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## Wasted Value: Need for the Reform of the Cooperative Legislation in Serbia

**Abstract:** *The paper gives a critical review of the Serbian legislation in force on cooperatives, identifying legal gaps and other problems in it, which could adversely influence the operation of cooperatives in Serbia. The work suggests potential improvements on the existing regulation and gives recommendations how to overcome problems in practice, at the same time taking into consideration local conditions, social, economic, political circumstances, international recommendations and best practices.*

**Key words:** *Serbia, cooperative, law, reform.*

### I. Introduction

Currently Serbia is struggling between eastern and western social models and “values“. At the same time, there is one valuable institution with a long tradition in Serbia “under threat“. This is the institution of cooperative. Cooperatives in Serbia can be traced back to the middle ages, to feudal and later to Turkish times, when families lived in village cooperatives to survive these very hard historic times.<sup>1</sup> Compared to other societies of the period, the basic principles of functioning of these cooperatives on the Balkans were rather democratic and human.<sup>2</sup> Aleksa S. Jovanović, a Serbian lawyer, politician and historian, for example wrote that they were based “on love and moral dependency“, and emphasised the equality of their members.<sup>3</sup> These village cooperatives disappeared

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<sup>1</sup> Z. Stefanović, J. Hrlje, *Statusno privredno pravo*, Fakultet za poslovno pravo, Beograd, 2005, p. 50; L. Mihajlović, *Kolektivni oblik ekonomije*, Magazin Poljoprivrede, 11/2003, p. 3; See also: N. Ilijić, *Istorija zadruga kod Srba*, Službeni list SRJ, Beograd, 1999.

<sup>2</sup> However, we may not forget that women had only very limited rights in these cooperatives. (N. Novaković, *Teorije o nastanku i strukturi porodičnih zadruga*, Stanovništvo, 1-4/2005, p. 109.)

<sup>3</sup> N. Novaković, *op. cit.*, p. 108.

in the 19th century thanks to the strong pressure from the new Serbian feudalist landlords and to the headway of capitalism. However, they have left a deep mark in the Serbian society in a positive sense (*e.g.*, strong feeling of liability for other members of the society, *etc.*). Unfortunately, during the 20th century, first the capitalism and later the socialism, stamped out lot of these social values from this institution.<sup>4</sup>

In spite of this, even today, many experts who deal with cooperatives, emphasise the potential social and economic importance of cooperatives. Thus, they point out that cooperatives can offer a democratic and participatory way of decision making, pay fair wages and ensure safe income for their members without exploiting them.<sup>5</sup> All this can contribute to the creation of a more stable and democratic society in general. Besides these values, cooperatives can help solving one of the most serious agricultural problems of transition in Serbia: the average agricultural farm is quite small, 2,5 hectares<sup>6</sup>, and from economic aspect this means that many times farming is not profitable on these properties. At the same time, farmers do not have the necessary means to enlarge these farms, as the price of arable land is relatively high in the region. To this serious economic and social problem, farming within the scope of cooperatives could be the solution.

The problem is that there are some severe shortcomings of the current regulation of cooperatives in Serbia, and no institution can function successfully without appropriate legal and institutional framework. At the same time, it seems that there is no willingness to reform the system. This work does not intend to find out the reasons of such indifference of the State towards this issue, but wants to describe the current state of law (*lex lata*) and its solutions regarding issues like membership, assets and organs of the cooperative, pointing out major inadequacies and making some suggestions regarding reforms, taking into account the Regulation on the Statute for a European Cooperative Society of the European Union (SCE)<sup>7</sup> and the ICA Statement and Guidelines for Cooperative Legislation (GCL).

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<sup>4</sup> Z. Njegovan, *Agrarno ili zadružno pitanje: prilog za razumevanje zadrugarstva u Republici Srbiji*, Ekonomika preduzeća, 2011, p. 306.

<sup>5</sup> M. Bateman, J. Pennarz, *Socijalna preduzeća u Srbiji: Zadruga – Institucionalni okvir i iskustva iz prakse*, UNDP Srbija: ITAD, 2008, p. 6. *See also*: I. Tomić, *Poslovni moral u zadrugarstvu u funkciji modela demokratizacije društva*, Nacionalni interes, 2/2012, pp. 281-292.

<sup>6</sup> Source: Ekonomski fakultet Beograd, Definisanje poljoprivrede, slika našeg agrara, <[www.ekof.bg.ac.yu/nastava/ekonomika\\_agrara/2007-08/Definisanje%20poljoprivrede%202007.ppt](http://www.ekof.bg.ac.yu/nastava/ekonomika_agrara/2007-08/Definisanje%20poljoprivrede%202007.ppt)>, visited on Dec. 12, 2014.

<sup>7</sup> Council Regulation (EC) no. 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society.

## II. Legal background

The Constitution of the Republic of Serbia (hereinafter: Constitution) provides the framework for the adoption of detailed laws and other legal acts in the field of cooperatives. At the same time, it is also the most important guarantee of basic human rights, which form part of cooperative values. In its first article, the Constitution states that the Serbian State is based on the “rule of law and social justice, principles of civil democracy, human and minority rights and freedoms [...]”. One of the rights guaranteed by the Constitution, the *freedom of association*, is particularly important, as this is the basis for the regulation of cooperatives with laws and lower legal acts. The Constitution provides that associations can be formed without prior approval and entered in the register kept by an administrative body of the State.<sup>8</sup> Cooperative principles are also guaranteed by other relevant provisions, like that on the protection of private property.<sup>9</sup> Cooperative assets (“*zadružna svojina*”) are expressly mentioned by the Constitution: “Private, cooperative and public assets shall be guaranteed.”<sup>10</sup> Besides this, the Constitution provides for the free exercise of lawful profession<sup>11</sup>, free entrepreneurship<sup>12</sup> and for the right to development<sup>13</sup>. These principles of free market economy are essential conditions of sound development of cooperatives in a democratic society.

Although the Constitution contains adequate provisions needed for the development of cooperatives, the same can not be said about the laws regulating this field. Currently, there are two laws in force that regulate this subject matter. One was “inherited” from the Federative Republic of Yugoslavia; this is the so-called “federal” law, *i.e.*, the Law on Cooperatives, published in the Official Gazette of Federal Republic of Yugoslavia nos. 41/96 and 12/98 and Official Herald of the Republic of Serbia nos. 101/2005 and 34/2006 (hereinafter: FLC). The other is the so-called “republican” law, the Law on Cooperatives published in the Official Gazette of the Republic of Serbia nos. 57/89, 67/93, 46/95 and 101/2005 (hereinafter: RLC). The reason for having two laws in force is that during the existence of the Federation, the republics had the right to regulate in parallel certain fields of law (however, the federal law was always of stronger legal force and more general laws as the republican laws had to be within the boundaries set by the federal law), and following the dissolution of Yugoslavia (and later of the Union of Serbia and Montenegro) the Republic of Serbia “inherited” the FLC as it became legal successor of the old state.

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<sup>8</sup> Art. 55, Constitution.

<sup>9</sup> Art. 58 (1), Constitution.

<sup>10</sup> Art. 86(1), Constitution.

<sup>11</sup> Art. 60(2), Constitution.

<sup>12</sup> Art. 83(1), Constitution.

<sup>13</sup> Art. 23(2), Constitution.

In our opinion, having two laws in the same legal system regulating the same subject matter is a serious problem that should be solved urgently, because it affects legal security. In a legal system that is based on the traditions of the continental law we can not expect that one of the laws will become obsolete. This is definitely the task of the lawmaker, *i.e.*, the Serbian Parliament. This problem is somewhat mitigated by the fact that in practice, courts apply the FLC.<sup>14</sup>

Another problem is that the laws were adopted at the time when market economy did not function properly in Serbia. Thus, some of their solutions are obsolete.

Technically, there are two possible solutions for this. The first one would be to repeal the old republican law, as courts do not apply this one, and to amend (reform) the federal one. However, the most clear solution to this challenge would be to overrule both of them by adopting an entirely new legislation for cooperatives. This should involve the reform of lower legal acts as well, which opinion is supported by some authors from this field.<sup>15</sup>

### III. Membership

According to the current law, cooperatives are founded by natural persons (except pupil cooperatives<sup>16</sup>).<sup>17</sup> Legally, these persons become members of the cooperative when the cooperative is founded. Persons who want to join the cooperative later, become members with signing a declaration of affiliation (“*pristupnaizjava*”). However, this is preceded by an application for membership (“*zahtev*”). The by-laws of the cooperative should define the organ that decides on the application. In practice, sometimes it happens that the manager of the cooperative decides on the application for membership without having explicit authorization for this. Theoretically, this should not be a problem, as for example the SCE Regulation provides that the management or the administrative organ of the cooperative should have the right to approve the application for membership.<sup>18</sup> However, there always must be a legal ground for such deci-

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<sup>14</sup> This is supported by our research done in one of the largest legal databases in Serbia (Paragraf Net). There is only one case related to the republican Law on Cooperatives (Decision of the Supreme Court of Serbia, Prev. 221/93 of 11.1.1994) and two court opinions in this database, while related to the federal Law on Cooperatives there are more than thirty court decisions and opinions. This is the reason why this work gives primarily a critical analyzes of the so-called Federal Law; at the same time, drawing attention to substantially different solutions offered by the Republican Law when it is necessary.

<sup>15</sup> M. Bateman, J. Pennarz, *op. cit.*, p. 36. Z. Simonović, D. Cvijanović, *Neki aktuelni problemi zadrugarstva Srbije u tranzicionim kretanjima*, Ekonomika, 2008, pp. 131-138.

<sup>16</sup> Art. 16, FLC.

<sup>17</sup> Art. 15, FLC.

<sup>18</sup> Art. 14 (1), SCE Regulation.

sion, *i.e.*, the authorization for this has to be stated in the by-laws expressly. Some argue that membership is an issue that affects all the members because of the character of the cooperative, and thus, it would be advisable that (all) the members (*i.e.*, the general assembly) decide on this issue. However, practically it might be very cumbersome and impractical to convene the general assembly only for this reason. Thus, some authors support the view that the board of directors could be the organ which decides on it, as it implements the business policy of the cooperative (this is suggested for example by Vlatković<sup>19</sup>).

Another problem related to the membership application is that many times in practice, the by-laws contain no provision on the requirements that have to be fulfilled when applying for membership, even though, the FLC provides that the conditions and mode of acquiring membership status should be stipulated in the by-laws. Thus, it would be advisable to require the cooperative by the law, under pain, to have such requirements laid down in the by-laws, or at least to provide for basic principles regarding these requirements. On the other hand, having too many requirements in the by-laws would not support the principle of “open door” when accepting members.<sup>20</sup>

Regarding the application procedure for membership, once the application is submitted, the competent organ has 30 days to inform the applicant on its decision. However, the FLC prescribes that when there is no information (decision) within 30 days, the application is considered not accepted. It should be mentioned here that the GCL states that in general there should be no obstacle admitting members to a cooperative, what is called the “open door” principle, meaning that no information on the acceptance within a certain period of time should mean acceptance after the lapse of the same time period. Thus, it can be concluded that the Serbian FLC applies the principle of “closed door”. This is contrary to international standards and practice, which apply the principle of „open door“. Some authors even suggest that the applicant should be notified about the decision immediately and the refusal must be justified and in writing.<sup>21</sup> Thus, the solution of the current legislation where with the lapse of thirty days without notification the application is considered refused without any justi-

<sup>19</sup> M. Vlatković, *Omladinske i studentske zadruge*, NIP, Beograd, 1999, p. 41.

<sup>20</sup> For some types of cooperatives, the FLC prescribes that their members must fulfill certain conditions. Thus, agricultural cooperatives can be established by people working in agriculture (or owning or using agricultural land), handicraft cooperatives can be established by professionals in the given handicraft, health cooperatives have to have at least one member who is a physician, and so on. (art. 9, FLC) These are on the one hand restrictive provisions (*e.g.*, against the “open door” principle), but on the other hand, they ensure professionalism of the members. Thus, until they are reasonable, they should be supported in our opinion.

<sup>21</sup> H. Henry, *Guidelines for Cooperative Legislation*, International Labour Office, Geneva, 2005, pp. 27, 28.

fication is alien to these recommendations. Introducing these international standards would limit the autonomy of the members to a certain extent, however, such solution would motivate cooperatives not to refuse applications without good cause.

If the application is refused or “not accepted”, the applicant has the right to appeal to the general assembly of the cooperative.<sup>22</sup> This is in accordance with the provisions of the SCE Regulation.<sup>23</sup>

However, the current legislation does not provide for the possibility of complaint to a court against the refusal of membership application. The applicant should also have the right to appeal to a court of law against the decision of the general assembly.<sup>24</sup> Such solution would offer better legal security and should be introduced to the law.

Regarding the issue of who can become member of the cooperative, the GCL suggests that both natural and legal persons should be allowed to become members of the cooperative as long as the principle of “one member one vote” is respected.<sup>25</sup> Based on the analysis of European legislation in this field, under certain limitations it should be allowed. Namely, this would make possible the foundation of so-called secondary cooperatives, that is to say cooperatives founded and operated by other cooperatives. This would be helpful for smaller cooperatives to access markets. Besides, this way investor members could become members of the cooperative (with certain restrictions, for example, the number of investor members in the cooperative should not exceed ten percent of all members, and the nominal value of the investor share should not exceed thirty percent of the share capital of the cooperative), as one of the largest problem of cooperatives is the lack of capital. Such solution would certainly help cooperatives to secure fresh capital, as this is one of the main problems of cooperatives operating in Serbia. Having investor members is also advocated by the SCE Regulation.<sup>26</sup> At the same time, there should be restrictions to protect members with moderate financial possibilities, because allowing legal persons without any limitation to become members, the cooperative might turn into a kind of company and can easily lose its cooperative character.

The FLC prescribes for each type of cooperative the minimal number of members necessary to establish the cooperative. Generally, at least ten persons are necessary to establish a cooperative (agricultural, consumer, handicraft, health, youth and student). The RLC requires only more than three persons for

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<sup>22</sup> Art. 17-19, FLC.

<sup>23</sup> Art. 14 (1), SCE Regulation.

<sup>24</sup> H. Henry, *op. cit.*, p. 28.

<sup>25</sup> *Id.* p. 25.

<sup>26</sup> Art. 14 (1), SCE Regulation.

the establishment of a cooperative.<sup>27</sup> For the establishment of a housing cooperative it is necessary to have at least 30 members according to the FLC. Regarding this issue, GCL emphasizes the importance of the freedom of association, that is to say, having no or minimal restriction on the number of members. Such restriction is reasonable only when it aims the protection of third parties (e.g., creditors), thus, it suggests a minimum number of three members.<sup>28</sup> Having this in mind, it can be said that the Serbian FLC is a bit restrictive. It would be useful to conduct a research on the ideal number of members in practice in Serbia, taking into account social circumstances as well as the fact that for the operation of the organs of a cooperative a minimal number of members (who are professionally capable) is needed.

According to Bateman and Pennarz there is also the issue of the growing number of so-called cooperants. These are persons who cooperate with the cooperative, without being its member. The actual problem is that the cooperatives are reluctant to allow these cooperants to become their members.<sup>29</sup>

There is also need to change the way of exclusion of members. Here is a very similar problem to the above mentioned „closed door“ principle applied to membership applications: the member has the right to complain to the exclusion to the general assembly, however, if the assembly does not make decision on the complaint, it is considered rejected. This provision should be amended in a way that no decision within a certain deadline on the complaint means acceptance of the complaint. Besides, the law should guarantee the basic due process in such procedures, meaning that the member under exclusion should have the right to present his case. The law should also give the possibility of judicial review of such decisions.

#### IV. Assets

Another important issue are the assets of cooperatives. There are two types of cooperatives in Serbia: one established and operated with shares („*udeli*“)<sup>30</sup> of the members, and the other established and operated without shares of the members, where the means for functioning are provided by membership fees.<sup>31</sup> Interpreting art. 55 (1) of FLC, it seems that these two types of financing can not be combined.

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<sup>27</sup> Art. 2, RLC.

<sup>28</sup> H. Henry, *op. cit.*, p. 26.

<sup>29</sup> M. Bateman, J. Pennarz, *op. cit.*, p. 22.

<sup>30</sup> These are not like stocks of a stock corporation (securities), but shares of participation.

<sup>31</sup> Arts. 50 and 55, FLC. According to the FLC the assets of the cooperative are comprised of the cooperative's ownership rights on movables and immovables, on financial assets and securities, and other ownership rights. The ownership rights of the cooperative comprise of shares, membership fees, other financial means realized with work and other means. (art. 49, FLC)

As to the first type, each member subscribes equal share. As a general rule, shares are subscribed in cash, however, if the agreement (deed) of foundation or the by-laws provide for, it is possible to subscribe in whole or in part shares in-kind, what is expressed in cash. In-kind contribution has to be appraised by the founders, or by the organ assigned by the by-laws.<sup>32</sup> This is a bit too permissive rule, at least the appraisal of some types of in-kind contributions, like personal commitment, services or work, should be approved by the general assembly, this way preventing any misuse. This way the interest of all the members would be better protected. The law also prescribes that during the membership status, contributions for the shares can not be returned, and no claim against the member can be enforced on such shares.<sup>33</sup> However, following the termination of the membership, the counter-value of the valorized shares has to be returned to the ex-member or to his/her heirs.<sup>34</sup> This provision corresponds to the Guidelines (GCL).

Regarding the system of membership fees, the by-laws might determine the frequency and the amount of the payment of such fees. It is important, that the FLC provides that membership fees can not be returned.<sup>35</sup>

In these transitional times the biggest problem for the majority of cooperatives in Serbia is the lack of fresh capital. In a market economy cooperatives without fresh capital and constant development can easily lose their competitiveness. Related to this issue, currently cooperatives face two problems.

The first one is how to attract new investments from the members, or new investor members. For this, obstacles that retain investors from investing into cooperatives should be identified. According to the current law each member registers equal share (50 (1)) and each member has one vote. Alas, such system do not motivate members with more means to invest more. Though, art. 57 of the FLC provides that members can agree in the by-laws on the division of profit, meaning that despite equal shares, some of the members can get bigger share from the profit, this is not a guarantee for the members, as by-law can be amended with majority votes of members.<sup>36</sup> Therefore, the lawmaker should reconsider these provisions, and introduce a system which motivates investors. Keeping the „equal share” and „one member one vote” principles, the initially agreed profit sharing should be guaranteed, or investor’s veto rights could be introduced regarding certain decisions.

The second problem is lack of bank credits. Bank credits are used worldwide in capitalist systems for acquiring fresh capital. However, banks usually

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<sup>32</sup> Art. 50, FLC.

<sup>33</sup> Art. 52, FLC.

<sup>34</sup> Art. 54, FLC.

<sup>35</sup> Art. 55 (2), FLC.

<sup>36</sup> Art. 34, FLC.

require some collateral for credits. The problem is that the immovable property of cooperatives during the socialist times was registered as the property of the „society“, and in the majority of cases it is still registered like that, meaning that cooperatives can not use it as a mortgage for loans. Thus, when applying for loans, cooperatives can offer suretyship of their members, what is cumbersome. It should be mentioned that the new Constitution of Serbia ceased the property of the „society“, and such property used and possessed by cooperatives should be transferred to cooperative property in the register (the State has three years to challenge such registration). In other cases the cooperatives have the right to prove their property rights in a court procedure. This is an ongoing process, which should be fostered by the State (what is not the case).

## V. Organs

The Guidelines for Cooperative Legislation emphasizes that when regulating the structure of the organs of a cooperative, both the principle of democracy (cooperatives are associations governed by the members) and the principle of economic efficiency (at the same time cooperatives are also enterprises) has to be taken into account.<sup>37</sup> Thus, it suggests that the general assembly of the cooperative should deal with issues related to the associative character of the cooperative, the board of directors should deal with issues pertaining to the enterprise and a professional manager should deal with issues related to everyday business of the cooperative. The GCL also suggests setting up some kind of controlling organ, *i.e.*, a supervisory board. The Serbian law is in accordance with the above mentioned principles. According to it, the organs of the cooperative are the general assembly („*skupština*“), the board of directors („*upravniodbor*“), the managing director („*direktor*“) and the supervisory board („*nadzorniodbor*“).<sup>38</sup>

The highest and the most important organ of a cooperative is the general assembly that is constituted by all the members of the cooperative. However, if the cooperative has more than one hundred members, the by-laws may prescribe the formation of a so-called „meeting of delegates“ („*skupština predstavnika [zadrugara]*“). Delegates may be elected for a term not exceeding five years (however, there is the possibility of re-election).<sup>39</sup> The Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with Regard to the Involvement of Employees encourages cooperatives to allow for the employees or their representative bodies to participate in

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<sup>37</sup> H. Henřý, *op. cit.*, p. 33.

<sup>38</sup> Art. 30, FLC.

<sup>39</sup> Art. 32, FLC.

the work of the general assembly of the cooperative with voting right. However, this is only encouragement and not an obligation for the cooperative and its members. The Serbian lawmaker should be encouraged to introduce similar possibilities for the employees of cooperatives, or at least the law should authorize the representatives of employees to attend the general assembly in an advisory capacity.

It is also important to mention that the FLC explicitly supports the principle of „one member one vote”. Interesting solution of the Italian Civil Code is that it gives the possibility to grant extra voting rights to some members who participate in certain mutual benefit ventures during the integration of these ventures, or only during certain phases of these ventures.<sup>40</sup> In our opinion, the principle of „one member one vote” should be kept. At the same time it could be combined with special veto rights given to investor members in certain cases as already mentioned (*e.g.*, annual business plan of the cooperative, etc.). This would certainly make economically more attractive Serbian cooperatives, as persons who invest into a cooperative more money than others expect to have certain surplus rights in decision making. At the same time, it should be kept in mind that cooperatives have different characteristics than companies.

To improve the efficiency of the functioning of the general assembly, the GCL suggests voting without physical presence, *e.g.*, the introduction of the possibility to vote via internet.<sup>41</sup> The Italian Civil Code also suggests that the by-law may prescribe the possibility to vote by means of telecommunication.<sup>42</sup> This seems a good idea, provided technical conditions and safety can be guaranteed. Another useful idea is contained in the Hungarian Law on Cooperatives, that provides for the convenience of extraordinary general assembly when a decision has to be adopted in a matter that falls within the competence of the general assembly, and any delay in the decision would endanger any vital interest of the cooperative, or it would entail the breach of any obligation of the cooperative conferred upon it by the law or by the by-laws.<sup>43</sup> Or when the convocation is requested by at least ten percent of all the members, or by the supervisory board in writing with the reason indicated.<sup>44</sup> This latter provision can be potentially important for all the members. Thus, such guarantees should be also included into the Serbian Law. Here should be mentioned the issue of the pre-

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<sup>40</sup> Art. 2538(4), Italian Civil Code.

<sup>41</sup> H. Henry, *op. cit.*, p. 35.

<sup>42</sup> Art. 2538(7), Italian Civil Code.

<sup>43</sup> Art. 20 (5) (a), Hungarian Law on Cooperatives (X/2006).

<sup>44</sup> Art. 20 (5), Hungarian Law on Cooperatives. The same law also provides that upon written request any matter supported by at least ten percent of all the members has to be included in the agenda of the general assembly. (art. 22 (1))

cise stipulation of who convenes the general assembly and sanctions for omitting this obligation, as this is not done in the current legislation.

It should be also mentioned here that issues like the review of the decision on expulsion, bringing decision on the admission of an investor member (if this possibility exists), and decision for ordering supplementary payments should be also in the general assembly's competency.

The FLC provides that the board of directors is elected by the general assembly. It should have at least five members and these members have to be elected from the members of the cooperative.<sup>45</sup> The FLC shows its social sensitivity when it prescribes that in cooperatives with more than fifty non-member employees, one member of the board of directors has to be elected from these employees.<sup>46</sup> The general tendency in the EU is to support employee participation (this is supported especially by Germany). Notwithstanding, such solutions are sometimes criticized, as they allow for non-members to take part in the decision-making. Not related to the issue of employee participation, Zsohar, Hungarian expert in the field, asserts that international tendency is to have professional non-member managers on the board.<sup>47</sup> This requirement might be added to the Serbian Law, however, first the law should be amended to allow non-members as board of directors' members, and secondly it should be determined what is to be understood under "professional".

However, more important issue is the liability of the board members for omission of their duties. This is not adequately regulated in the current legislation. Besides, there are no adequate sanctions for non-performance or omission of duty. The law should explicitly enumerate sanction for such cases. In our opinion, in a country under transition these are important issues and should not be ignored.

Also the lawmaker should oblige the board of directors to report on its activities<sup>48</sup> and on the financial situation of the cooperative to the supervisory board (at least once every three months) and to the general assembly (at least yearly once), taking over the Hungarian model for example. This provision would additionally guarantee the transparent and fair work of the board of directors (managing director).

And finally, the managing director, who is also elected by the general assembly according to the FLC.<sup>49</sup> These people are usually not professional man-

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<sup>45</sup> At the same time, the FLC provides that cooperatives with less than twenty members do not have to form a board of directors. In this case, the competences of the board of directors are exercised by the organ that is defined in the by-laws. (art. 36, FLC)

<sup>46</sup> Art. 35, FLC.

<sup>47</sup> A. Zsohár (ed.), *Szövetkezeti jog*, HVG-ORAC, Budapest, 2007, p. 34.

<sup>48</sup> Also obliging individual members of the board of directors to report their objections against a decision of the board of directors to the supervisory board.

<sup>49</sup> Art. 31, FLC.

agers, economists or financial experts. However, in a modern world it would be very useful to have managers who are proficient in these fields. This can be crucial as bad economic, marketing or financial decisions can be fatal for the whole cooperative. The managing director is responsible for the everyday business of the cooperative, for the legality of its dealings, and represents the cooperative.<sup>50</sup> It would be important to clearly delineate the competencies of the managing director and those of the chairman of the board of directors. Many times happens in practice that key operative decisions are made by the managing director, without having explicit competencies for this. What is even greater problem, that sometimes the by-laws, that define the competencies of the managing director, provides for overlapping competencies (with the board of directors). When drafting the by-laws it should be taken into consideration that the managing director should be primarily the one who executes decisions, and not the one who makes them. Another solution would be to introduce a model, having only board of directors, where the chairman of the board has the competencies of the managing director. Such solution proved to be useful in some European countries.<sup>51</sup>

Regarding the liability of the managing director, the FLC provides that he/she is materially liable for his/her decision if they result in material damages for the cooperative.<sup>52</sup> However, it is not clear what is the liability of the managing director for the omission of his/her duties. Thus, it would be useful to insert into the law a provision which would oblige the members of the board of directors and the managing director to conduct the management of the cooperative with due care and diligence as generally expected from persons in such position.

## VI. Conclusion

The above discussed issues underpin the statment from the introduction of this work, that there is need for the reform of the Serbian cooperative legislation. As it was shown above, appropriate constitutional grounds exist in this field. However, current laws and lower level legislation have to be repealed. In Europe there are several well-functioning laws on cooperatives, which could be used when reforming the current legislation, taking into account local features. This reform should not be defered any more. Cooperatives had too great social importance in the past, and they can contribute to the creation of a more stable society in Serbia.

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<sup>50</sup> The authority of the managing director is defined by the Law, agreement of foundation and by-laws. (art. 44, FLC).

<sup>51</sup> *E.g.*, Hungary.

<sup>52</sup> Art. 46, FLC.

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## **Eltékozolt érték: a szövetségi jog reformjának szükségessége Szerbiában**

***Absztrakt:** A tanulmány kritikai áttekintést ad a hatályos szerb szövetségi jogról, azonosítva az abban található vitatható megoldásokat, valamint azokat, amelyek hátrányosan érinthetik a szövetségi jog további fejlődését Szerbiában. Az írás emellett javaslatokat tesz a jelenlegi szabályozás lehetséges továbbfejlesztésére, illetve reformjára, figyelembe véve a helyi sajátosságokat, a szociális, gazdasági, politikai körülményeket, valamint a nemzetközi gyakorlatot és ajánlásokat ezen a téren.*

***Kulcsszavak:** Szerbia, szövetség, jog, reform.*

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## **Проћердана вредност: потреба за реформом правног уређења задруга у Србији**

**Сажетак:** У раду се даје критички приказ позитивноправне регулативе задруга у Србији, с освртом на нормативна решења која могу да буду предмет критике, као и на оне које негативно утичу на даљи развој задружног права. Дају се и предлози за могуће унапређење, односно реформу постојеће регулативе, узимајући у обзир локалне посебности, социјалне, привредне и политичке околности у Србији, као и међународноправну праксу и прејоруке из ове области.

**Кључне речи:** Србија, задружно право, реформа