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Legal problems of agricultural cooperation development in the conditions of digitalization in the Republic of Kazakhstan

This article examines some theoretical and practical issues of legal regulation of agricultural cooperative activities in the context of digitalization in Kazakhstan. Digitalization of the agricultural sector provides opportunities to improve the efficiency of agricultural cooperation, the study of legal problems of which will allow to effectively solve the problems of food security and rational use of agricultural land. The authors focus on the relevance of the problem under study, determine the place and role of digitalization in solving issues of agricultural cooperation. A comparative analysis of the legislation of foreign countries and the Republic of Kazakhstan in the field of agricultural cooperation and digitalization of agricultural entrepreneurship showed the lack of a unified concept for the implementation of digitalization of this area, which requires comprehension and legal support, including such areas as the creation of technologies that simplify the process of monitoring the use and protection of land of agricultural cooperatives; lending, subsidizing and insurance of agricultural cooperatives; the introduction of digital tools for the use of information resources, platforms and technologies that increase the efficiency of its activities; the implementation of digital platforms for monitoring and managing transport and logistics infrastructure in agriculture. It is proposed to legislate the goals and objectives of the digital transformation of the sphere of agricultural entrepreneurship in general, and to provide for measures to protect the rights and legitimate interests of agricultural entrepreneurs.

Keywords: agrarian legislation, agricultural cooperative, land law, problems of legal regulation, state mechanism, agricultural entrepreneurship, digitalization, digital technologies, agricultural map, agro-industrial complex.

Introduction

Nowadays, agricultural cooperative is one of the most widespread forms of entrepreneurial activity in agriculture in the world. Defining promising forms of cooperative management, it is useful to comprehensively study the world experience. The world experience of agricultural cooperatives is extensive and of great interest for the study and use by farmers of our republic. Foreign experience indicates that cooperatives operate in almost all the most important sectors of agriculture. Our own experience and world practice is widely used in the creation of cooperatives. This does not deny but presupposes the participation of republican and regional AIC management bodies in the development of cooperation and integration. In addition, it should be noted that agricultural cooperatives in the agrarian sphere can and should be developed to occupy a corresponding niche in the country's economy along with other effectively functioning agro-industrial formations.

In the Republic of Kazakhstan there are no scientific studies of the legal problems of agricultural cooperation in the context of new Entrepreneurial Code of the Republic of Kazakhstan and the Law of the Republic of Kazakhstan "On Agricultural Cooperation". There is no fully scientifically based methodological approach in special literature. In the theory and practice of the development of macroeconomic relations various forms of state influence on entrepreneurial activity are distinguished: fiscal, monetary, legal, and others. At the same time, in the modern conditions of globalization of the economy it is necessary to develop an effective strategy for using these forms in enhancing entrepreneurship.

The above shows that the problems of agrarian transformations require close attention from the legal science, which should theoretically comprehend the role of the state and law in the process of forming a conceptually new model of agrarian policy, and propose legal tools for its effective implementation in the present conditions. The current stage in the development of society requires a rethinking of many tenets of so-

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cialist theory and practice in the field of agricultural cooperation and the justification of new priorities, a review of conceptual provisions.

The development of cooperation in the agrarian sector of Kazakhstan requires new approaches in the implementation of the State program of the agro-industrial complex until 2020. The Republic of Kazakhstan has created an extensive legal framework for the development of cooperation.

October 29, 2015, Kazakhstan adopted the Entrepreneurial Code aimed at improving and developing legislation in the sphere of interaction between business entities and the state, supporting entrepreneurship, eliminating gaps and contradictions in the legal regulation of business relations [1].

The State Program "Digital Kazakhstan" states that its goals are to accelerate the pace of development of the economy of the Republic of Kazakhstan and improve the quality of life of the population through the use of digital technologies in the medium term, as well as to create conditions for the transition of the economy of Kazakhstan to a fundamentally new development trajectory, ensuring the creation of the digital economy of the future in the long term [2]. It should be noted that currently in our country there is a great potential for transformation in agriculture with the help of digital technologies, and in the conditions of full-scale digitalization program agriculture is able to reach a qualitatively new level of development and become a driving force of the country's economy. As the experience of the United States, Canada, and Australia shows, digital technologies have radically changed this traditional industry. Modern geographic information systems and big data obtained from various sources, including IoT, contribute to high yields without depletion of the soil and with the rational use of resources. The industrial Internet of Things enables the creation of automated farms with remote management. The developed logistics system and e-commerce make it possible to reduce the cost of delivering agricultural products to the final consumer, even for small farms, while maintaining their quality. This is an important factor in preserving and developing the production of environmentally friendly products, both from the point of view of preserving the health of the nation, and realizing the export potential [3]. Along with the above, it should be noted that in the Republic of Kazakhstan there are no scientific studies of the legal problems of digitalization of agricultural entrepreneurship. In the current legislation there are no norms regulating the principles and procedure, conditions for the digitalization of agricultural production, the responsibility of state bodies in the implementation of digitalization in this area, requirements for ensuring interests and rights in the process of digitalization of agricultural production [4]. The aforesaid shows that the problems of digitalization of agricultural transformations require close attention from the legal science, which should theoretically comprehend the role of the state and law in the process of forming a conceptually new model of digitalization in the field of agricultural entrepreneurship, and offer legal tools for its effective implementation in the present conditions.

Materials and methods

In the process of researching the problems of this scientific work general scientific and theoretical research methods were used. The main method of research is the method of analysis of scientific and legal literature on the stated research issues. The authors analyzed and studied the publications of scientists who have studied the problems of agricultural cooperation development in the conditions of digitalization. The generally accepted methods of scientific knowledge were used to study the basic issues related to agricultural cooperation development. The following methods were used: dialectical method, historical method, method of formal logic, method of synthesis and systematic analysis of data. Formal-legal and comparative-legal methods were also used.

Results and Discussion

At the present stage of development cooperation is recognized as the most perfect form of interaction. The idea of creating cooperation is based on the joint implementation of a project aimed at deriving economic benefits and having a positive socio-economic effect on the development of rural areas. Such a form of interaction can help activate the activities of economic entities, allow them to solve certain problems or increase the value of the resources involved.

In the current legislation of Kazakhstan, particularly in the Civil Code, the Law on Agricultural Cooperatives, an agricultural cooperative is recognized as a legal entity in the organizational and legal form of a production cooperative created on the basis of membership by voluntary association of individuals and/or legal entities for joint production and/or other economic activities in order to meet their socio-economic needs in the production, processing, marketing, storage of agricultural household products, aquaculture products (fish farming), the supply of the means of production and material and technical resources, lending,

water supply or other services for members of the cooperative, as well as associate members of the cooperative. They are legal entities with general legal capacity arising after their state registration, and act on the basis of the statutes adopted by the founders at meetings in accordance with the norms of general civil and cooperative legislation. The purpose of an agricultural cooperative is joint activities for the production, processing and marketing of agricultural products and the implementation of other activities not prohibited by law. Civil Code of the Republic of Kazakhstan, Art. 226 makes it possible to create production cooperatives based on a peasant farm: “members of a peasant or farm can establish a business partnership or production cooperative on the basis of the property of the farm. Such a reorganized peasant or farm as a legal entity has ownership of property transferred to it in the form of contributions and other contributions by members of the farm, as well as property obtained as a result of its activities and acquired for other reasons not contrary to the law” [5].

The main problem of the effective development of the agro-industrial complex of the Republic of Kazakhstan lays in the small-scale nature of production, accompanied by a high proportion of small farms in the total gross agricultural output, the total number of agricultural formations, and the tendency to reduce their land plots.

It should be noted that according to the legislation on entrepreneurial activity, its implementation, including the conduct of agricultural production, is possible without the creation of a legal entity. In this case, the citizen leading such activities, i.e., acting in the role of commodity producer, has the legal status of an individual entrepreneur and the corresponding rights and obligations of the participant in commodity-money and legal relations forming them.

All agricultural commercial organizations and enterprises are holders of complex legal personality, that is, they can be participants in administrative, civil, labor, cooperative, land and other legal relations. The range of such legal relations with the participation of agricultural commercial organizations (enterprises) is very wide and varied. It is determined for each particular enterprise primarily by the nature of its industrial and commercial activities and industry specialization.

The subject of law is one of the most important categories of legal science and practice. Without subjects there is no legal relationship. In our opinion, the subjects of agrarian legal relations can be, first of all, individuals and legal entities engaged in agricultural activities.

According to G.E. Bystrov, “the key to determining the circle of participants in agrarian relations is the concept of agricultural activity” [6]. The current legislation focuses on the implementation of commercial agricultural production; what signs are inherent in commodity agricultural production and what it is. The current legislation, including the law “On state regulation of the agro-industrial complex and development of rural territories” does not give an answer, which in practice leads to discrepancies and misinterpretation of legislative requirements [4].

In our opinion, agricultural production is an activity that is inseparably linked with the use of agricultural land for the purpose of producing agricultural products for own and others' needs. It should be noted that earlier in the conditions of the socialist form of economic management there was a Classifier of branches of the national economy and agricultural and industrial products. It was convenient because it could be clearly defined, which type one or another activity or product could be attributed to, and therefore the creation of such an instrument in the conditions of market relations is also necessary. For example, are mushrooms that grow in the forest or on agricultural fields agricultural products or not, and if they are specially grown for the purpose of sale? Therefore the need to create such a document in the form of a catalog or classifier has arisen. Moreover, such analogues already exist, for example, by the order of the Department of Food Resources of the Government of Moscow dated 04.10.04 01-P-291/4 the Classifier of agricultural products, raw materials and food was introduced. It says that this document was created in order to unify information of the enterprises of the wholesale food complex on the distribution of agricultural products, raw materials and food, linking indicators with the All-Russian Product Classifier and systematize the collection of data on availability, supply, prices and sales of food products in the city.

Such features as, firstly, the use of land as the main means of production and, secondly, the focus on the production of agricultural products (plant growing, animal husbandry, beekeeping), are inherent in agricultural production.

In order to determine whether this is a commodity activity or not it is necessary, in our opinion, to work out a number of criteria on the basis of which it is possible to determine the presence of commodity production. These include the following:

– Purpose and types of agricultural production. It should be carried out with a view to profit. As for the types of production, for example, in the personal subsidiary (household) such products are created in order to meet their own needs.

– The size of the land used for agricultural production. This criterion is of great importance. For example, the Land Code provides that for the management of personal subsidiary households, Kazakhstan citizens can be provided with free of charge 0.25 hectares of non-irrigated and 0.15 hectares of irrigated land, and the limits are set by local representative [7]. For peasant farms and legal entities leading commercial agricultural production the maximum and the minimum norms of land plots, which may be in private ownership or land use, are not established. In practice, the fact of the creation of a farm or a legal entity already gives grounds to state the existence of commodity production. Establishing the size of a land plot, from which it is possible to judge the management of commodity production, is important in conditions when many peasant farms are not officially registered with the real estate authorities.

– Organizational and legal form of activity on the land plot. These include legal entities and individual entrepreneurs engaged in agricultural production for profit. In this regard, we would like to note that “the expansion of agrarian legislation beyond land relations in their narrow sense led to its inclusion in its orbit as a central legal institution in the field of agricultural regulation, the institute of an agricultural enterprise, therefore the problem of agricultural activity as a subject of legal regulation closely related to the problem of an agricultural enterprise, as an economic and legal category” [8]. Determining the availability of commodity agricultural production is necessary in order to properly implement the norms of the current Land Code of the country, which requires that agricultural land be provided to private ownership or use of peasant farms and non-state legal entities of the RK for commercial agricultural production (Article 24, 97). This means that not for all types of agricultural activity agricultural land can be made privately owned. For example, if an economic entity deals only with the processing or sale of agricultural products, it cannot be the owner of agricultural land, because in its activities the land does not play the role of the main means of production, it plays the role of a spatial basis. Therefore, many studies use the term “primary processing”, “sales of own production”, which indicates that agricultural activity in the agrarian and legal aspect takes place when it comes to the close connection of the production process, and only then its subsequent stages, that is, the processing and sale of agricultural products.

Food security, as an integral part of economic and national security, always has priority and global significance. The priority of food security means that the life of the whole society is directly dependent on the provision of food. The higher the level of food security, the higher the country's power in the economic, political and social spheres. That is, firstly, providing the people with food determines their livelihoods from a physiological position. Secondly, it determines the political independence of the state and ensures its economic stability. This is a global problem; therefore food security is very relevant. The agricultural sector plays a significant role in ensuring the country's food security. The agricultural sector is a priority and an important sector of the economy, which is determined by the fact that the agricultural sector is engaged in the production of agricultural products, providing the country with food and raw materials.

The role of agricultural cooperatives in ensuring food security is that agricultural cooperatives cover the entire cycle of agricultural production: from direct cultivation and processing to its implementation, which ensures its sustainability [9]. Agricultural cooperatives facilitate the integration of agricultural producers. The results of this are the growth of expanded reproduction and attraction of investment in agriculture. Agricultural cooperatives ensure the employment and participation in the distribution of incomes for their members, increase their level of effective demand for food products. Since their members are also consumers of agricultural products produced by agricultural cooperatives, agricultural cooperatives produce environmentally friendly products and ensure the rational use of land and other natural resources.

The practice of foreign countries shows that the system of production and sale of products of the agricultural sector of the economy is based on the system of cooperation and small producers and agro-industrial integration. Features of the development of the system in the context of various countries are determined by economic, social and historical conditions. Cooperation here is considered as an association of individuals based on voluntary membership for the organization of collective entrepreneurship based on the combination of property share contributions.

It should be noted how the governments of foreign states support the development of agricultural cooperation.

Currently, cooperation in Germany, France, the Netherlands, the USA and other developed countries has become the main form uniting agricultural producers in order to gain access to loans, necessary material resources, opportunities for sales of agricultural products.

Throughout the entire period of development of agricultural cooperation in the United States the state constantly provided substantial assistance to cooperatives by participating in the provision of long-term loans on special conditions for the entire system of cooperative lending.

The main advantages that agricultural producers have from participating in cooperatives in the USA are determined by the following conditions: increase in the cooperative's income due to the formation of large quantities of agricultural goods; reduction of costs for storage and sale of agricultural goods; the ability to use the services of transportation, storage, transformation, packaging, quality control of goods, etc.; effective marketing and logistics system; ensuring constant search for new channels for the sale of goods; cooperation with farmers with similar problems, leading to joint interests in the search for effective ways to solve them [10]. Cooperatives in the United States constantly receive tax incentives from the government. In accordance with the Federal Law on Taxation in the United States, tax is paid at the same level — this is the level of the cooperative or its member. Funds that are involved in business cooperation do not become corporate income and therefore are not taxed [11].

In Germany the activities of cooperatives are regulated by legislation on consumer and production cooperatives. All cooperatives, including agricultural ones, have been given a unified legal status. To stimulate the development of cooperation in the country the German federal government provides material assistance and tax incentives to cooperatives. The taxable amounts of farms engaged in production services and supplies, as well as farm cooperatives engaged in the production, processing and marketing of agricultural products, economic operations of the cooperatives themselves with their participants, are not included in taxable amounts. Substantial encouragement of cooperative activities is also significant support.

Agricultural cooperation in the Netherlands is understood somewhat differently than in Kazakhstan. The Dutch cooperative is an economic organization whose founders and owners are farmers. Typically, cooperatives are created by farmers in response to adverse market conditions, which become their common problem: difficulties in selling products, low prices offered by resellers, difficulties in purchasing seeds, equipment, fertilizers, etc. Combining efforts to solve these problems by creating cooperatives, farmers greatly facilitate their lives and strengthen their market position. In this case, the production of products is carried out by each farmer separately, in his own farm. Farmers, as a rule, do not take direct labor participation in the work of the cooperative; employees employed by the cooperative do this, but all important decisions in the cooperative are made exclusively by its founders, that is, farmers [10].

In France in the Law on Cooperation cooperatives are defined as companies whose main objectives are to reduce the cost or sale price of goods and services, as well as improve the quality of manufactured goods and customer service. The country has established the Ministry of Social Economy, which, while creating conditions for the development of cooperation, does not interfere in the operational economic activities of the cooperatives themselves. Moreover, the state considers cooperation to be the third sector of the economy after public and private [12].

The legal basis for cooperation in Italy is Article 45 of the Constitution of the Italian Republic of 1947, which states that the Republic recognizes the social function of cooperation based on mutual assistance and not pursuing speculative goals. Italian law also distinguishes between societies that aim to make a profit, as well as mutual aid societies, which include cooperatives. They are exempt from taxes during the first ten years of their activities in full. In addition, goods and services sold within this cooperative are also not subject to value added tax. The state exempts consumer cooperation from the need to trade in the deep zones of the country where trade is unprofitable, and creates its own stores for this [13].

The Russian legislator is more consistent in this area. The law recognizes the organization of an individual entrepreneur engaged in the production of agricultural products as an agricultural producer, their primary and subsequent (industrial) processing (including leased assets) in accordance with the list approved by the Government of the Russian Federation. The sale of these products is subject the total income of agricultural producers' share from the sale of these products is not less than seventy percent in a calendar year. This provision allows to judge about the presence of the fact of commodity production. It takes place in the presence of 70 % of the sold agricultural products of own production or processing during the calendar year. The formulation "subsequent industrial" processing is not entirely clear. In our opinion, this type of economic activity is not directly related to the use of land as the main means of production, therefore the inclusion of private ownership of agricultural land in the subjects is undesirable.

The progressive provisions of this law, in our opinion, should be adopted and implemented in national legislation.

According to the current land legislation of the Republic of Kazakhstan, both state and non-state legal entities can act as subjects of rights to agricultural land plots. Thus, the subjects of the law of permanent land use, according to Art. 34 of the Land Code of the Republic of Kazakhstan, may be state land users engaged in agricultural production, as well as research, experimental and educational activities. As for non-state structures, the land legislation does not specify the particularities of the legal regime of land plots of such entities, only stipulating that they can act as actors, both the rights of temporary land use and the rights of private ownership of agricultural land.

According to I. Amirkhanova, “The legal framework for agricultural entrepreneurship of individuals and legal entities is significantly different due to the specifics of determining the land regime as the main means of production used for this activity” [8].

The identification of types of entrepreneurial activity is possible according to several criteria, namely, the criterion of the fundamental principle of entrepreneurial activity — the form of property on which it is carried out, according to the criterion for determining a business entity and its organizational and legal forms. The main specific division of entrepreneurship, depending on the form of ownership in accordance with the current legislation, is into private and state entrepreneurship. In addition, legal forms of entrepreneurship can be distinguished, first of all, by legal subjects of entrepreneurial activity which is the entrepreneurship of individuals and legal entities.

Legal support of agricultural entrepreneurship of individuals and legal entities has significant differences in connection with the specifics of determining the mode of land as the main means of production used for this activity. These differences are manifested in the formation of agrarian business entities, at the initial stage of providing the opportunity for the state to use land for business throughout the entire period of the activity itself. There should be created a separate niche for agricultural entrepreneurship in the legislative design

Among all agricultural producers a certain percentage of the production of agricultural products accounted for agricultural organizations. In the current legislation of the Republic of Kazakhstan there is no well-established definition of the concept of agricultural organization. In our opinion, it is necessary to distinguish the concepts of “agricultural organization” and “agricultural commodity producer”. They should not be equal in the meaning. Firstly, the agricultural organization has the status of a legal entity, whereas an agricultural producer may be an individual. Secondly, not every agricultural organization directly participates in the production and primary processing of agricultural products. For example, an agricultural partnership may be created with the aim of providing various services. Thirdly, the land is not always the main means of production of such an agricultural organization, which is engaged in the provision of various types of sales, supply and other services. Fourthly, the agricultural organization should be recognized as the organizational and legal form of agricultural entrepreneurship, since it is associated with agricultural activities, agricultural business, and its implementation involves making profit or solving some statutory tasks. Narrowing the circle of subjects of agrarian business, recognizing only agricultural producers, as it was suggested by I. Amirkhanova [8], in our opinion, is wrong.

Currently, the state is interested in the development of various organizational and legal forms of agrarian entrepreneurship. Therefore it creates economic conditions to stimulate the activities of both agricultural producers and other economic entities in the agricultural business, for example, the activities of a rural consumer cooperative, agricultural partnership.

In this regard there is an urgent need for legislative differentiation of the above mentioned concepts in order to determine their legal personality. Automatic recognition of all agricultural organizations by agricultural producers will lead to “squandering” of agricultural land, which is an unacceptable luxury. Land legislation is in the position that agricultural land is provided for agricultural production. Therefore regulatory authorities should be armed with specific statutory regulations that allow to judge the existence of such production in order to exercise effective control over the use of agricultural land and the assessment of its quality. We focus not on all agricultural land, we are talking only about farmland.

The presence of these practical problems is explained by the fact that the current legislation does not contain a clear understanding of the agricultural organization. This question is not answered in the agrarian and in the land legislation, although many agricultural scientists recognize the existence of an independent legal institute “Organizational and legal forms of agricultural organizations”, which shows the content of all

foreign and domestic textbooks on agrarian law. Moreover, there is a lack of comprehensive scientific research in agrarian and legal science in this area, which requires its solution.

Currently the following factors hampering the development of cooperation of rural producers in the production and sale of products, material and technical supply and the provision of services can be identified:

- low income of the rural population, small and medium-sized rural businesses not allowing them to provide the necessary starting capital for the creation and operation of cooperatives;
- inaccessibility of bank loans, poor development of financial services delivery systems to small and medium rural enterprises;
- lack of qualified personnel and mechanisms for their search, training and consolidation;
- low level of awareness of rural residents about the benefits of cooperation;
- low level of legal culture in the countryside, the practical lack of public awareness of the legislative conditions of activity;
- high level of distrust of the population in any created structures, resulting in inertia, indecision, unwillingness to invest in any projects.

In the Republic of Kazakhstan the legal and economic foundations for the creation and activities of agricultural cooperatives and their unions constituting the system of agricultural cooperation are determined by the Law of the Republic of Kazakhstan from October 29, 2015 No. 372-V “On Agricultural Cooperation”. According to Art. 5 of the law, an agricultural cooperative is a legal entity in the organizational and legal form of a production cooperative created on the basis of membership by voluntary association of individuals and/or legal entities to carry out joint production and/or other economic activities in order to meet their socio-economic needs in production, processing, marketing, storage of agricultural products, aquaculture products (fish farming), the supply of the means of production and material technical resources, crediting, water supply or other servicing of members of a cooperative, as well as associate members of a cooperative [16]. The main activities of agricultural cooperatives are the production, processing, marketing, storage of agricultural and aquaculture products (fish farming), the supply of production facilities and material and technical resources and other types of services for members of the cooperative, as well as associated members. Thus, paragraph 5 of Art. 96 of the Civil Code of the Republic of Kazakhstan established that the legal status of an agricultural cooperative formed in the form of a production cooperative, as well as the legal status, rights and obligations of its members are determined by this Code and other Laws of the Republic of Kazakhstan, except as provided by the Law of the Republic of Kazakhstan “On Agricultural Cooperatives”.

However, paragraph 2 of Art. 2–1 of the Law of the Republic of Kazakhstan dated October 5, 1995 “On Production Cooperative” [15] established that this Law does not apply to relations on regulation of the legal status of an agricultural cooperative formed in the form of a production cooperative, as well as the legal status, rights and obligations of its members, which are determined by the Law of the Republic of Kazakhstan “On Agricultural Cooperatives”. Thus, on the one hand, the legislation establishes that an agricultural cooperative is created and operates in the form of a production cooperative. On the other hand, it does not allow the application of the norms of the Law on Production Cooperatives to agricultural cooperatives. Even more confusion in this issue causes paragraph 4 of Art. 5 of the Law on Agricultural Cooperatives, according to which the company name of an agricultural cooperative must include its name with the words “agricultural production cooperative” or the abbreviation “APC”.

Another problem is related to the introduction of the law on agricultural cooperatives. It has also been established that rural consumer cooperatives, rural consumer cooperatives of water users and agricultural partnerships are required to undergo a reorganization or liquidation procedure in accordance with the legislation of the Republic of Kazakhstan. If these requirements are not fulfilled after one year from the moment this Law enters into force, these cooperatives are subject to liquidation by a court decision. At the same time, the Law does not indicate in what form the reorganization should be made. Probably, the developers of this Law and the legislator have left this question to a consideration of the members (participants) and the heads of these legal entities, as well as the registration authorities. However, it is obvious that whatever form such reorganization is supposed to take, it cannot be carried out with the preservation or appearance (the last is during reorganization in the form of division, separation or merger) of legal entities of the mentioned organizational and legal forms. In other words, due to the repeal of the aforementioned Laws, rural consumer cooperatives, agricultural partnerships and rural consumer cooperatives of water users were excluded from the list of legal forms of legal entities. There remains a transformation, but into what form of a legal entity? There are only two options: a “simple consumer cooperative” or an agricultural cooperative (but not a religious association, a political party, an autonomous educational organization, a cooperative of apartment owners or a

notarial chamber). But both options are also flawed. The possibility of transforming into “just a consumer cooperative” does not contradict the law, but shows the imperfection of the system of non-profit organizations themselves. Unlike the list of commercial organizations closed by the Civil Code, the list of forms of non-profit organizations is “half-open” to other legislation (Art. 34 Civil Code) [5].

Digitalization of the agricultural sector provides opportunities to improve the efficiency of agricultural cooperation. To implement the strategy of long-term development of the agricultural sector the Ministry of Agriculture of the Republic of Kazakhstan has developed a specialized program of strategic tasks called E-AIC. The main stated goal of the E-AIC program is to introduce the most effective and affordable tools for digitalizing agriculture to increase labor productivity by 2.5 times by 2022 compared to the level of 2017. The strategy provides for a similar increase in the volume of exports of processed agricultural products. In quantitative terms, the digitalization of the country's agro-industrial complex is planned to cover the maximum number of farms in the country and create 2,000 advanced-level farms and 10 “digital farms”. Digitalization will also cover the business processes of providing public services for the agricultural sector [17].

Currently, Kazakhstan has developed a draft law “On amendments and additions to some legislative acts of the Republic of Kazakhstan on digitalization in the field of land relations” [18]. The new draft Law proposes a unified approach to granting rights to land plots, digital inventory and monitoring of agricultural land, increasing the level of control over the condition and use of agricultural land; unifying the procedure for granting and using land plots for the needs of agricultural entrepreneurship. In particular, the draft law provides that land plots for agricultural production will be provided through an electronic tender, which involves the following innovations: control of the timing and progress of the execution of applications through an information system; paperless provision of services; exclusion of land commissions; transfer of the approval procedure with state bodies and monopolists to an electronic format; automation of the procedure for making a decision on the provision of land plots.

Agricultural land plots for which the term of temporary land use expires will be put up for bidding (contests, auctions), but only in case of refusal of the temporary land user. The procedure for organizing and conducting tenders for the provision of land plots for lease for agricultural production requires legal regulation. Anyone will be able to choose a land plot from the list of plots to be auctioned, independently choose the requested land plot on the map, visually determining its location, learn about the points of connection to communication systems. As a result, after receiving a positive approval the local executive body will be obliged to put the requested plot up for auction.

It is proposed to introduce a digital agricultural map in order to have a complete picture of the composition, structure and characteristics of agricultural land according to their actual condition. It can be used to improve the efficiency of agricultural land use, provide information on the quality of land for the calculation of taxes, rent, sale of lease rights and cadastral (estimated) value of land, as well as to monitor agricultural land, maintain the state land cadastre, provide a mechanism for regulating land turnover by transferring agricultural land from one type to another, and compiling a land balance, conducting land management and monitoring the use and protection of land, creating soil, geobotanical and other thematic maps.

The study of the current legislation in the field of agricultural cooperation showed the lack of a unified concept for the implementation of digitalization of this area, which requires the comprehension and introduction of legal mechanisms. We believe that it is necessary to legislate the goals and objectives of the digital transformation of the sphere of agricultural entrepreneurship in general, including agricultural cooperatives, and to provide for measures to protect the rights and legitimate interests of agricultural entrepreneurs.

In our opinion, the following areas require legal support: the creation of technologies that simplify the process of monitoring the use and protection of land of agricultural cooperatives, lending, subsidizing and insurance of agricultural cooperatives; the introduction of digital tools for the use of information resources, platforms and technologies that increase the efficiency of its activities, the introduction of digital platforms for monitoring and managing transport and logistics infrastructure in agriculture [19].

Conclusion

Summing up this brief study of the legal status of agricultural cooperatives, it should be said that the developers of the law on agricultural cooperatives violated the integrity of the system of organizational and legal forms of commercial legal entities that its creators, the authors of the Civil Code of the Republic of Kazakhstan, are proud of.

The new law eliminated many of the flaws and mistakes made in previous laws. Today in many regions of the country agricultural producers are increasingly expressing a desire to unite in cooperatives.

The new law establishes the following principles for the creation of agricultural cooperatives:

- voluntary entry into the agricultural cooperative and exit from it, the possibility of entry for any person;
- democratic governance based on equality of members of the cooperative: one member — one vote, regardless of the size and quantity of property (share) contributions, with the exception of associate members of the cooperative;
- election and accountability of the management bodies of the agricultural cooperative to the general meeting of its members;
- autonomy and independence of agricultural cooperatives;
- the agricultural cooperative sells goods (works, services) to its members at their cost price;
- mutual assistance and provision of economic benefits for members of the cooperative;
- availability of information on the activities of an agricultural cooperative, an association (union) of agricultural cooperatives for all their members.

Analysis of the development of the agro-industrial complex of the Republic of Kazakhstan shows that in order to increase agricultural production and competitiveness and to ensure food security it is necessary to create large commodity farms. Only in large commodity farms it is possible to conduct expanded production and introduce innovative technologies. The solution to this problem is the development of economic mechanisms for the association, merger of small farms into large commodity farms, mutual assistance and mutual responsibility to each other.

A study of the history of the development of cooperation in Kazakhstan shows that cooperation is a powerful ideological and economic force capable of solving complex problems in the world structure. The effective functioning of such production structures is possible with their proportionality, consistency, rhythm, rational economic relations and production relations. One of the forms of cooperation in Kazakhstan, functioning for many years, was the collective farms, which were created with the aim of eliminating private ownership of land and for a rapid transition to socialism and communism. In the years of the emergence of Kazakhstan as an independent state in the 1990s in order to boost and strengthen the economy of the agrarian sector the government of the republic adopted a program on the denationalization and privatization of state agricultural and other agricultural enterprises. The mechanism of privatization led to the fragmentation of the former state and collective farms into medium and small farms. Subsequently, medium-sized farms turned into small ones, and small ones went bankrupt and filled up the ranks of households. Based on the above problems, it is necessary to create financial institutions in order to develop agricultural cooperation in Kazakhstan, provide state subsidies to agricultural cooperatives for the reimbursement of expenses for the payment of interest on loans and borrowings, improve the procedures for granting preferential loan.

Today a wide circle of stakeholders is involved in the process of creating and developing agricultural cooperatives: government agencies, research and educational centers, business structures from both the agricultural and non-agricultural sectors, agricultural producers. And it should be noted that among them there is still no common understanding of the essence of cooperation in the agricultural sector, including both the production process and the types of work of a post-production nature (cleaning, storage, processing, marketing and others). This causes certain difficulties in creating cooperatives, and first of all, farmers who are not fully aware of the key conditions and requirements set out in the new law face difficulties, which in turn contain provisions contrary to the norms of other laws of the country. This leads to further complication of the situation.

In our opinion, government bodies should support agricultural cooperatives with the following measures:

- a) the development and implementation of projects and programs for the development of agricultural cooperatives;
- b) providing agricultural cooperatives with the opportunity to use preferential credit resources and grants, including state grants;
- c) providing appropriate advice to agricultural cooperatives;
- d) determination of tax incentives for agricultural cooperatives.

The study of the current legislation in the field of agricultural cooperation showed the lack of a unified concept for the implementation of digitalization of this area, which requires the comprehension and introduction of legal mechanisms. We believe that it is necessary to legislate the goals and objectives of the digital

transformation of the sphere of agricultural entrepreneurship in general, including agricultural cooperatives, and to provide for measures to protect the rights and legitimate interests of agricultural entrepreneurs.

In our opinion, the following areas require legal support: the creation of technologies that simplify the process of monitoring the use and protection of land of agricultural cooperatives, lending, subsidizing and insurance of agricultural cooperatives; the introduction of digital tools for the use of information resources, platforms and technologies that increase the efficiency of its activities, the introduction of digital platforms for monitoring and managing transport and logistics infrastructure in agriculture

This research has been funded by the Science Committee of the Ministry of Education and Science of the Republic of Kazakhstan (Grant No IRN AP08857095). The name of the project: “Problems of legal regulation of digitization of environmental information in the Republic of Kazakhstan”.

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Қазақстан Республикасында цифрландыру жағдайында ауылшаруашылық кооперациясының дамуының құқықтық мәселелері

Мақалада Қазақстандағы цифрландыру жағдайында ауылшаруашылығы кооперативтерінің қызметін құқықтық реттеу мәселелері қарастырылды. Аграрлық секторды цифрландыру ұжымдық ауылшаруашылығы бизнесінің тиімділігін арттыру үшін мүмкіндіктер ашады, оның құқықтық проблемаларын зерделеу азық-түлік қауіпсіздігі проблемаларын тиімді шешуге және ауыл шаруашылығы мақсатындағы жерлерді ұтымды пайдалануға мүмкіндік береді. Авторлар зерттелген мәселенің өзектілігіне назар аударған, ауылшаруашылығы кооперациясы мәселелерін шешуде цифрландырудың орны мен рөлін айқындайды. Шет елдер мен Қазақстан Республикасының ауылшаруашылығы кооперациясы және ауылшаруашылығы кәсіпкерлігін цифрландыру саласындағы заңнамасын салыстырмалы талдау осы саланы цифрландыруды іске асырудың бірыңғай тұжырымдамасының жоқтығын көрсетті, бұл түсіну мен құқықтық қолдауды, оның ішінде: ауылшаруашылығы кооперативтерінің жерлерін пайдалану мен қорғаудың мониторингі процесін оңайлататын технологияларды құру, ауыл шаруашылығы кооперативтерін кредиттеу, субсидиялау және сақтандыру сияқты бағыттар бойынша түсінуді және құқықтық қолдауды талап ету, ауылшаруашылығы кооперативтерін бақылау және басқару үшін цифрлық платформаларды енгізу, ауылшаруашылығындағы логистикалық инфрақұрылым. Жалпы ауылшаруашылығы кәсіпкерлігі саласын цифрлық трансформациялаудың мақсаттары мен міндеттерін заңнамалық тұрғыдан бекіту, сондай-ақ ауылшаруашылығы кәсіпкерлерінің құқықтары мен заңды мүдделерін қорғау жөніндегі шараларды көздеу ұсынылған. Қазақстан Республикасының агроөнеркәсіптік кешенін дамытуды талдау ауылшаруашылығы өнімінің өндірісін ұлғайту, бәсекеге қабілеттілікті арттыру және азық-түлік қауіпсіздігін қамтамасыз ету мақсатында ірі тауарлы шаруашылықтар құру қажеттігін көрсетті. Тек ірі тауар шаруашылықтарында ғана кеңейтілген өндірісті жүргізуге және инновациялық технологияларды енгізуге болады. Бұл мәселенің шешімі — шағын фермаларды ірі тауарлы фермаларға біріктірудің, өзара көмек пен бір-бірінің алдындағы өзара жауапкершіліктің экономикалық тетіктерін әзірлеу.

Кілт сөздер: аграрлық заңнама, ауылшаруашылығы кооперативі, жер құқығы, құқықтық реттеу проблемалары, мемлекеттік тетік, ауылшаруашылығы кәсіпкерлігі, цифрландыру, цифрлық технологиялар, ауылшаруашылығы картасы, агроөнеркәсіптік кешен.

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Правовые проблемы развития сельскохозяйственной кооперации в условиях цифровизации в Республике Казахстан

В статье рассмотрены вопросы правового регулирования деятельности сельскохозяйственных кооперативов в условиях цифровизации в Казахстане. Цифровизация аграрного сектора предоставляет возможности для повышения эффективности коллективного сельскохозяйственного бизнеса, изучение правовых проблем которого позволит эффективно решать проблемы продовольственной безопасности и рационального использования земель сельскохозяйственного назначения. Авторы акцентировали внимание на актуальности исследуемой проблемы, определили место и роль цифровизации в решении вопросов сельскохозяйственной кооперации. Сравнительный анализ законодательства зарубежных стран и Республики Казахстан в области сельскохозяйственной кооперации и цифровизации сельскохозяйственного предпринимательства показал отсутствие единой концепции реализации цифровизации данной сферы, что требует осмысления и правового обеспечения, в том числе таких направлений, как создание технологий, упрощающих процесс мониторинга, использования и охраны земель сельскохозяйственных кооперативов, кредитование, субсидирование и страхование сельскохозяйственных кооперативов, внедрение цифровых платформ для мониторинга и управления транспортно-логистической инфраструктурой в сельском хозяйстве. Предложено законодательно закрепить цели и задачи цифровой трансформации сферы сельскохозяйственного предпринимательства, а также предусмотреть меры по защите прав и законных интересов сельскохозяйственных предпринимателей. Анализ развития агропромышленного комплекса Республики Казахстан показывает, что для увеличения производства сельскохозяйственной продукции, повышения конкурентоспособности и обеспечения продовольственной безопасности необходимо создание крупных товарных хозяйств. Только в крупных товарных хозяйствах можно вести расширенное производство и внедрять инновационные технологии. Решением этой проблемы являются разработка экономических механизмов объединения, слияние мелких фермерских хозяйств в крупные товарные хозяйства, взаимопомощь и взаимная ответственность друг перед другом.

Ключевые слова: аграрное законодательство, сельскохозяйственный кооператив, земельное право, проблемы правового регулирования, государственный механизм, сельскохозяйственное предпринимательство, цифровизация, цифровые технологии, сельскохозяйственная карта, агропромышленный комплекс.

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