

A century of codification of the cooperative law in Poland

Stulecie kodyfikacji prawa spółdzielczego w Polsce
Столетие кодификации кооперативного права в Польше
Століття кодифікації кооперативного права в Польщі

KRZYSZTOF PIETRZYKOWSKI

Prof. Dr. habil., University of Warsaw
e-mail: k.pietrzykowski@wpia.uw.edu.pl, <https://orcid.org/0000-0001-6295-1344>

Summary: This article aims to present the evolution of Polish cooperative law, primarily using the historical method. The Act on cooperatives was passed on 29 October 1920 and entered into force on 1 January 1921. Its provisions concerning the auditing of cooperatives, audit associations and the Cooperative Council were substantially amended by the Act of 13 March 1934, which began the process of subordinating cooperatives and audit associations to state authorities. Further changes, which increased this subordination to an even greater extent, were introduced after the Second World War and led to the outright nationalisation of Polish cooperatives. The Act on cooperatives was repealed by the Act of 17 February 1961 on cooperatives and their associations. In turn, the Act on cooperatives and their associations was repealed by the Act of 16 September 1982 – Cooperative Law, which saw several amendments. The provisions of the Cooperative Law were amended by the Act of 7 July 1994 amending the Cooperative Law and certain other acts. The Act of 3 June 2005 amending the Act on Housing Cooperatives and certain other acts introduced significant changes to the Cooperative Law as well.

Key words: Act on cooperatives 1920, Act on cooperatives and their associations 1961, Cooperative Law Act of 1982, cooperative law

Streszczenie: Celem artykułu jest przedstawienie ewolucji polskiego prawa spółdzielczego. Na potrzeby podjętych rozważań odwołano się do metody historycznej. Ustawa o spółdzielniach została uchwalona 29 października 1920 r., zaś weszła w życie 1 stycznia 1921 r. Przepisy ustawy o spółdzielniach o rewizji spółdzielni, związkach rewizyjnych i Radzie Spółdzielczej zostały istotnie zmienione przez ustawę z dnia 13 marca 1934 r., która rozpoczęła proces podporządkowania spółdzielni i związków rewizyjnych organom państwa. Kolejne zmiany, które w znacznie większym stopniu podporządkowały spółdzielnie i związki rewizyjne organom państwa, zostały wprowadzone po II wojnie światowej i prowadziły faktycznie do upaństwowienia polskiej spółdzielczości. Ustawa o spółdzielniach została uchylona przez ustawę z dnia 17 lutego 1961 r. o spółdzielniach i ich związkach. Ustawa o spółdzielniach i ich związkach została uchylona przez ustawę z dnia 16 września 1982 r. – Prawo spółdzielcze. Ustawa Prawo spółdzielcze była wielokrotnie nowelizowana. Przepisy ustawy Prawo spółdzielcze zostały zmienione przez ustawę z dnia 7 lipca 1994 r. o zmianie ustawy – Prawo spółdzielcze oraz o zmianie niektórych ustaw. Ustawa z dnia 3 czerwca 2005 r. o zmianie ustawy o spółdzielniach mieszkaniowych oraz niektórych innych ustaw wprowadziła bardzo istotne zmiany w ustawie Prawo spółdzielcze.

Słowa kluczowe: ustawa o spółdzielniach z 1920 r., ustawa o spółdzielniach i ich związkach z 1961 r., ustawa Prawo spółdzielcze z 1982 r., prawo spółdzielcze

Резюме: Цель данной статьи – представить эволюцию польского кооперативного права. Для целей проведенного анализа был использован исторический метод. Закон о кооперативах был принят 29 октября 1920 года и вступил в силу 1 января 1921 года. Положения Закона о кооперативах, о ревизии кооперативов, ревизионных союзов и Кооперативного совета были существенно изменены Законом от 13 марта 1934 года, который начал процесс подчинения кооперативов и ревизионных союзов государственному

органам. Последующие изменения, которые в гораздо большей степени подчинили кооперативы и ревизионные союзы государственным органам, были введены после Второй мировой войны и фактически привели к национализации польских кооперативов. Закон о кооперативах был отменен Законом о кооперативах и их союзах от 17 февраля 1961 года. Закон о кооперативах и их союзах был отменен Законом от 16 сентября 1982 года – Кооперативное право. В Закон Кооперативное право неоднократно вносились поправки. Положения закона Кооперативное право были изменены Законом от 7 июля 1994 года о внесении изменений в Закон Кооперативное право и внесении изменений в некоторые законы. Закон от 3 июня 2005 года о внесении изменений в Закон о жилищных кооперативах и некоторые другие законы внес очень существенные изменения в закон Кооперативное право.

Ключевые слова: Закон о кооперативах от 1920 года, Закон о кооперативах и их союзах от 1961 года, Закон Кооперативное право от 1982 года, кооперативное право

Резюме: Метою статті є представити еволюцію польського кооперативного права. Для цілей міркувань використано історичний метод. Закон про кооперативи був прийнятий 29 жовтня 1920 р. і набув чинності 1 січня 1921 р. Положення закону про кооперативи про ревізію кооперативів, ревізійних спілок і кооперативної ради були суттєво змінені актом від 13 березня 1934 р., який започаткував процес підпорядкування кооперативів і ревізійних спілок державним органам. Подальші зміни, які значно більше підпорядковували кооперативи та спілки органом держави, були запроваджені після Другої світової війни і фактично призвели до націоналізації польського кооперативного руху. Закон про кооперативи був скасований законом від 17 лютого 1961 р. про кооперативи та їх об'єднання. Закон про кооперативи та їх спілки був скасований законом від 16 вересня 1982 р. – Кооперативне право. Закон про кооперативне право неодноразово змінювався. Положення Закон – Кооперативне право був змінений Законом від 7 липня 1994 року про внесення змін до Закону – Кооперативне право та деяких актів. Закон від 3 червня 2005 року про внесення змін до закону про житлові кооперативи та деякі інші акти вніс значні зміни до закону – Кооперативне право.

Ключові слова: Закон про кооперативи з 1920 р., Закон про кооперативи та їхні спілки з 1961 р., Закони – Кооперативне право з 1982 р., кооперативне право

Introduction

Reborn after the First World War, the Polish Republic inherited its legal systems from its former rulers. This inevitably applied to civil law as well. A great task of unifying the national law, including civil law, was thus laid before the state authorities and lawyers. Cooperative law was the first division of civil law in which the legal systems of the partitioning states were replaced by uniform Polish law.

1. Codification of the cooperative law in Polish law

Poland's eastern provinces were subject to Russian law, namely Volume X of the *Zvod zakonov* (A set of laws). In the western provinces, the Prussian *Landrecht* (since 1794) was initially in force, followed by the German Civil Code (BGB) starting

from the year 1900. In the southern provinces, the Austrian Civil Code (ABGB) was in force since 1812; it was preceded by the Josephine Code (in force since 1786), and the West Galician Code (in force since 1798). The central provinces, i.e. the Duchy of Warsaw and later the Kingdom of Poland, were governed based on the French Civil Code, known as Napoleonic Code, starting from 1808. From 1825 onward, this Code was applied in a partly changed version known as the Civil Code of the Kingdom of Poland, which regulated the issues of personal law and family law. In 1836, titles V and VI of this Code were replaced by the Marriage Law. Other issues, including property law, contract law and inheritance law, were still regulated by the Napoleonic Code. The area of Spisz and Orawa, incorporated into Poland in 1920, was subject to the Hungarian Civil Code. Based on the Act of 26 October 1921,¹ the Hungarian law was maintained, but the Council of Ministers was nonetheless authorised to enact Polish laws. Pursuant to this Act, the Council of Ministers regulation of 14 September 1922² introduced the applicable Austrian law in Spisz and Orawa.

Before the state authorities and lawyers laid an enormous task of unifying Polish law, including civil law. The 1919–1920 period saw the introduction of several legislative acts in the field of civil law, including three decrees of the Head of State: the Act of 4 February 1919 on patents for inventions, drawing design and model protection and trademark protection,³ the Act of 28 June 1919 on the protection of tenants⁴ and the Act of 24 March 1920 on the acquisition of real estate by foreigners,⁵ which remains in force to this day. However, these were not legislative acts, as they did not repeal the normative acts of the partitioning states. Besides, they did not regulate specific areas of civil law but only amended some parts of it. Nonetheless, it should be noted that cooperative law was the first division of civil law in which the legal systems of the partitioning States were replaced by uniform Polish law. The Act on cooperatives was passed on 29 October 1920⁶ and entered into force on 1 January 1921, whereas the provisions of Section III on the Cooperative Council came into force on 11 December 1920. Stanisław Wróblewski's remark on this was as follows: "Among some of the laws that have so far formed a uniform Polish law, the act on entrepreneurship and economic association, i.e. cooperatives, is certainly the most momentous for social life, because it introduces into the law all these

¹ Journal of Laws [Dziennik Ustaw] 1921 no. 89, item 657.

² Journal of Laws 1922 no. 90, item 833.

³ Journal of Laws 1919 no. 13, items 137, 138 and 139.

⁴ Journal of Laws 1919 no. 15, item 201.

⁵ Journal of Laws 1920 no. 31, item 178; now Journal of Laws 2017, item 2278.

⁶ Journal of Laws 1920 no. 111, item 733.

symptoms of life, which are called the cooperative movement. The meaning of this movement cannot be defined with complete accuracy today, because we are only at the beginning of its development; the fact is, however, that it has created a number of powerful organisations in Poland, that it covers more and more areas of economic life, and finally, in today's difficult times for Poland, society has high – perhaps too high – hopes for its further development.”⁷

The Act on cooperatives was one of the most outstanding achievements of Polish legislation during the era of the Second Polish Republic and was likely the best cooperative act in the world at the time. The Act on cooperatives consisted of 131 articles in six sections. It contained regulations on general principles (Articles 1–4), establishing cooperatives (Articles 5–6), the register of cooperatives and announcements (Articles 7–10), cooperatives' business names (Article 11), branches (Article 12), cooperative members (Articles 13–32), the authorities (bodies) of cooperatives (Articles 33–51), accounting (Articles 52–59), audit, which is commonly referred to as 'lustration' in today's Poland (Articles 60–65), audit associations (Articles 66–70), amending the Articles of Association (Articles 71–74), cooperative dissolution, including liquidation and bankruptcy (Articles 75–106), the State Cooperative Council (Articles 107–109) and penalties (Articles 110–116), as well as transitional provisions (Articles 117–129), and provisions on the entry into force and implementation of the Act itself (Articles 130 and 131). The merger of cooperatives was initially regulated by the Act of 7 April 1922 on the merger of cooperatives.⁸ It was repealed by Article 6 of the Act of 13 March 1934 amending the Act on cooperatives, and its provisions, with minor amendments, were incorporated into the Act on cooperatives and designated as Articles 106a–106i, and according to the 1934 consolidated text, as Articles 107–115. The Act on cooperatives was amended four times during the Second Polish Republic's existence: by the Act of 4 December 1923 on the partial amendment of the Act on cooperatives of 29 October 1920,⁹ the Regulation of the President of the Republic of Poland of 14 April 1924 on the change of the monetary system,¹⁰ the Act of 28 May 1924 on introducing the Act on cooperatives of 29 October 1920 and subsequent acts concerning the cooperative movement in the Upper Silesian part of the Silesian Province,¹¹ and the Act of

⁷ S. Wróblewski, *Przedmowa*, in: *Ustawa o spółdzielniach*, Kraków 1921 [*Foreword to the Act on Cooperatives*].

⁸ *Journal of Laws* 1922 no. 33, item 265.

⁹ *Journal of Laws* 1920 no. 135, item 1119.

¹⁰ *Journal of Laws* 1924 no. 34, item 351 as amended.

¹¹ *Journal of Laws* no. 50, item 504.

13 March 1934 on the amendment of the Act on cooperatives.¹² The consolidated text of the Act on cooperatives was promulgated in 1934.¹³

The Act on cooperatives was highly appreciated by the commentators at the time.¹⁴ It provided cooperatives with a significant degree of autonomy and independence from state authorities. Cooperatives were obliged to undergo an audit, now commonly called lustration, but this did not significantly limit their independence. The audit was carried out by a competent auditor appointed by the cooperative union or by the Cooperative Council (in non-associated cooperatives, i.e. the so-called non-union cooperatives). The Cooperative Council could also entrust the audit of non-union cooperatives to audit associations or other organisations and institutions (Articles 60–62 of the Act on cooperatives). The establishment of and membership in audit associations were voluntary for cooperatives. The primary task of a cooperative union was to carry out audits. The Cooperative Council was set up as a body attached to the Minister of the Treasury with a view to working with the Government on cooperative matters. The Minister of the Treasury appointed the members of the Cooperative Council for two-year terms, selecting them from among candidates proposed by the cooperative associations while taking into account all branches of the cooperative movement as far as possible. In addition, the Council was composed of delegates from seven ministries. The members appointed from among the candidates proposed by the associations had to account for at least two-thirds of the total number of Cooperative Council members. The Chairman of the Cooperative Council was selected by the Minister of the Treasury from among the officials of his Ministry (Article 107 of the Act on cooperatives, Article 116 of the Act on cooperatives of 1934).

The Act on cooperatives provisions which concerned the auditing of cooperatives, audit associations and the Cooperative Council were substantially amended by the Act of 13 March 1934, which began the process of subordinating cooperatives and audit associations to state authorities. Associations were obliged to submit their articles of association for approval to the Minister of the Treasury. The Minister of the Treasury could grant a union the right to carry out audits and could make the granting of such right conditional upon the union's compliance with his demands as to the narrowing or expansion of the union's activities. If the union failed to

¹² Journal of Laws 1920 no. 38, item 342.

¹³ Journal of Laws 1934 no. 55, item 495.

¹⁴ S. Wróblewski, *Przedmowa...*; W. Jenner, *Kodeks spółdzielczy. Zbiór ustaw i rozporządzeń dotyczących spółdzielni*, Lwów 1926; J. Dzierżanowski, *Ustawa o spółdzielniach. Rozporządzenie o własności lokali*, Warszawa 1938. See also K. Pietrzykowski, *Prawo spółdzielcze*, in: *Prawo handlowe i gospodarcze II Rzeczypospolitej*, eds. R. Jastrzębski et al., Warszawa 2019, pp. 121–157.

comply with the audit obligation, expanded its activities for purposes not covered by the articles of association and Article 66 of the Act, or failed to comply with the provisions of the law and the orders issued thereunder, the Minister of the Treasury, after hearing the opinion of the Cooperative Council, could revoke its right of audit. The activities of the audit associations were supervised by the President of the Cooperative Council and the costs of supervision were covered by the unions as designated by the Minister of the Treasury. By means of the Act of 13 March 1934, many competencies held by the Cooperative Council were allocated to its Head.

Subsequent changes that further subordinated cooperatives and cooperative associations to the state authorities were introduced after the Second World War and led to the nationalisation of Polish cooperatives.¹⁵ Under the decree of 24 August 1945 amending the 1920 Act on cooperatives,¹⁶ the Council of Ministers was authorised to order, by way of resolution, a merger of cooperative unions 'for the benefit of the cooperative movement' (Article 70a of the Act on cooperatives). Subsequently, a unified Cooperative Audit Union of the Republic of Poland was established, which had a monopoly on auditing all cooperatives. The Council of Ministers was also able to order a merger of cooperatives and simultaneously confer articles of association on the acquiring cooperative in exceptional economic circumstances 'for the benefit of the cooperative movement' (Article 115a of the Act on cooperatives). Under the Decree of 28 October 1947 on the amendment of the Act on Cooperatives,¹⁷ the Association of cooperatives of the Republic of Poland was authorised to carry out administrative and economic activities that it commissioned based on specific provisions. The Act of 21 May 1948 on the Central Cooperative Union and Cooperative Headquarters¹⁸ made it possible to establish the Central Cooperative Union, which legally brought together all cooperative and state cooperative headquarters along with the cooperatives belonging to them. The Central Cooperative Union and the cooperative centres, with which cooperatives of particular types were obligatorily affiliated, had sovereign powers in relation to the affiliated cooperatives, including the right to adopt model articles of association for cooperatives and repeal resolutions of general meetings of cooperatives and supervisory boards on the grounds that they were illegal and 'for other important reasons.' The Council of Ministers granted the Central Cooperative Union its first articles of association and appointed the Supreme Cooperative Council (one of the

¹⁵ K. Pietrzykowski, in: *System Prawa Prywatnego*, vol. 21. *Prawo spółdzielcze*, ed. K. Pietrzykowski, Warszawa 2020, pp. 15–16.

¹⁶ *Journal of Laws* 1945 no. 34, item 205.

¹⁷ *Journal of Laws* 1947 no. 66, item 401.

¹⁸ *Journal of Laws* 1948 no. 30, item 199 as amended.

bodies of the Central Cooperative Union). The Central Cooperative Union took over the assets of the previous State Cooperative Council and the previous Cooperative Review Union of the Republic of Poland.¹⁹ Many provisions of the Act on cooperatives were amended by the Act of 20 December 1949 on the amendment of the Act on cooperatives of 29 October 1920 and the Act of 21 May 1948 on the Central Cooperative Union and Cooperative Headquarters,²⁰ which laid the foundations for a central, top-down system of cooperative management by state authorities. Cooperatives were reduced to the role of executors of national economic plans for the benefit of the People's State (amended Article 1 of the Act on cooperatives). In 1950, a consolidated text of the Act on cooperatives was promulgated,²¹ though it was largely a caricature of the original 1920 Act.

The Act on cooperatives was repealed by the Act of 17 February 1961 on cooperatives and their associations,²² which contained not only provisions applicable to all cooperatives and concerning the cooperative associations and the Supreme Cooperative Council, but also special provisions for agricultural production cooperatives, labour cooperatives and housing cooperatives – unlike the 1920 Act on Cooperatives. As it continued to be developed in the 1945–1949 period, the Act on cooperatives and their associations established a cooperative model and the authorising powers of cooperative associations over cooperatives. The cooperative association headquarters became local central cooperative associations (Article 188), whereas the Central Cooperative Association was dissolved and all its property rights and obligations were transferred by force of law to the Supreme Cooperative Council (Article 189 Section 3). The sovereign powers of the Central Cooperative Union and the Supreme Council over cooperatives were strengthened. This included such things as the right to dismiss the members of cooperative management boards (Article 45 Section 4), the right to determine the provisions of the articles of association (Article 3 Section 3), the right to issue declarations stating the advisability of establishing a cooperative (Article 4 Section 3), the right to request the convening of a general meeting of cooperatives (Article 35 Section 3), the obligation to notify the competent central association of the time, place and agenda of the general meeting (Article 36 Section 1), the right to revoke or suspend a resolution of the general meeting (Article 39 Section 1 and 2) or of the supervisory board (Article 43 Section 1), and the powers of vetting of cooperatives, liquidation

¹⁹ For more information, see K. Pietrzykowski, *Prawo spółdzielcze. Komentarz do zmienionych przepisów*, Warszawa 1995, pp. 211–212.

²⁰ Journal of Laws 1948 no. 65, item 524 as amended.

²¹ Journal of Laws 1950 no. 25, item 232.

²² Journal of Laws 1961 no. 12, item 61 as amended.

of cooperatives and bankruptcy of cooperatives (Article 61 et seq., Article 72 et seq., Article 87 et seq.). For these reasons, the Act in question was sometimes jokingly referred to as ‘the law on unions and their cooperatives.’

According to Article 33 Section 1 item 4 of the original Civil Code,²³ cooperatives and their unions were units of the socialist economy. Ownership and other property rights, among other things, were the property of cooperative organisations as workers’ social organisations (Article 44 of the original Civil Code), while the social property was either socialist national (state) property, cooperative property or property of other workers’ social organisations (Article 126 of the original Civil Code).

The Act on cooperatives and their associations was repealed by the Act of 16 September 1982 – Cooperative Law,²⁴ which also contained provisions common to all cooperatives and provisions on cooperative unions and the Supreme Cooperative Council, as well as special provisions for agricultural production cooperatives, farmers’ agricultural cooperatives, labour cooperatives and housing cooperatives. The cooperatives’ activity was guided by such things as the objectives set out in central and local social and economic plans (Article 1 of the original Act). While cooperatives carried out their activities independently, local authorities could issue laws and decisions that were binding for them; the basis and scope of such laws and decisions were provided for in the law (Article 2 of the original Act; see Article 71 Section 1 and 2 of the original Act as well). Every cooperative was a member of a central cooperative union that it could choose on its own (former Article 4). However, it should be emphasised that the sovereign powers of the central cooperative unions and the Supreme Cooperative Council over cooperatives were partly relaxed and limited at that time. For example, the central association could no longer repeal a resolution of the general meeting or the supervisory board of a cooperative, though it could still challenge it in court (former Article 43 Section 1 and Article 47). The central association’s management board could dismiss a member of a cooperative’s management board but this could be challenged in court either by the cooperative itself or the dismissed member (former Article 51). Lastly, it could also adopt a resolution to put the cooperative into liquidation yet a resolution in this matter could be challenged in court by the cooperative as well (Article 114).

The Cooperative Law was amended several times. It should be emphasised that the process of restoring authentic cooperative activity in Poland began along with the entry into force of the Act of 23 October 1987 amending some acts regulating

²³ Journal of Laws 1964 no. 16, item 93.

²⁴ Journal of Laws 1982 no. 30, item 210.

the principles of functioning of the national economy,²⁵ which abolished the obligatory membership of cooperatives in central cooperative associations and made it voluntary, as well as abolished the obligation to obtain a declaration from the central cooperative association on the advisability of establishing a cooperative. The subsequent Act of 23 December 1988 on economic activity²⁶ proclaimed the principles of freedom to undertake and conduct economic activity and equality of the so-called economic entities before the law, among other things.

The Cooperative Law was further amended after the political transition in Poland. At first, the Act of 20 January 1990 on Changes in the Organisation and Activity of Cooperative Societies²⁷ was passed, putting into liquidation all cooperative associations, cooperatives of legal persons and cooperatives of legal and natural persons, which took over the assets of the respective associations in part or in whole due to the cooperatives' transformation. The Act also temporarily banned the formation of new cooperative associations and contained two regulations directly affecting cooperatives. The first enabled the division of cooperatives at the request of a minority (Article 9), and the second ordered that cooperatives must hold elections to their bodies by 31 March 1990 or else be put into liquidation (Article 19 Section 4 and 4a).

Significant changes regarding cooperatives were also introduced into the Constitution²⁸ and the Civil Code,²⁹ in particular, the provisions concerning socialised economic units and social property were repealed or amended. Mention should also be made of the Act of 30 August 1991 on the revaluation of membership shares in cooperatives and amendments to certain acts.³⁰

The provisions of the Cooperative Law were amended by the Act of 25 October 1991 amending the Civil Code, the Land and Mortgage Register Act, the Cooperative Law, the Civil Procedure Code and the Local Law,³¹ which introduced the possibility of establishing separate land and mortgage registers for cooperative rights to premises and securing these rights with a mortgage.

²⁵ Journal of Laws 1987 no. 33, item 181.

²⁶ Journal of Laws 1988 no. 41, item 324 as amended.

²⁷ Journal of Laws 1990 no. 6, item 36 as amended.

²⁸ Act of 29 December 1989 amending the Constitution of the People's Republic of Poland (Journal of Laws 1989 no. 75, item 444 as amended.); Act of 8 March 1990 amending the Constitution of the Republic of Poland (Journal of Laws 1990 no. 16, item 94 as amended.).

²⁹ Act of 28 July 1990 amending the Civil Code, Journal of Laws 1990 no. 55, item 321 as amended.

³⁰ Journal of Laws 1991 no. 83, item 373 as amended.

³¹ Journal of Laws 1991 no. 115, item 496.

The provisions of the Cooperative Law were later amended by the Act of 7 July 1994 amending the Cooperative Law and certain other acts.³² At that time, a new definition of a cooperative was introduced (Article 1), Article 3 set out the economic definition of cooperative property ('the property of a cooperative is the private property of its members'), Article 4 was repealed and many other provisions of the Act were amended. However, further changes that would have led to the restoration of authentic cooperatives were omitted.³³

Among other changes, the Act of 15 December 2000 on Housing Cooperatives³⁴ introduced Article 108a of the Cooperative Law on the division of cooperatives at the request of a minority, which was modelled after Article 9 of the Act of 20 January 1990 on changes in the organisation and operation of cooperatives.

The Act of 3 June 2005 amending the Act on Housing Cooperatives and certain other acts³⁵ introduced substantial changes to the Cooperative Law as its Article 18 regulated the rights and obligations of cooperative members in detail. This included amendments to provisions on the suspension or expulsion of cooperative members (Article 24) and intra-cooperative proceedings (Article 32, with Article 33 being repealed). Members have been granted broader rights in terms of participating in the general meeting (Article 36 Section 2a and Article 37 Section 4). The provisions on sanctions for defective resolutions of the general meeting have been radically amended (Article 42). Certain provisions concerning the management board and the supervisory board have been amended (Articles 49, 56 and 59), as have those pertaining to lustration (Articles 91, 93 and 93a) and appealing against resolutions of the board of the audit association (Article 257 Section 1). Criminal provisions have also been introduced (Articles 267a, 267b, 267c and 267d).³⁶

In recent years, repeated attempts have been made to enact a new law in the area of general cooperative law. Two parliamentary drafts were submitted to the Sejm (Polish Parliament) in 1999, i.e. the Act on cooperatives³⁷ and the Cooperative Law Act.³⁸ However, the Cooperative Law Act of 25 July 2001 was not signed by the

³² Journal of Laws 1994 no. 90, item 419 as amended. For more information, see K. Pietrzykowski, *Prawo spółdzielcze. Komentarz...*

³³ K. Pietrzykowski, *Spółdzielczość mieszkaniowa de lege ferenda. Siedem grzechów głównych ustawy*, *Gazeta Sądowa* 1996, no. 4, p. 9.

³⁴ Journal of Laws 2001 no. 4, item 27 as amended.

³⁵ Journal of Laws 2005 no. 122, item 1024.

³⁶ K. Pietrzykowski, *Zmiany w prawie spółdzielczym*, *Monitor Prawniczy* 2005, no. 21, pp. 1047–1053.

³⁷ Third parliamentary term paper, no. 1265; K. Pietrzykowski, *Projektowane zmiany w prawie spółdzielczym*, *Przegląd Legislacyjny* 1999, no. 3, pp. 11–28.

³⁸ Third parliamentary term paper, no. 1426.

then President Aleksander Kwaśniewski,³⁹ who then proceeded to set up a team of experts under my leadership, which prepared the draft of the Cooperative Law Act that was submitted to the Sejm on 28th September 2004.⁴⁰ The Extraordinary Committee of the Sejm established after the first reading prepared a report, which was not, however, directed to the second reading by the Marshal of the Sejm. Given the expiry of the term of the Sejm, the project in question failed to bear any fruit. Subsequently, President Lech Kaczyński appointed a team of experts (also under my leadership and with a composition closely matching that of the initial team), which prepared a draft Law on Cooperatives, submitted to the Sejm on 17 April 2008.⁴¹ This project was rejected by the Sejm on 25 July 2008 after the first reading. The parliamentary draft Law on Cooperatives,⁴² which was submitted to the Sejm on 11 July 2008 and which referred to the first presidential draft from 2004, shared its fate. On 9 October 2008, the Sejm Economy Committee prepared a report in which it requested the rejection of the draft.⁴³ Subsequently, the parliamentary draft Law on Cooperatives⁴⁴ was rejected by the Sejm after the third reading on 30 August 2011. Yet another parliamentary draft of the Act on cooperatives⁴⁵ was withdrawn on 27 May 2014 following more than 2 years of work in the Sejm. The 7th-term Sejm failed to complete the work on two parliamentary drafts of the Law on Cooperatives.⁴⁶

The drafts⁴⁷ included such things as a definition stating that a cooperative is an autonomous and independent association with variable composition and a variable participation fund, with its purpose being to raise the standard of living of its members and their families by doing business through the members' personal or property-based interaction. They also indicated that cooperatives may carry out economic activity on a non-profit basis (housing cooperatives, cooperative savings and credit unions and social cooperatives) and noted that the articles of association regulate the

³⁹ Third parliamentary term paper, no. 3437. Some of the solutions contained in this Act were later used in the parliamentary bill amending the Act on housing cooperatives and certain other acts (Fourth parliamentary term paper, no. 4087), based on which the Act of 3 June 2005 amending the Act on housing cooperatives and certain other acts was enacted.

⁴⁰ Fourth parliamentary term paper, no. 3415. H. Cioch, *Prawo spółdzielcze w świetle prezydenckiego projektu ustawy*, Kraków 2005.

⁴¹ Sixth parliamentary term paper, no. 657.

⁴² Sixth parliamentary term paper, no. 1035.

⁴³ Sixth parliamentary term paper, no. 1116.

⁴⁴ Sixth parliamentary term paper, no. 3493.

⁴⁵ Seventh parliamentary term paper, no. 515.

⁴⁶ Seventh parliamentary term papers, no. 980 and 1005.

⁴⁷ K. Pietrzykowski, *Projektowane zmiany w prawie spółdzielczym*, Przegląd Prawa Handlowego 2011, no. 3, pp. 31–37.

organisation, the way cooperatives operate and the relationships between cooperatives and their members within the limits set by the Act. It was suggested that any legal provisions that are contrary to the act should be invalidated. One new solution was the possibility of adopting the statute of limited transferability of shares. The complicated procedure for leaving a cooperative was also simplified. Intra-cooperative proceedings were modified in a way that would strengthen the rights of cooperative members who would be able to decide for themselves whether to pursue their claims in court or first seek redress before the cooperative bodies. The amendment to the provisions on cooperative bodies was aimed primarily at tidying up the procedure for adopting resolutions. It provided for enabling the invalidation of legal transactions made without the required resolution of the general meeting or the supervisory board, e.g. in cases where no such resolution exists. It also clarified the premises for challenging a resolution of the general meeting in court and limited the possibility for court resolutions to be annulled or declared invalid for formal reasons. The rules for the representation of a cooperative by the management board were modified. As regards the supervisory board and the administrative board, it was proposed that anti-competitive legislation should be included alongside existing anti-corruption legislation. The rules governing the liability of members of the supervisory board or of the management board for damage caused to cooperatives were clarified. An amendment was proposed to allow cooperatives to decide on their own whether they should have an authorised lustration expert carry out a lustration process. The current rules on the bankruptcy of cooperatives were omitted as it was assumed that this matter should be governed solely by insolvency law. At present, the National Cooperative Council represents the Polish cooperative movement both at home and abroad, but it operates on an ex-lege basis and no cooperative belongs to it. It was therefore proposed to establish the National Cooperative Council as a corporate organisation that should bring together all Polish cooperatives.

Thus, all previous attempts by the Sejm to pass a new law on cooperatives have failed. Recent years have seen no further attempts at changes in this regard. The cooperative law is still awaiting a new act.

Conclusion

The Act on cooperatives was one of the most outstanding achievements of Polish legislation during the era of the Second Republic of Poland and probably the world's best cooperative act at the time. On 1 January 1983, the Act of 16 September 1982 –

Cooperative Law entered into force. The Cooperative Law was amended several times and recent years have seen repeated attempts to enact a new law in the area of general cooperative law. Previous attempts by the Sejm to pass a new cooperative law have so far failed. No further attempts have been made in this regard, and as such, Poland's legal system is yet to gain its new cooperative act.

Bibliography

- Cioch H., *Prawo spółdzielcze w świetle prezydenckiego projektu ustawy*, Kraków 2005.
- Dzierżanowski J., *Ustawa o spółdzielniach. Rozporządzenie o własności lokali*, Warszawa 1938.
- Jenner W., *Kodeks spółdzielczy. Zbiór ustaw i rozporządzeń dotyczących spółdzielni*, Lwów 1926.
- Pietrzykowski K., in: *System Prawa Prywatnego*, vol. 21. *Prawo spółdzielcze*, ed. K. Pietrzykowski, Warszawa 2020.
- Pietrzykowski K., *Prawo spółdzielcze*, in: *Prawo handlowe i gospodarcze II Rzeczypospolitej*, eds. R. Jastrzębski et al., Warszawa 2019.
- Pietrzykowski K., *Prawo spółdzielcze. Komentarz do zmienionych przepisów*, Warszawa 1995.
- Pietrzykowski K., *Projektowane zmiany w prawie spółdzielczym*, *Przegląd Legislacyjny* 1999, no. 3.
- Pietrzykowski K., *Projektowane zmiany w prawie spółdzielczym*, *Przegląd Prawa Handlowego* 2011, no. 3.
- Pietrzykowski K., *Spółdzielczość mieszkaniowa de lege ferenda. Siedem grzechów głównych ustawy*, *Gazeta Sądowa* 1996, no. 4.
- Pietrzykowski K., *Zmiany w prawie spółdzielczym*, *Monitor Prawniczy* 2005, no. 21.
- Wróblewski S., *Ustawa o spółdzielniach*, Kraków 1921.