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NORMATIVE LEGAL ACTS REGULATING THE ACTIVITIES OF COOPERATIVES IN THE REPUBLIC OF TURKIYE

Açar sözlər: *Mülki Məcəllə, hüquq, dövlət, kooperativ, fiziki şəxs.*

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Understanding the legal framework for cooperatives in Turkiye involves understanding the key legal provisions that govern their establishment and operation. The activities of cooperatives in the Republic of Turkiye are regulated by the Law of the Republic of Turkiye on Cooperatives dated 24 April 1969 (Law No. 1163). Article 1 of that Law defines cooperatives as follows: Cooperatives are commercial partnerships (companies) with variable capital and members, established by individuals and legal entities to meet and protect the specific economic interests of their members, in particular their professional or material needs, through mutual assistance, solidarity, labor and monetary donations [6].

The Law on Cooperatives operates in conjunction with the Commercial Code of Turkiye No. 6102, which contains additional rules for registration and management.

According to Reha Poroy, Ünal Tekinalp and Ersin Çamoğlu, cooperatives are different from other public associations and commercial companies, which are associations of individuals, in terms of their goals. Unlike commercial companies, whose goal is to make and share profits, cooperatives cannot pursue the commercial goal of making and sharing profits [9, p. 588].

Yusuf Ustun and Muhittin Aydin note that the main goal of cooperatives is to improve the economic well-being of their members by meeting their economic interests and needs [15, p. 111]. Therefore, they aim to provide economic benefits and protection to their members, and to meet their material needs. In this respect, cooperatives also differ from public associations established for charitable purposes.

Whether cooperatives have entrepreneurial status is debatable. Even during the period when the former Turkish Commercial Law No. 6762 dated 29 June 1956 [14], was in force, this issue was controversial and there was no consensus in court decisions. The article on which some Supreme Court decisions and doctrines that did not consider cooperatives to be entrepreneurs were based was Article 1 of the Law on Cooperatives. It was there that, when defining a cooperative, it was stated that it was an "organization" and not a "company" [4, pp. 10-11]. However, opposing views were also put forward during this period.

On April 21, 2004, Law No. 5146 amended Article 1 of the Law on Cooperatives, which defines cooperatives, and replaced the word "organization" with the word "partnership (company)".

In the first part of Article 124 of the Turkish Commercial Law dated 13 January 2011, which is an integral part of the Turkish Civil Code (Law No. 4721) adopted on 22 November 2001, cooperatives are listed among commercial companies, as in Article 136 of the previous Turkish Commercial Law. Thus, the aforementioned articles state: commercial companies consist of collective, limited partnership, joint-stock company, limited liability company and cooperative companies [13].

After the adoption of the new Turkish Commercial Code, a decision issued by the 15th Judicial Circuit concluded that the activities of housing cooperatives are not considered entrepreneurial activities [4, p. 15-16].

Mehmet Bahtiyar states that according to the amendment made to the definition of cooperatives in Article 1 of the Law on Cooperatives and Article 124 of the new Turkish Commercial Code, cooperatives are still considered commercial partnerships (companies). This situation indicates that the activities of cooperatives should be considered entrepreneurial activities. In addition, the idea that the norms of the Turkish Commercial Code regarding joint stock companies are applied when there are issues not regulated in the Law on Cooperatives, as reflected in Article 98 of the Law on Cooperatives, also gives reason to say this. Consequently, although cooperatives, unlike commercial partnerships (companies), do not aim to make a profit and share it among their members, they also have economic goals and interests [2, pp.1-2].

According to Article 2 of the Law on Cooperatives, a cooperative is established by no less than seven persons. According to Article 19 of the same Law, each member of a cooperative must acquire at least one membership (partnership) share. The value of one membership (partnership) share is 100 (one hundred) Turkish liras.

Both natural and legal persons can be members of a cooperative (Article 1 of the Law on Cooperatives). However, natural persons must have legal capacity (Article 8 of the Law on Cooperatives).

Although it is not controversial that those who are completely incapacitated cannot become members of a cooperative, the issue of those with limited capacity being able to become members of a cooperative through a legal representative is controversial. According to Eriş Gönen, it is not possible to become a member of a cooperative through a legal representative [3, p. 297].

According to Abdulkadir Arpacı, persons with limited capacity can become members of a cooperative with the permission or consent of their legal representatives [1, pp. 23-24]. Özge Örnek also expresses a similar opinion, noting that, as long as the special conditions that members must meet do not contradict mandatory provisions, the founding agreements (charter) may stipulate that persons with limited legal capacity can be members of a cooperative [8, p. 33].

There are no restrictions in the law on foreigners being members of cooperatives. Therefore, foreigners can also be members of cooperatives, unless there is a provision in the founding documents prohibiting foreigners from being members of cooperatives. In addition, foreigners can become participants, partners, shareholders of one of the commercial companies regulated by the Turkish Commercial Law or of a regular company subject to the provisions of the Turkish Obligations Law. According to the Turkish Commercial Law, it is possible for foreign investors to establish cooperatives or become members of cooperatives. However, if the activities of a cooperative are prohibited for foreigners by spe-

cific legislative acts, foreigners cannot become members of that cooperative. In this context, a different assessment is necessary for housing cooperatives. Because issues related to the acquisition of property by foreigners are regulated by law, and foreign members of housing cooperatives are also subject to the rules regarding the acquisition of real estate by foreigners in Turkiye. Article 36 of the Law on Real Estate Registration stipulates that foreigners who own 50% or more of the shares or have the authority to determine the management body of a cooperative must obtain permission from the Governorship to acquire real estate [11].

There is no restriction on a person who is a member of one cooperative being a member of another cooperative. However, being a member of more than one cooperative operating in the same fields is contrary to the cooperative concept. Commercial companies are also permitted to be members of cooperatives. Because Article 9 of the Law on Cooperatives states that state and private legal entities may establish cooperatives in accordance with their goals, manage them, and become members. These provisions were included in the Law on Cooperatives as a result of the amendment made by Law No. 5146 dated April 21, 2004. Before the amendment, Articles 1 and 9 of the aforementioned Law stated that cooperatives could be established by individuals, state legal entities, special departments, municipalities, villages, societies and associations, therefore, legal entities such as companies, trade unions and foundations could not be members of cooperatives. The purpose of the relevant amendment is to increase the efficiency and effectiveness of cooperatives and ensure their development [9, p. 662].

Establishing a cooperative requires compliance with a number of procedural requirements, beginning with the development of a charter. These charters must detail the cooperative's objectives, business activities, capital structure, and governance model.

According to the amendments made by Law No. 7099 (Omnibus bill) dated March 10, 2018, the procedure for approving the charter has been changed. According to the currently valid regulatory legal acts, the founders of the cooperative, that is, those who establish the cooperative, must sign the charter at the trade registry body (i.e., at the Chamber of Commerce and Industry). That body approves and registers the charter. This amendment has abolished the previous rule (notarization of the charter). There is no longer a need for notarization of the charter [7].

According to the new law, the signature declaration of the heads of cooperatives is also drawn up directly at the trade registry authority, not at a notary's office. Notarized signature declarations are not accepted.

All registration applications must be submitted through MERSIS (*Merkezi qeydiyyat sistemi*-Central Registration System) [12]. The following documents are required to establish a cooperative: MERSIS application; Trade registry application; Chamber registration application; Permission letter from the relevant Ministry; Charter approved by the Trade registry authority (5 copies); Signature declaration approved by the Trade registry authority; Bank letter indicating that the share amounts have been paid to the bank; Inspector acceptance declaration; Letter of commitment.

The name of the cooperative must be unique and not similar to any existing registered entity, which requires prior verification with the Trade Registry to avoid conflicts, as stipulated in Article 39 of the Trade Code of Turkiye.

Following successful registration in the Commercial Register, the next step is registering the cooperative with the relevant municipal and tax authorities. This includes obtaining a tax identification number and registering

with the Social Security Administration to fulfill employment and social security obligations under the Tax Procedure Act of January 4, 1961 (Law No. 213) [10].

The cooperative must also open a corporate bank account to manage financial transactions and ensure transparency for tax purposes. Another important compliance measure is obtaining the necessary licenses and operating permits, depending on the specific scope of the cooperative's activities.

In addition to these compliance requirements, cooperatives in Turkiye must also navigate various industry regulations that may apply depending on their field of operation. For example, agricultural cooperatives must comply with additional regulations established by the Ministry of Agriculture and Forestry, which may include specific provisions on land use, sustainable agricultural practices, and subsidies. Maintaining consistent compliance with regulatory standards is vital to maintaining the legal status of a cooperative in Turkiye. This includes adhering to statutory audit requirements and fulfilling annual reporting obligations as outlined in the Turkish Commercial Code. Cooperatives are also required to convene annual general meetings to discuss and analyze the cooperative's financial condition and operating activities.

Proper record keeping and timely submission of financial statements to the relevant authorities are mandatory to avoid legal consequences.

We consider it necessary to state that the Turkish Condominium Law (Law No. 634) was adopted on June 23, 1965 [5]. This Law does not regulate the activities of housing cooperatives. The aforementioned Law regulates relations in buildings with individual owners (for example, buildings that have already been handed over). However, the aforementioned Law plays an important role in the process that occurs after housing cooperatives hand over apartments to their members, that is, at the stage of individualization.

The provisions of the Condominium Property Law (e.g. management of common areas, rights and obligations of residents) apply only after the establishment of a "condominium association". The term "condominium association" refers to the initial legal regime that allows for the creation of ownership rights for individual parts of a building (apartments) built on a land plot. Condominium association arises from the moment of state registration of rights to real estate.

Even if a housing cooperative completes the building and hands it over to its members, if a condominium association has not been established, the apartments are still legally registered in the cooperative's name, meaning they are considered the cooperative's property. In this case, the Law on Condominium Ownership does not apply and the management powers remain entirely with the board of directors of the cooperative. In other words, even if the residents live in the building, the person who is the full owner of the apartment or other real estate cannot dispose of that apartment or other real estate.

After the housing cooperative has completed the construction of the building, it must receive an official document on the occupancy permit. This document indicates that the building is ready for occupancy. The individual property issues of the members (according to the Law on Condominium Ownership) must be completed within 1 (one) year at the latest after receiving the occupancy permit. That is, each member must be registered as the owner of his or her apartment (Article 81 of the Law on Cooperatives).

Thus, the Law on Condominium Ownership creates the main legal basis for the "termination" and "transition to individual ownership" stages of housing construction cooperatives. It is impossible to transfer to individual ownership without establishing a condominium association.

Where there is no condominium association, the building is managed by the cooperative board of directors.

We would also like to point out that although there is no specific provision regulating the activities of cooperatives in the text of the Law of the Republic of Turkiye dated 7 November 2013 on Consumer Protection (Law No. 6502), cooperatives are considered as "sellers" in relation to their members, since they are institutions that sell housing or provide services, and therefore a number of provisions of that Law apply to them. For example, if there is a defect in the apartment delivered by the cooperative (for example, construction defects, insulation problems) or in any service provided (for example, delay in the personalization process), the third section of the aforementioned Law, called "Defective goods and services" (Articles 8-16), applies.

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TÜRKİYƏ RESPUBLİKASINDA KOOPERATİVLƏRİN FƏALİYYƏTİNİ TƏNZİMLƏYƏN NORMATİV HÜQUQİ AKTLAR

XÜLASƏ

Türkiyə Respublikasında kooperativlərin fəaliyyəti əsasən "Kooperativlər haqqında" 24 aprel 1969-cu il tarixli Türkiyə Respublikasının Qanunu və Türkiyə Mülki Məcəlləsinin ayrılmaz tərkib hissəsi olan 13 yanvar 2011-ci il tarixli Türkiyə "Ticarət haqqında" Qanunu ilə tənzimlənir. Kooperativ dəyişkən kapitala və dəyişkən üzvlüyə malik hüquqi şəxs kimi müəyyən edilir. Həm fiziki, həm də hüquqi şəxslər kooperativ üzvü ola bilər. Lakin fiziki şəxslər fəaliyyət qabiliyyətinə malik olmalıdırlar. Kooperativlərin fəaliyyətinin sahibkarlıq fəaliyyəti olub-olmaması məsələsi mübahisəlidir.

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НОРМАТИВНО-ПРАВОВЫЕ АКТЫ, РЕГУЛИРУЮЩИЕ ДЕЯТЕЛЬНОСТЬ КООПЕРАТИВОВ В ТУРЕЦКОЙ РЕСПУБЛИКЕ

РЕЗЮМЕ

Деятельность кооперативов в Турецкой Республике регулируется главным образом Законом Турецкой Республики «О кооперативах» от 24 апреля 1969 года и Законом Турции «О торговле» от 13 января 2011 года, являющимся неотъемлемой частью Гражданского кодекса Турции. Кооператив определяется как юридическое лицо с переменным капиталом и переменным числом членов. Членами кооператива могут быть как физические, так и юридические лица. Однако физические лица должны обладать дееспособностью. Вопрос о том, являются ли деятельность кооперативов предпринимательской деятельностью, является спорным.

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