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PROFIT OF THE COOPERATIVE AND ITS DISTRIBUTION

Açar sözlər: *Mülki Məcəllə, hüquq, dövlət, kooperativ, mənfəət.*

Ключевые слова: *Гражданский кодекс, право, государство, кооператив, прибыль.*

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Cooperation is one of the main systemic approaches aimed at the development of small and medium-sized enterprises, which form the basis of the economy of any country. This mechanism is widely used all over the world and has fully proven itself [2, p. 125].

S.I. Pakhomova and A.R. Purge note that even during the New Economic Policy period, cooperative-based joint activity was considered the main driving force of economic progress [6, p. 102].

The development of cooperative organizations has not lost its importance in many areas of the economy, primarily in agriculture [4, p. 179].

Legislative regulation of cooperatives' activities is of great importance in ensuring their efficient operation [7, p. 21].

The restoration of independence in the Republic of Azerbaijan and the transition from a planned economy to a free market economy led to fundamental changes in the legal status of all participants in civil turnover. In Soviet civil law, collective farm-cooperative property, along with state property, was considered one of the main forms of socialist property and constituted a special legal regime of public property.

According to the current legislation of the Republic of Azerbaijan, cooperative ownership does not act as a separate form of ownership, but as one of the forms of manifestation of the private property rights of legal entities, and the property of the cooperative is considered private property belonging to the cooperative legal entity.

Cooperatives can be classified into three main types, taking into account their legal status and operating objectives: production cooperatives, consumer cooperatives, and mixed (production-consumption) cooperatives. However, in the practical organization of cooperative activities, production and consumption cooperatives dominate. For this reason, most researchers in the scientific literature prefer to study the legal regulation and operational characteristics of production and consumption types of cooperatives. According to M.L. Minina, the classification of production cooperatives as commercial organizations and consumer cooperatives as non-commercial organizations does not fully reflect the specific features of the legal nature of cooperatives and the goals of their establishment [5, p. 49].

The effectiveness of the legal and economic activities of both production, consumer and mixed-type cooperatives directly depends on the procedure for forming a share fund, the mechanism for exercising the right to dispose of cooperative property, as well as the principles of distributing profits obtained as a result of activities among members.

The main feature that distinguishes cooperatives from Limited Liability Companies and Joint Stock Companies is that they operate on the basis of a membership (persons) rather than a capital unit. It is this feature that has a decisive impact on the rules for the formation and management of cooperative property and the distribution of profits among members.

According to S.A. Khodyrev, profit is considered the main goal of the economic activity of all economic entities carrying out entrepreneurial activity in a market economy. As an economic category, profit represents the net income formed as a result of entrepreneurial activity and obtained by the economic entity [3, p. 3].

Since a production cooperative is a commercial legal entity, the main purpose of its activities is to make a profit. This profit is a positive financial result formed after deducting tax liabilities, production costs and other necessary expenses from the income of the cooperative from the production and sale of products, performance of work, provision of services, as well as other entrepreneurial activities not prohibited by law.

A consumer cooperative, on the other hand, is a non-commercial legal entity and its main goal is not to make a profit, but to meet the material and other needs of its members. At the same time, it may engage in entrepreneurial activity, provided that it serves the objectives of the charter. The use and distribution of profits from such activities is carried out in accordance with the requirements of the legislation and the charter of the cooperative.

One of the main doctrinal principles of cooperative law is reflected in the mechanism of profit distribution. While in joint-stock companies, dividends are determined in accordance with the size of the shares owned by the shareholder, and in limited liability companies - in accordance with the size of the participant's share in the authorized capital, Article 110-2.2 of the Civil Code of the Republic of Azerbaijan regulates the distribution of profits in cooperatives according to a mixed legal model based not only on capital participation, but also on the participation of the cooperative member through personal labor or in other forms [1].

The main legal idea of Article 110-2 of the Civil Code of the Republic of Azerbaijan is that a production cooperative, unlike classical capital associations, is a legal entity model based on the joint activity and personal labor participation of members. Therefore, if one of the two members who have contributed the same amount of share capital has a more active personal labor participation in the activities of the cooperative, this factor is also taken into account when distributing profits. Thus, in cooperative law, profit distribution is carried out according to a mixed legal model based not only on capital participation, but also on the degree of participation of the member in the cooperative's activities. The specific rules for profit distribution can be regulated in more detail in the cooperative's charter, subject to the imperative requirements of the Civil Code.

A systematic analysis of Article 110-2 of the Civil Code shows that the use and distribution of cooperative profits is usually carried out in the following sequence (although the Law does not directly determine the sequence of these payments):

- Payment of taxes and other mandatory payments established by law;
- Making allocations for the formation of funds (reserve fund, indivisible fund and other funds) provided for by law and the cooperative's charter;
- Fulfillment of the cooperative's existing obligations to creditors;

- Distribution of the remaining profit among the members in accordance with Article 110-2 of the Civil Code of the Republic of Azerbaijan and the cooperative's charter, taking into account the amount of their share (absolute and additional) fees, as well as the degree of participation in the activities of the cooperative through personal labor or in any other form.

Article 110-2.2 of the Civil Code of the Republic of Azerbaijan defines the substantive and legal criteria for the distribution of cooperative profits. This norm provides for two independent criteria for the distribution of profits and allows their application both separately and together. The first criterion is the amount of the share fee contributed by the member to the cooperative's share fund. This includes both mandatory membership fees and voluntary additional fees. This approach is close to the principle of profit distribution proportional to the share of participation in capital companies. The second criterion is the member's participation in the cooperative through personal labor or in some other form. This feature is one of the main elements that distinguishes a cooperative from corporate legal entities based solely on capital participation. While in joint-stock companies, dividends are usually calculated solely on capital participation, in a cooperative the personal labor participation of a member can also act as a legal criterion for profit distribution. The expression "participation in other forms" used in the article is evaluative in nature and may also include other forms of economic participation of the member, depending on the type of cooperative, its characteristics of activity and the provisions of the charter. The expression "participation in other forms" used in the article is evaluative in nature and may also include other forms of economic participation of the member, depending on the type of cooperative, its characteristics of activity and the provisions of the charter.

The content of the concepts of "participation through personal labor" and "participation in other forms" and the criteria for their evaluation, reflected in Article 110-2.2 of the aforementioned Code, have not been specified. As a result, the determination of these criteria is subject to the regulation of each cooperative's charter, which may lead to the same legal relations being regulated differently in different cooperatives and to disputes in law enforcement practice. In particular, the issue of the criteria on the basis of which the volume of a member's personal labor participation or its economic equivalent is assessed has not been resolved in the legislation.

In other words, the main drawback of Article 110-2.2 of the aforementioned Code is that, although it defines the criteria for profit distribution, it does not normatively specify the procedure for applying these criteria, their mutual ratio and calculation methodology. As a result, determining the above issues by the cooperative's charter and decisions of the general meeting creates a wide margin of discretion, which may pose risks in terms of legal certainty and equal protection of the rights of cooperative members. In our opinion, it would be appropriate to amend Article 110-2-2 of the Civil Code of the Republic of Azerbaijan and provide the following wording: "The profit of the cooperative is distributed in accordance with the procedure established in the cooperative's charter, taking into account the amount of contributions made by members to the cooperative's share fund, their personal labor or the volume of their participation in the cooperative's activities in any other form". The criteria for profit distribution, the mutual ratio of these criteria and the calculation procedure are determined in advance in the cooperative's charter and are applied on the basis of the principle of equality in relation to members in the same legal situation".

Article 110-2.3 of the Civil Code grants the general meeting broad discretionary powers, but does not define the legal criteria and limits for the exercise of that power. As a result, the general meeting can significantly limit the amount of cooperative payments and dividends. The failure to define the limits of such restrictions in the law may, in individual cases, lead to the abuse of this right, damage to the property interests of minority members, and the emergence of corporate conflicts.

We believe that in order to determine the legal basis and limits of the exercise of discretionary powers of the general meeting of the cooperative, strengthen the principle of legal certainty, ensure more effective protection of the property rights of minority members, strengthen the principles of equality and honest behavior in corporate governance, as well as ensure a fair balance between the financial stability of the cooperative and the economic interests of its members, it would be appropriate to amend Article 110-2.3 of the Civil Code of the Republic of Azerbaijan and provide it with the following wording: "The general meeting of members of the cooperative may adopt a decision on limiting the amount of cooperative payments and dividends in order to ensure the financial stability of the cooperative, the formation of funds provided for in its charter, financing the development of the cooperative, as well as ensuring the fulfillment of obligations to creditors. Such a decision should not disproportionately restrict the rights and legitimate interests of the members of the cooperative, should be applied on the basis of the principle of equality in relation to members in the same legal situation and should be based on objective criteria previously established in the cooperative's charter".

It is noteworthy that the legislator regulates the concepts of "cooperative payments" and "dividends" as types of payments with different legal content. The parallel existence of these forms of payment reflects the hybrid legal nature of the cooperative. This indicates that the cooperative is a special corporate-legal organization form that combines both the participation of members through personal labor and share (capital) participation.

Since a consumer cooperative is a non-commercial legal entity, its main purpose is not to make a profit, but to ensure the economic and social interests of its members. Therefore, income from entrepreneurial activities permitted by law and the charter is primarily directed to the implementation of the charter goals of the cooperative. The use and, if possible, distribution of such income among members is carried out in accordance with the requirements of the legislation and the cooperative's charter. Although in comparative cooperative law, the volume of use of cooperative services by a member is considered one of the main criteria for the distribution of income in consumer cooperatives, Azerbaijani legislation does not establish this criterion as a general rule for all consumer cooperatives.

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KOOPERATİVİN MƏNFƏƏTİ VƏ ONUN BÖLÜŞDÜRÜLMƏSİ

XÜLASƏ

Ümumilikdə, Azərbaycan Respublikası Mülki Məcəlləsinin 110-2-ci maddəsi kooperativin hüquqi təbiətinə xas olan kapital iştirakı ilə şəxsi əmək və ya digər formada iştirakın uzlaşdırılması prinsipini özündə əks etdirən, mənfəətin bölüşdürülməsinin əsas hüquqi meyarlarını müəyyən edən mühüm normadır. Həmin maddə dispozitiv hüquqi tənzimetmə üsuluna üstünlük verməklə kooperativ üzvlərinə mənfəətin bölüşdürülməsi qaydalarının müəyyən edilməsində geniş sərbəstlik verir, eyni zamanda kooperativin kreditorları qarşısında öhdəliklərinin prioritet qaydada yerinə yetirilməsi, mənfəətin bölüşdürülməsinin əsas meyarları və bu məsələlərin kooperativ üzvlərinin ümumi yığıncağı tərəfindən həll edilməsi kimi fundamental hüquqi çərçivəni müəyyən edir.

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ПРИБЫЛЬ КООПЕРАТИВА И ЕЕ РАСПРЕДЕЛЕНИЕ

РЕЗЮМЕ

В целом статья 110-2 Гражданского кодекса Азербайджанской Республики представляет собой важную правовую норму, устанавливающую основные юридические критерии распределения прибыли в кооперативе и отражающую присущий его правовой природе принцип сочетания участия в капитале с личным трудовым либо иным участием членов кооператива. Предоставляя приоритет диспозитивному методу правового регулирования, указанная статья наделяет членов кооператива широкой свободой усмотрения при определении порядка распределения прибыли. Вместе с тем она закрепляет фундаментальные правовые основы, предусматривающие приоритетное исполнение кооперативом обязательств перед кредиторами, определяет основные критерии распределения прибыли, а также относит решение указанных вопросов к компетенции общего собрания членов кооператива.

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