

CRIMINAL LIABILITY IN COOPERATIVE LAW

(doctoral dissertation summary)

A cooperative is an undertaking that carries out the tasks of social economy, which means that profits it generates are intended to be re-invested in social goals or in the community of cooperative members, instead of maximising the profit of individual cooperative members. According to the definition provided for by the cooperative law, a cooperative is a voluntary association of unlimited number of persons, with variable composition and variable share fund, which runs common business activity in the interest of its members. The cooperative movement was established as a form of protection for workers against the effects of aggressive capitalism and in its initial form it was limited to activities undertaken for the common good of its members, while its principles were listed by the International Cooperative Alliance (ICA). The criminal provisions of the relevant Act provide for the types of offences related to the functioning of a cooperative.

The aim of the dissertation is to present in a comprehensive manner the issue of criminal liability in cooperative law, with particular focus on the elements of specific types of offences and the good protected under criminal law. The principle of subsidiarity of criminal law envisages that it should constitute *ultima ratio*. There appears, therefore, a question about the justification of criminal law intervention in the functioning of cooperatives, which have their own control mechanisms for the purpose of verifying the correctness of their functioning, such as mandatory inspection (*lustracja*) and cooperative liquidation upon the request of the inspection committee (*związek lustracyjny*).

The author analyses in his research only those offences that may be committed by a member of a cooperative body and in the case of which the good protected is related to the functioning of the cooperative, both in terms of its internal and external relations. Common offences that may be committed by people holding managerial functions at any legal entity and the provisions on housing cooperatives (housing associations) have been excluded from the scope of the analysis. This is due to the fact that cases related to offences committed in

relation to housing cooperatives (*spółdzielnie mieszkaniowe*) are examined under the Petty Offences Procedure Code (*Kodeks postępowania w sprawach o wykroczenia*), while the subject of the present research are offences under the Criminal Code.

The dissertation consists of six chapters.

The first chapter is a presentation of ideas underlying the cooperative movement. The values described, together with the growing importance of the cooperative movement, became corner stones for creating mechanisms that served to protect it, ensured by obligations imposed by the State. This chapter outlines the ideas and the history of the cooperative movement in Poland and around the world.

The second chapter, entitled *A cooperative in Polish law*, presents the current *status quo* of cooperatives in the Republic of Poland. A legal dogmatic research method was used to illustrate the current understanding of the notion of cooperative, its types and structures of its bodies. It is the description of cooperative bodies which is of paramount importance for the purpose of further considerations on individual offences. An offence within cooperative law may be committed only by a holder of a function in a cooperative body during their term of office. This chapter describes specific features of various types of cooperatives, starting from agricultural production cooperatives (*rolnicze spółdzielnie produkcyjne*), farmer cooperatives (*spółdzielnie kółek rolniczych*) and professional cooperatives (*spółdzielnie pracy*), which are regulated in the currently applicable Cooperative Law. Its further parts describe cooperatives in the order of their introduction to the legal system, and therefore according to the chronology of acts that regulate their functioning. Even though the applicable Act on Cooperative Savings and Credit Unions was adopted in 2009, it replaced the Act of 1995, and for this reason it seemed appropriate to describe cooperative savings and credit unions (*spółdzielcze kasy oszczędnościowo-kredytowe*) before any other types of cooperatives. Subsequently, the legal framework for cooperative banking, housing cooperatives (associations), social cooperatives, European cooperative societies and farmers' cooperatives is presented.

The third chapter entitled *Criminal liability for offences in cooperatives from historical perspective* is focused on the shaping of criminal liability regime in the cooperative law in the territory of Poland throughout the years. A historical legal research method has been used to present regulations related to offences in cooperatives distinguished in the interwar period, i.e. after Poland regained its independence, but also in the Polish People's

Republic, as well as the evolution of criminal regulations in the Third Polish Republic. The last part includes the discussion on the activities to the detriment of a cooperative classified in Article 267a of the Cooperative Law, which was repealed on 13 July 2011 as a result of amendments to the Criminal Code.

To discuss the types of offences in cooperatives, it is indispensable to analyse the elements of such offences. This topic is raised in the most extensive chapter, chapter four, entitled *Offences in cooperatives*. The provisions of commercial criminal law are, in most parts, incomplete as they do not contain all the components of at least one standard of conduct. As a rule, these are blanket provisions. The adoption of blanket provisions is related to sanctioning breaches covered by other branches of law. To present in full the normative content of the provision of non-Code commercial criminal law, it is necessary to refer to regulations beyond the provision in question. Therefore, this chapter constitutes also an attempt to reconstruct specific elements of various types of offences. The types of offences have been ordered according to the good protected. Identification of the good protected by law under the cooperative law may pose certain difficulties. It is impossible to clearly state what sort of good is protected by specific provisions. Methodologically speaking, in view of the 'primary objective' of the regulation, the categories introduced are: offences against trade, offences against the rights of cooperative members and offences against widely understood information. The specific nature of a European cooperative society results in that only selected types of offences may be committed within this legal entity and for this reason the taxonomy proposed includes also a category of offences typical of European cooperative societies.

The classification of offences in cooperatives must be accompanied by the analysis of practical use of particular categories. Chapter five, entitled *Practical application of the provisions of criminal cooperative law*, provides a statistical analysis of criminal activity in cooperatives in Poland and discusses practical issues related to the application of the legal provisions analysed. Statistics on the number of closed proceedings and rulings issued have been obtained from the Ministry of Justice and the Public Prosecutor's Office. Even though the data represent only a section of criminality in Polish cooperatives, and of criminal policy of the State in general, the analysis of specific cases *in concreto* enables certain patterns in law application to be seen.

The analysis in chapter six, focused on legal comparative studies, covers criminal law regulations existing in other legislations with regard to the members of cooperative bodies.

The comparative analysis includes British, German and French regulations. It seemed reasonable to discuss the rules of criminal liability in reference to cooperatives in the United Kingdom as it is England that is perceived as a birthplace of cooperatives. It is assumed that it was in Rochdale that the first cooperative in history was established in 1844. The cooperative movement developed throughout Europe as an alternative to the capitalist vision of economy. As the British regulations are grounded in *common law* order, it was necessary to extend the comparative analysis with the regulations functioning within the codified law system, within which the German Pandectist model and the French Napoleon model may be distinguished. The choice of these two countries is even more justified in view of the fact that it was in the territory of Germany where cooperative savings and credit unions started evolving, while French banking cooperatives are the largest in the world. Moreover, due to the diversity of legal solutions existing in the cooperatives of Western Europe, three models may be distinguished: Roman, German and British, even if the lines of division are increasingly blurred.

Having regard to all the above considerations, the author presents *de lege ferenda* suggestions related to the criminal regulations provided for by the Polish cooperative legislation.