uzbekistan – 3 persons; in Belarus and Russia – 5 persons; in Moldova – 7 persons; in Armenia – 30 persons.

There are small variations of stipulations (where they exist) with regard to the age eligible for cooperative membership. In Armenia, Georgia, Belarus, Russia and Uzbekistan it is 16-year limit; in Ukraine – also 16, with a clause allowing a 14-year age limit for membership in school cooperatives; in Kyrgyzstan there is a 18-year age limit.

The laws of the majority of the CIS countries determine a procedure of admittance to membership, the rights and obligations of members, the order of the cessation of membership.

In some cases legal norms are established with regard to cooperative employees, who are not members. It concerns mostly the producers’ cooperatives, for which personal labour participation is one of the mandatory conditions for membership. For instance, the Russian Law on Producers’ Cooperatives stipulates an average number of hired personnel for a period of account, which shall not exceed 30 per cent of the total membership of the cooperative.

With regard to the consumers’ cooperatives, the laws determine some aspects of labour relations, although none of them contains legal norms envisaging the opportunity for employed personnel to participate in the elected management and control bodies for the protection of their interests.

In the whole, legislative provisions concerning cooperative membership can be assessed as appropriate, with the exception of those stipulating minimal number of members. It would be much better to allow cooperatives themselves to determine it in their by-laws.

However, one serious flaw of all the CIS laws must be noted, namely the absence of provisions regulating the role of the cooperative as an employer.

Cooperative management

Most of the laws of the CIS countries envisage a double level of management in a cooperative, namely, the general meeting and the board.

The laws relating to consumers' cooperatives, stipulate that the powers of the general meeting may be delegated to the meeting of representatives, who shall be elected in a cooperative's areas in the case when the cooperative embraces several communities. Some individual laws determine minimal number of members, under which condition, the powers of the general meeting can be delegated to the meeting of representatives, (ranging from 100 to 300 members).

Some laws stipulate a mandatory introduction of supervisory councils. The Russian law on agricultural cooperation, for instance, determines that the supervisory council shall be established in the mandatory course for an "agricultural consumers' cooperative", whereas for an "agricultural producers' cooperative" the supervisory council shall be established under the condition when its membership exceeds 50 persons. A similar norm is contained in the Ukrainian law on agricultural cooperation.

The Russian law on consumers' cooperation prescribes a more complicated structure of cooperative management. It stipulates a three-level structure: the general meeting (meeting of representatives), the council and the board.

The general meeting is determined as the highest authority of the consumers' society. In between the general meetings, the powers are delegated to the council, which is a representative body. The executive body is the board, the members of which are appointed by the council. The law rigidly regulates the composition of the council, whose membership must consist only of lay members. The law forbids the inclusion in the council's membership of any board or other staff representatives.

The law of the Russian Federation on producers' cooperatives prescribes that in a cooperative with membership over 50 persons, the supervisory council may be established, thus allowing a cooperative to decide independently on this issue.

The same law stipulates that a cooperative, with a membership exceeding 10 persons, shall elect the board. The Board's terms of reference shall embrace the issues, which are not in the exclusive competence of the general meeting.

The Russian law on consumers' cooperation sets up some norms for the system of the cooperative management, which reflect an intention of the legislators to create a certain "verticalness of power". Thus, the law determines that "decisions made by bodies of power of an apex union on the issues determined in the by-laws of that union, shall be mandatory both for primary societies and for the secondary level organisations, affiliated to the said union". The same law gives the powers to the apex union to carry out executive functions towards primary societies and their secondary level unions, which certainly contradicts the principle of cooperative autonomy and independence.

An inclination for introducing some new elements in the system of managing cooperatives is reflected in the Moldavian law on consumers' cooperation. It determines the following governance bodies for a consumers' society: the general meeting (or meeting of representatives), the administrative council and the executive bureau. The law stipulates that the administrative council shall exercise powers in between general meetings, whereas the executive bureau carries out executive functions in between the meetings of the administrative councils. It is also stipulated that in cases when a cooperative's membership does not exceed 300 persons, the functions of the administrative council can be delegated to the general meeting and to the executive bureau, provided that the by-laws of the society

in question do not prescribe otherwise. The law stipulates that the administrative council is to be headed by the chairman. The chairman of the council can also bear the office of the chairman of the executive bureau.

A three-level management structure is also set up by the Kyrgyz law “On Cooperation” (1999), namely, the general meeting, the council and the board. The issue of electing or appointing the board as the executive body is left to the discretion of a cooperative itself.

The rest of the cooperative laws in the CIS countries prescribe a two-level structure of cooperative governance (the general meeting and the board). The powers of the board include those of a top authority in between the general meetings.

A most evident flaw, which can be noted in the co-operative legislation of the CIS countries concerning the cooperative governance, is the excessive regulation of the procedures for establishing and functioning of management bodies. It is also thought as inadmissible that the legislation can set up legal norms making decisions of apex unions mandatory for their affiliated members. The latter norm, which is inherited from the past Soviet practices, stands in the way of using the powers of the general meeting as the highest authority of a cooperative organisation.

Cooperative property and distribution of surplus

Legislative acts on cooperatives adopted in the CIS countries in the early 1990-s, recognized the cooperative members as the owners of cooperative property. However they didn't specify the role and responsibility of the cooperative itself, as a legal entity, which, under certain conditions, obtains the right to own, use and dispose the cooperative property. There were also no legislative provisions allowing cooperatives to establish and own indivisible funds and assets.

The Russian law on consumers' cooperation of 1992 (since then amended), for instance, stipulated that the property of a consumers' society belonged to members on the right of private (common share assets and common jointly-owned assets) ownership. By decision of the general meeting, the employees of a cooperative could get their share of the assets.

After the adoption of that law, a campaign for “legalizing” cooperative property by members and employees started in many regions of Russia. In some places it ended up with the privatization of quite a few of cooperative enterprises, mostly by employees, who got hold of the cooperative property either through legalizing their “share” of the assets, or through buying out members' shares.

The cooperative laws enacted in late 1990-s, established some legal norms aimed at the protection of cooperative property and members' interests. They establish the right of each member as a co-owner of the cooperative assets and the right of the cooperative itself, as a legal entity, to own the property belonging to the cooperative.

The current Russian law on consumers' cooperation (enacted in 1997 and amended in 1999 and in 2000) stipulates that the owner of the cooperative property is the consumers' society, which, in its own turn, secures the ownership rights of its members. Indivisible assets are defined as follows: “Indivisible assets are a part of the property of a consumers' society, or union, which cannot be distributed among its members, the usage of which is determined by the cooperative by-laws”.

The Georgian law on consumers' cooperation (1997) determines the property of consumers' cooperatives and their unions as "private property, in which every member owns an individual share".

The Moldavian law on consumers' cooperation (2000) stipulates that the property of consumers' cooperative organisations is a private property, consisting of divisible and indivisible assets. Divisible assets consist of members' share contributions paid by individuals or by organisations. Indivisible assets are those, which a cooperative forms through its business activity, with the exclusion of the share funds.

In the Kazakh law on rural consumers' cooperation it is determined that the property of a consumers' cooperative shall be divided into divisible (share fund) and indivisible assets. The indivisible assets and their true value are determined by the general meeting of a cooperative.

All cooperative laws contain provisions determining the right of a cooperative to collect share contributions, to get an income from entrepreneurial activity (artificially limited for consumers' cooperatives) and to establish funds: share capital, indivisible assets, development fund, reserve fund, etc.

Legislative provisions concerning the distribution of surplus among cooperative members in the CIS countries have their own specifics. In Belarus and Kazakstan, for example, legal collisions occurred due to classifying the cooperatives in the respective civil codes as "non-commercial organisations". The codes specify that the cooperatives can carry out entrepreneurial activity only to the extent limited by their constitutional objectives. They further stipulate that the surplus shall not be distributed among cooperative members. In this connection, the cooperative laws cannot stipulate the right for cooperative members to get a return on the paid share capital. Equally, they cannot stipulate the distribution of surplus by a cooperative in the form of bonuses, in proportion to a member's participation in economic activity of a cooperative.

The Russian law on consumers' cooperation partly solves this collision through granting the right to cooperative members "to receive cooperative payments" according to decisions of the general meeting. The maximal amount of payments is limited by 20 per cent of the amount of surplus of a cooperative society.

Such legal collisions cannot take place with regard to producers' cooperatives, which are classified by the civil codes as "commercial organisations". The Russian law on producers' cooperatives specifies that "the surplus shall be distributed among cooperative members in proportion to their labour (or other) participation and to an amount of their share". The members, who do not work in the cooperative, can also benefit from this distribution "in proportion to the amount of their shares in a cooperative". By the decision of the general meeting, a part of surplus can be distributed among non-member employees.

All cooperative laws of the CIS countries stipulate the right of members to get back their paid share contribution in case of their resignation from membership or dissolution of a cooperative.

When summarizing the content of cooperative laws of the CIS countries with regard to the legal provisions on cooperative property and distribution of surplus, one may state that they bear a controversial character. On the one hand, the laws recognize the ownership rights of co-operative members. On the other hand, in some individual cases the members are deprived of the opportunity to receive even a limited return on their capital, which is envisaged by the third principle of the ICA Statement on the Cooperative Identity.

Relations of cooperatives with the state

During the Soviet period, the cooperatives of the present CIS countries functioned under the hard press of state control. The present laws declare autonomy and independence of cooperatives, but at the same time the trend of retaining the state's dominance has not yet been overcome.

The complexity of the situation manifests itself in the fact that the cooperatives themselves, especially those, which provide services to low-income strata of population mainly in rural areas, do need state support. However it is important to secure that in cases when such support is given, it would not be followed by negative influence on the cooperative's independence.

Most of the legislative acts on cooperatives of the CIS countries proclaim inadmissibility of interference on the part of bodies of state power in cooperative affairs. An exception from this is the Decree on consumers' cooperation of Belarus, which sets up a procedure of a mandatory conciliation of the issues related to the resignation of elected officers of cooperative organisations with the bodies of state power. In particular, the decree contains a provision prescribing that "The chairman of the board of a consumer society can be dismissed from his office by decision of the cooperative's highest authority. This can be done after agreeing this issue with local bodies of state power, or, alternatively, by decision of a local body of state power, with a consequent notification of the consumers' society in question". This provision is an example of the violation of the principle of cooperative democracy.

The cooperative laws of the CIS countries commonly contain provisions concerning a state support to cooperatives, but such provisions often bear non-obligatory character in the legal sense.

For example, the Russian law on agricultural cooperation has the following clause: "The state shall stimulate the establishment of cooperatives and shall offer support to them through allocating resources from the federal budget and from regional budgets for acquiring and constructing processing and servicing enterprises, for the establishment of credit and insurance cooperatives on the basis of territorial development programs, as well as through scientific, human resource development and informative assistance".

This provision is nothing but declarative, as legal instruments for its implementation have not been determined. In reality, the process of the creation of agricultural cooperatives is very slow and the presently functioning cooperatives can hardly boast of any significant state support.

The law on consumers' cooperation of Russia sets up a procedure, according to which the relationships between cooperatives and the bodies of local and central state power are stipulated by agreements. An analysis of the existing agreements reveals that a major part of obligations is assumed by the consumers' cooperatives, mainly for improved services and equitable pricing policies. The state obligations usually concern disposing credit resources (commonly on very hard terms) and limited taxation preferences. The existing practice proves, that even these insignificant obligations are not always properly met, neither by cooperatives nor by the state bodies.

The Moldavian law on consumers' cooperation contains a special article entitled "Privileges granted to consumers' cooperatives". Its provisions envisage privileges to consumers' cooperatives in the sphere of the utilization of their surplus, the taxation and some other.

However in the whole the cooperatives in most of the CIS countries do not get state support even when it could be provided on an equal terms with other economic actors.

Thus, in most of the CIS countries the consumers' cooperatives are not subject to state support in accordance with the legislative acts on the state support of small entrepreneurship, despite the fact that the absolute majority of the consumers' cooperatives are engaged in SME activity.

The Russian law on state support of small enterprising prescribes the establishment of special funds, aimed at providing support to small businesses, at the creation of mechanisms for granting preferential loans and other privileges to small businesses. However only "commercial organisations", representing small business sector are eligible for such privileges, whereas the consumers' cooperatives are totally excluded from this list.

It is deemed necessary to make a principal notice about negative influence of the state on the cooperative development.

All the CIS countries establish an order for licensing individual spheres of business activity for which bodies of state power are responsible. In Russia, for instance, more than 500 spheres of activities are subject to licensing. According to expert estimations, this number could be reduced by many times, without any damage to the existing practice. The same situation has formed with regard to the certification of commodities, when unreasonably large number of commodities for retail network is subject to mandatory certification.

Excessive licensing and certification imposes additional costs on the cooperatives, puts them to an unjustified dependence on the state officials, thus creating additional obstacles for their adequate performance.

A logical conclusion can be made that the legislation in the CIS countries, regulating the relationships between the state and the cooperatives, has not yet created favourable environment for cooperatives. Some individual laws allow a direct interference of the state in cooperative affairs. Some laws declare a state support to cooperatives but do not provide for legal mechanisms of its implementation. The consumers' cooperatives are deprived the access to special funds designed to support small enterprises.

3.2 Decrees by heads of states and by governments

Normative legal acts, adopted by the bodies of the executive power, play a certain role in the regulation of cooperative activity in the CIS countries. Their impact on the development of the cooperative movement bears a controversial character. In some cases they are aimed at providing a state support to cooperatives, but more often it is just an unjustified interference in the cooperatives' affairs.

As an example, one can refer to the Decree of the President of Russia "On measures aimed at the stabilization in the provision of goods and services to the rural population" (1996). This document, adopted during the presidential election campaign, charged the government and the local bodies of state power with a commission to undertake measures aimed at making the organisations of consumers' cooperatives to provide mandatory services to non-member sectors of the rural population. Those categories included disabled persons, children and other people who needed social protection. Above that, the same bodies were supposed to control re-establishing members of the consumer cooperatives, who seized their membership during 1991-1996.

Thus a direct interference in cooperative affairs was made without taking into account that such matters are a prerogative of the cooperatives themselves. Some “baits” of that Decree, such as vague promises of providing a direct state support to the cooperatives, had never been realized.

Another example of a direct interference is the Decree of the President of Russia “On the Commercialization of Enterprises of the Consumers’ Cooperatives” (1997). It prescribed the organisations of consumers’ cooperatives to reorganize their enterprises (retail stores, restaurants, purchasing agencies, etc.) in such a way that the latter could acquire a status of a legal entity.

This decree inflicted a great damage to a number of consumers’ cooperative organisations in Russia, as it was used by some dishonest managerial staff in their personal interests as a legal instrument for taking over these enterprises. According to this decree, they could attain a full independence from their cooperative societies and could manipulate with their newly acquired legal status, which made it possible even to “privatize” such enterprises at a later stage.

Perhaps the most damaging consequences for consumer cooperatives had the Uzbek Government Decree of 1998 “On measures aimed at harmonizing property relationships, governance structures and de-monopolization of rural trade”. By this decree many rural consumers’ societies were transformed into joint-stock companies or totally liquidated.

At the same time, some legal acts of this kind have played a positive role in improving legislative environment for the cooperatives in the CIS countries, mainly with regard to their specific role in the emerging free-market economy. Among them one can mention the Decree of the President of Kazakhstan “On measures aimed at improving services to rural producers (1993); the Russian Government’s Decree “On enhancing the role of consumers’ cooperatives in the food supply of the population”; the Decree of the President of Ukraine “On measures aimed at the development of the cooperative movement and at increasing its role in the reformation of the Ukrainian economy” and some other.

4. Model legislative acts on cooperative

4.1 Model Civil Code

In 1992 the Inter-Parliamentary Assembly of the CIS was established with the seat in Sankt-Petersburg. Its main function is the elaboration and adoption of model laws, which are supposed to be used in the process of the formation of a national legislation.

So far the Inter-Parliamentary Assembly of the CIS has adopted over 100 legislative acts, some of which relate to cooperative activity.

The basic act is a model civil code, which was elaborated and adopted during 1994 – 1996. It consists of 1235 articles and embraces the whole system of property relations and other relations connected with them.

The structure and basic provision of the model code are reproduced to a large extent in the civil codes of Armenia, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Tadjikistan, Turkmenistan and Uzbekistan.

The model civil code, being no doubt an important commendatory act, bears similar faults with regard to cooperatives, like most of the civil codes of the CIS countries. In particular, it gives incorrect interpretations of the character and objectives of a cooperative, of its definition and classification, of the provisions concerning distribution of surplus, liability of members, etc.

At present the Inter-Parliamentary Assembly is considering proposals on amendments to the model civil code, initiated by the International Council of Consumers' Cooperatives (Consuminter), which affiliates the majority of apex cooperative organisations of the CIS countries. These proposals envisage in particular the following amendments to the model civil code, aimed at improving the cooperative legislation:

- Inclusion in the text of the model code a correct definition of a cooperative accepted in the international practice;
- Defining more exactly the types of cooperatives on the basis of existing diversity, as well as defining their identity;
- Inclusion of the provision that the order of surplus distribution shall be determined by cooperative by-laws;
- Allowing the cooperatives to establish a unitary type of enterprise owned by the cooperatives;
- Inclusion of new provision on cooperative associations (unions) which shall be allowed to carry out entrepreneurial activity and to establish associations (unions) of a subsequent level.

In June 2001, the author of this study took part as an expert in the work of the Permanent Commission on Economy and Finance of the Inter-Parliamentary Assembly of the CIS. The agenda of the Commission included the issue on "Initiating amendments to the model civil code with regard to issues determining an organisational and legal status of cooperatives". The Commission decided that the proposals of the Consuminter for amending the model civil code were recognized as expedient. It was further decided that these proposals were sent to national parliaments and other interested organisations, which

would give their comments by October 20, 2001, after which this issue would be finally discussed at the Permanent Commission's meeting.

Along with supporters of this proposal there were adversaries as well, in particular among those who formerly participated in the elaboration of the model civil code. Their characteristic attitude is non-acceptance of a specific nature of the cooperative and a strong desire to retain the existing approaches, where the priority is given to the development of non-cooperative sectors of economy.

Discussion on this issue is going to continue and the final decision will depend on opinions expressed by the national parliaments of the CIS countries.

4.2 Model law on cooperatives and their associations (unions)

Adopted by the Inter-Parliamentary Assembly in 1997, this law, although limited by the above-mentioned provisions of the model civil code, represents a relatively complete version of a legislative act as a whole. As it is practiced in the Inter-Parliamentary Assembly, it is formulated as a model text of a general law on cooperatives, which can be adapted to specific local conditions of the respective countries.

In brief, its structure is given below.

Preamble says that the law determines general legal, organisational, economic and social aspects of the establishing and functioning of cooperatives and their associations (unions) with the consideration of the cooperative values and principles recognized by world community.

Main definitions, which are used in the law, are listed with a brief explanation of each definition (a cooperative, a member of a cooperative, a share contribution, share capital, reserve fund, indivisible fund, cooperative payments, participation in the economic activity of the cooperative, etc.

Main principles: 6 principles out of 7 are formulated.

Types of cooperatives are determined, namely in the sphere of production and services, agricultural, consumers', housing, credit unions, etc.

Formation of a cooperative: The order of the formation is determined, as well as by-laws requirements and the order of state registration.

Rights and obligations of members: A provisional list of rights and obligations of members is given.

Property of a cooperative: It is stipulated that the property, created by member contributions and formed through economic activity of a cooperative, belongs to the cooperative on the right of the ownership of a legal entity. The order of payment of entrance and share contributions, the formation of funds is determined.

Governance in the cooperative: General meeting is determined as the highest authority of a cooperative, an executive body is the board (chairman). Supervisory council may be established if it is envisaged in the by-laws.

Cooperative unions to be established with the purpose of the coordination and protection of cooperative interests, for the creation of more favorable conditions for economic activity, for mutual help and joint actions in attaining constitutional objectives, for providing informational, legal and other services to their affiliated members.

Labor relations in the cooperative: The model law establishes an average number of employed personnel in the producers' cooperative (not more than 30 per cent). For consumers' cooperatives, the law doesn't set up any limitations, as well as regards the provision of services to non-members. It is stipulated that labor relations between employers and employees are determined in accordance with the existing legislation and cooperative by-laws.

Inter-relations between cooperatives and the state: It is stipulated that the bodies of state power have no right to interfere in the economic, financial and other activity of cooperatives and their unions, with the exception of the cases envisaged by the legislation.

Specific features of different types of cooperatives: The law bears a general character, but nevertheless it aims at reflecting specific features of individual types of cooperatives: producers', consumers', agricultural, housing, credit, etc. In this way it suggests the unification of legal norms for different types of cooperatives on the one hand, and the consideration of their specific features on the other.

4.3 Adjacent model acts affecting interests of cooperatives

There are a number of adjacent model acts, which have certain significance for the formation of national cooperative legislation. Among them are such acts as "On general principles of the regulation of the protection of consumers' rights"(1993); "On the protection of economic competition" (1996); "On state support of small enterprises" (1997); "On audit" (1994); "On the basics of ecological entrepreneurship" (2000), etc.

It must be noted however, that the participation of the national cooperative organisations of the CIS countries in the model legislative process is rather passive, which naturally hinders due protection of their interests in the existing national cooperative legislation. At present one can notice a growing understanding in the cooperative circles of the importance of model legislative activity, which exerts notable influence on national legislative policies, including those which affect the cooperative movement. The collaboration of the cooperators with the Inter-Parliamentary Assembly of the CIS is regarded as expedient, which is evidently a positive trend in the work for improving cooperative legislation.

This is also important in the light of the necessity of a periodical review of the acts adopted by the Inter-Parliamentary Assembly, with the consideration of their use in the national legislation of the CIS countries and in view of international practices.

5. Summary and conclusions

1. The legislation of the CIS countries is being formed in difficult and controversial conditions of the transitional period. The national constitutions, which reflect the aspirations of the states for the formation of a free democratic civil society, have been adopted along with the civil codes regulating the sphere of economic relations. A considerable number of laws, including special cooperative laws have been also adopted.

At the same time, many legislative acts bear the traces of haste and inadequate elaboration of legal issues, related to functioning of a multi-faceted market economy or to borrowing foreign experience, which might be alien for the local conditions.

The legislation of the CIS countries has not yet formed a homogeneous system. The adoption of an individual law much depends on the lobbying influence of the interested groups, rather than on the immediate needs of the society.

2. The cooperative law, as an integral part of the national legal system of the CIS countries is still in the process of formation. The existing legislative acts on cooperatives do not take into full account their specific character, they do not reflect a dual nature of cooperatives, as well as their economic and social identity.

Despite the fact that in a number of the cooperative laws, adopted in the second half of 1990-s, the cooperative principles are declared, their true meaning is often distorted. One cannot accept as rightful the existing classification for the producers' cooperatives as "commercial organisations" and the consumers' cooperatives as "non-commercial organisations", without considering that cooperatives of any kind do not regard profit as its main objective, but its non-profit character has its own specifics, which distinguish cooperatives from non-commercial public, religious and charity organisations. Any kind of a cooperative is formed for providing services to its members, for which purpose it should be profitable and competitive.

The cooperative laws of the CIS countries do not guarantee the respect of the principle of autonomy and independence of the cooperative. This manifests itself in the establishing of certain legal provisions enhancing a dominant role of the state and in some cases of apex unions, which, on the contrary, are supposed to be run by primary organisations, whose interests they are supposed to protect.

Some laws impose on cooperatives rigid schemes of the governing structures, establish excessively detailed requirements of their composition, irrespective of a size of a cooperative and a character of its activity. By this cooperatives are artificially restricted of opportunities for choosing optional governance schemes and for defining relative provisions in the by-laws on the basis of general legislative norms.

3. The legislation of the CIS countries determines basic forms of relationships between the cooperatives and their members. However, a characteristic underestimation of these relations under the Soviet regime has not been overcome to a full extent, and the presently existing norms are still insufficient. In some cooperative laws there are no clear provisions with regard to the rights and obligations of members, to specific conditions for servicing members and non-

members. Financial rights of members are especially insufficiently stipulated in the laws. Even more, some laws deprive cooperatives of the right to allocate resources out of their surplus for dividends and bonuses to members.

4. The adaptation of the cooperatives to the conditions of a free market requires a legislative enforcement of their right for the development of entrepreneurial activity and for receiving state support. However this issue is very vaguely reflected in the existing cooperative and adjacent laws. In some cases, consumers' cooperatives, which are mostly widespread in the post Soviet scene and in fact are multi-purpose cooperatives, are not liable to entrepreneurial activity and hence, to a state support in accordance with the existing laws on state support of SME.

The laws put obstacles for the establishment of cooperative enterprises necessary for the fulfillment by cooperatives of their constitutional objectives. In a number of the CIS countries the laws determine that individual enterprises, not bearing a status of an economic society, (so called unitary enterprises) may be established only in the state sector of economy. In puts the cooperatives in an unequal condition and makes a negative influence on managing cooperative activity.

For example, consumer cooperatives in Russia possess over 100 thousand of various enterprises (retail and wholesale stores, restaurants, purchasing agencies, processing industries, etc), which in the past had a status of a cooperative enterprise with a property allocated to them on the right of business jurisdiction. Nowadays they are not allowed to have such a status and are forced to transform into "cooperative branches" or limited societies despite the fact that the property allocated to them belongs to the cooperatives as an indivisible property, which cannot be divided by individual shares.

In conjunction with the above-mentioned legislative restrictions the consumers' cooperatives have to seek for alternative ways of running their business through establishing limited societies, or through entering private joint enterprises. Such a practice endangers the cooperatives in terms of losing their positions in the market and of taking over their enterprises by their competitors.

It would be much more expedient to lift the legislative restrictions for the development of entrepreneurship by the cooperatives themselves and by the enterprises and unions established on their initiative.

5. The laws of the CIS countries do not determine terms for financing business activity of the cooperatives. The latter are put in unequal condition as compared with other business actors in the market. Thus cooperatives are forbidden to issue liquid investment certificates, bonds, they are in practice deprived of the use of alternative sources of external financing.

It is stipulated by the legislation of the CIS countries that banks may exist only in the form of an economic society, basically as joint-stock companies. Cooperative banks, which existed in the past in Russia, Kazakhstan, Turkmenistan and some other republics, seized their activity, which also worsened the situation with regard to cooperative financing. In the majority of the CIS countries there is no appropriate legislation for establishing credit unions or cooperative insurance institutions.

6. Similar to other transitional economies, the cooperative legislation in the CIS countries is still in the process of formation. The main hindrances for the

elaboration of adequate laws can be attributed to a negative influence of the recent past's experience, formed under the totalitarian regime, to the absence of due understanding of true nature of cooperatives on the part of many legislators.

One can suggest that in the course of accumulating positive experience of cooperative development and a gradual formation of the civil society and free-market relations the cooperative legislation will be improving and approaching to world standards of a high level.

The continuation of studying these problems under the ILO auspices in close collaboration with the Inter-Parliamentary Assembly of the CIS and the cooperative organisations and parliaments of individual CIS countries could make a notable contribution in this process.

Attachment

List of legislative acts of the CIS countries used in the study

Azerbaijan

The Constitution of Azerbaijan (1995)

Armenia

The Constitution of Armenia (1995)

The Civil Code of Armenia (1998)

The Law on Consumers' Cooperation (1993)

Belarus

The Constitution of Belarus (1996)

The Civil Code of Belarus (1999)

Decree of the President of Belarus "On Consumers' Cooperation in the Republic of Belarus" (1999)

Georgia

The Constitution of Georgia (1995)

The Civil Code of Georgia (1999)

Decree of the President of Georgia "On Consumers' Cooperation" (1993)

The Law of Georgia "On Entrepreneurs" (1994, amended in 1997)

The Law of Georgia "On Consumers' Cooperation" (1997)

Kazakhstan

The Constitution of Kazakhstan (1995)

The Civil Code of Kazakhstan (1995)

The Law of Kazakhstan "On Consumers' Cooperation" (1991)

The Law "On Producers' Cooperatives" (1998)

The Law of Kazakhstan “On Rural Consumers’ Cooperation” (1999)

Decree of the President of Kazakhstan “On Measures Aimed at Improving Services to Producers and to Population in Rural Areas (1993)

Kyrgyzstan

The Constitution of Kyrgyzstan (1993, amended in 1996)

The Civil Code of Kyrgyzstan (1996)

The Law of Kyrgyzstan “On Cooperatives” (1999)

Moldova

The Constitution of Moldova (1994)

The Law of Moldova “On Consumers’ Cooperation” (2000)

Russia

The Constitution of the Russian Federation (1993)

The Civil Code of the Russian Federation, Part 1 (1995)

The Law “On Consumers’ Cooperation” (1992, amended in 1997 and in 2000)

The Law “On State Support of Small Enterprises in the Russian Federation” (1995)

The Law “On Producers’ Cooperatives”(1996)

The Law “On Joint-Stock Societies “ (1996)

The Law “On Horticultural, Gardening and Dacha Associations of Citizens” (1998)

Decree of the President of Russia “On Commercialization of the Activity of the Enterprises of the Consumers’ Cooperation” (1991)

Decree of the President of Russia “On Measures Aimed at the Stabilization in Providing Rural Population with Goods and Services” (1996)

Decree of the Russian Government “On Enhancing the Role of Consumers’ Cooperation in Food Distribution Among the Population” (1999)

Tadjikistan

The Constitution of Tadjikistan (1994)

The Law “On Consumers’ Cooperation in the Republic of Tadjikistan” (1992)

Turkmenistan

The Constitution of Turkmenistan (1992)

The Law “On Consumers’ Cooperation in Turkmenistan” (1992)

Uzbekistan

The Constitution of Uzbekistan (1991, amended in 1993)

The Civil Code of Uzbekistan (1995)

The Law “On Cooperatives In the Republic of Uzbekistan” (1992)

The Law “On Agricultural Cooperative” (1998)

Decree of the Government of Uzbekistan “On Measures Aimed at Harmonizing Property Relationships, Improving Governance Structure and De-Monopolization of Rural Trade” (1998)

Ukraine

The Constitution of Ukraine (1996)

The Civil Code of Ukraine (1963, amended by laws during 1992 – 1997)

The Law “On Consumers’ Cooperation” (1992)

The Law “On Agricultural Cooperation” (1997, amended in 1997 and in 1998)

Decree of the President of Ukraine “On Measures Aimed at the Development of the Cooperative movement and Enhancing Its Role in Reforming Ukrainian Economy On Market Conditions” (2000)

Commendatory legislative acts adopted by the Inter-Parliamentary Assembly of the CIS

The Civil Code, Part One, Model (1994)

Model Law “On Cooperatives and Their Associations (Unions)” (1997)

Legislative acts of the former Soviet Union

Decree “On Worker-Peasant Consumers’ Societies” (1918)

Decree “On Consumers’ Cooperation” (1921)

Decree “On Reorganizing Consumers’ Cooperation on the Basis of Voluntary Membership” (1923)

Decree “On Consumers’ Cooperation” (1924)

The Law “ON Cooperation in the USSR” (1988)

Basics of the Civil Law of the USSR and Its Republics (1991)