THE GREEK ANTI-PARADIGM: HOW LEGISLATION ON AGRICULTURAL CO-OPERATIVES CAUSED THEIR FAILURE

Michael Fefes[1]

Abstract

The first piece of Greek co-operative legislation was promulgated in 1914. This legal regime remained till 1979, having been amended several times. Since 1979, there were seven laws concerning exclusively rural co-operatives. One may presume that such interest shown by Greek legislators would mean the development and expansion of co-operative model in rural sector. Nevertheless, the co-operative enterprise model has been a failure in Greece, at least as regards rural co-operatives. The present paper attempts to point out that Greek legislation has played a negative role for rural co-operatives and had a serious contribution to their decline instead of serving as an encouraging and enforcing factor to their routing and betterment. In addition, one may stipulate that Greek legislation follows a specific pattern with the purpose to supervise and control rural co-operatives, treating them not as enterprises but as political tools. The above comments will be based on the analysis of three relevant laws in Greece, that is Law 1541/1985, Law 4015/2011 and Law 4384/2016, while a very brief commendation is to be done as to the very recent development on 11th March 2020 (Law 4673/2020).

Keywords: rural co-operatives; Greek legislation; legal deficiencies.

1) INTRODUCTION

The aim of the present paper is to illustrate the shortcomings of the Greek rural co-operative legislation. We shall start with Law 1541/1985, then we shall proceed with Law 4015/2011 and the paper will complete its description with an analysis of Law 4384/2016 to a larger extent, as it was the legislation in force until 13/03/2020.

Law 4384/2016 reformed the legal status for rural co-operatives, abolishing the previous legal provisions. Nevertheless, Law 4384/2016 itself fell prey to the constant legislative practice as regards Greek rural co-operatives, i.e. the repealing of a legislation and its replacement with a new one, every time there is a change in the government or in the leadership in the concerned ministry (Rural Policy and

[1] Associate Professor, Department of Social and Educational Policy, University of Peloponnese (Damaskinou & Kolokotroni Str., 20100, Corinth, Greece), mfefes@uop.gr

Food). Thus, Law 4673/2020[2] is the current legislation on rural co-operatives, and one could assume that it may remain in force only until there is a change in the government. Though it may be premature, a very brief comment on Law 4673/2020 is included in the present paper for the purpose of completeness of presentation.

The co-operative movement is far from being a marginal phenomenon. At least 12% of humanity is a direct or indirect member of any of the 3 million co-operatives in the world.[3] Nevertheless, the co-operative enterprise model is argued to be a failure in Greece, at least as regards rural co-operatives. There are specific reasons for this, mainly the clientelistic element of Greek political life envisaging co-operatives as the best means of manipulating and harnessing rural voting. In most cases, the co-operatives' members were more concerned with their political activities and aspirations than with the progress of their enterprises. This fact, combined with the generally low educational level of farmers, created a climate of doubt and disparagement for co-operative institution, with the consequence that co-operatives became marginal market players functioning rather as intermediaries, between farmers and the then Agricultural Bank of Greece or the State.[4]

As mentioned above, the Greek legislation, to an extent, has been evidenced to facilitate the shortcomings in the application of cooperative law in the country. The main shortcoming for co-operatives is that they were never allowed to operate freely as businesses. Paragraph 4 of Article 12 of the Greek Constitution provides that "Rural and civil co-operatives of all kinds are self-governed institutions according to the law and their statutes, and are protected and supervised by the State, which is obliged to concern for their development". Such concern and supervision definitely does not entail components such as guardianship, or manipulation, or strict, unnecessary and unjustified control systems.

After a brief discussion on the Greek rural co-operatives from a historical perspective, the present paper will turn to the explanation of several legal provisions found in the legal measures described above. Following that, it is indicated that co-operative legislation contributed to the decline of rural co-operatives in Greece instead of serving as an encouraging lever for their development. In addition, one may stipulate that Greek legislation follows a specific pattern with the purpose to oversee and control rural co-operatives.

2) GREEK CO-OPERATIVE MOVEMENT

Co-operatives are *sui generis* private enterprises. They differ from the other common commercial legal entities, because they combine an economic and a social facet in their activities. They are bodies

[2]. Greek OJ 52, 1st Issue, 11/03/2020.
[3]. https://www.ica.coop/en/cooperatives/what-is-a-cooperative?_ga=2.247599684.2135337862.15504 98409-1121495596.1550498409.
[4]. Agricultural Bank of Greece lost its banking permit on 2012 and is currently under liquidation.

composed of natural persons or/and legal persons and pursue both economic and social aims. The private economic initiative is an element residing in their inherent character during the process of their business. On the other hand, the social element gives them their *sui generis* character. Their economic activity, entrepreneurial activity, organisation and management are purely internal matters of the co-operative. The State may encourage the co-operative movement at its very beginning and then foster it by securing a friendly environment for its growth and stability. The importance of the attitude of the State for the stable and rational development of co-operatives is great. The provision of a legal framework, adapted to the nature of the enterprise on an equal basis to that of commercial companies and giving useful guidelines to co-operatives, is of equal importance.

As a principle the above remarks are generally accepted and reflected in the literature concerning co-operatives worldwide, taking as a necessary prerequisite that co-operatives always work within the framework of an open and fair market competition. It is also generally accepted that the essential nature of co-operatives is that they are created to serve the needs of their members and this is the reason we meet co-operative enterprises all over the world. Nevertheless, each country has developed its own co-operative entrepreneurial model according to the peculiarities of each particular State. A brief analysis of the historical evolution of rural co-operative movement in Greece will serve as an explanatory tool for the present situation in the co-operative sector.

There were several traditional models of co-operation among professionals in Greece.[5] Thus, one may wonder why farmers did not follow these patterns of co-operation, when the Modern Greek State was founded. Greece may be considered as a country that presents the perfect model for the application of rural co-operative activities. Since the main structural problems in Greece were the small size of holdings, their territorial fragmentation and the multicultivation of crops, co-operation among farmers seemed necessary. Co-operatives could have played a vital and reviving role in the agricultural economy of the infant State. Nevertheless, for nearly eighty years (1827-1914) there were no formal co-operatives at all.

There are particular factors that influenced co-operatives and led to the structural deficiencies they suffer even nowadays. At first, during the Ottoman rule, Greek population, being in substantial cultural and economic isolation from the western world, was not able to come into contact with the other European countries and follow their evolution. On the other hand, the War of Independence, which lasted nine years, left the country in ruins. The whole rural structure had been destroyed. The rural economy was at a primitive level. It is characteristic that the only tools at the disposal of the farmers were antiquated.

Secondly, the basic prerequisite for the development of co-operatives, that is land ownership, did not exist, because the large volume of land belonged to the State and the Church. Experience shows that farmers who are independent owners of family farms come together easily to form various kinds of co-

[5]. See Antoniou, p. 239-250.

operatives, but peasants whose tenure is insecure are not likely to do so, or do so only with difficulty. It is futile to organise a massive co-operative movement, until thoroughgoing schemes of land reform are implemented. The need for comprehensive and enabling land reforms existed from the beginning in Greece. One may note that a final shape of a land reform scheme took shape and was implemented in 1928.

Thirdly, Greek governments, during the first fifty years of the new state, had no agricultural policy at all. Thus, no central planning existed for the development of the agricultural economy. There were no means of transport and no transport network, no agricultural insurance, credit and education, no land reform. The Ministry of Agriculture was established only in 1917. Naturally, its establishment did not mean an automatic correction. It took several years before an elementary national agricultural policy could be planned. In conclusion, during the first century there was a haphazard agricultural evolution and the necessary infrastructure that could make co-operatives flourish was non-existent.

Fourthly, the absence of an agricultural credit institution left the farmers to fall victims of usury. Though co-operative credit was very essential, the financing of the agricultural sector was very limited due to its particularities. The rarity of loans and their severe conditions turned farmers to seek recourse to usurers. No possibility of economic solidarity of co-operatives could exist under those circumstances.

Finally, since the co-operative is a complicated form of organisation, its establishment and administration demand specific knowledge of co-operative affairs as well as knowledge of agricultural matters generally. However, most of the Greek farming population was completely illiterate. On the other hand, the State showed no interest in their training, save a few sporadic attempts. The shortage of educated people was shocking in the agricultural sector. In 1898 there were 38 agronomists and till 1865 not even one veterinarian.

Consequently, the essential requirements for the success of the co-operative movement in Greece were missing during the first 80 years of its modern history. Having to face utmost poverty, Greeks could not think of a superior way of economic activity, but were too absorbed in the day-to-day struggle for survival.

The first co-operative created in Greece was the co-operative of Almyros, a village near Volos, Thessaly, in 1900. This event is presumed to be the beginning of Greek co-operative history. Additionally, a very significant event was the adoption of Law 602/1914, which provided for a general legal framework for the organisation of all kinds of co-operatives. It followed the internationally accepted co-operative principles and was quite progressive and radical for its day. It is important to underline that Law 602/1914 remained valid as the basic co-operative law till 1979. The law seems to have given

farmers the necessary impetus. While before its adoption there were only 150 co-operatives, their number increased to 5,186 till 1939. The predominant co-operative form was the credit society. [6]

Law 602/1914, if applied properly, could be a valuable tool for the advance of co-operatives in Greece. Unfortunately, co-operatives failed for many reasons.[7] It suffices to note that the main reasons were the weakening and falsification of the legal and institutional framework of co-operatives, the interference of the State in co-operative affairs, the legal prohibition of a real credit policy by co-operatives after the creation of the Agricultural Bank of Greece and the total indifference of the State toward the establishment of a sound agricultural co-operative education and training for farmers. On the other hand, it is known that the rural community tends to be conservative. Combining all these factors, one may understand why Greek farmers adopted a hesitant at first and negative afterwards attitude towards co-operative organisation. The obvious advantages that co-operatives presented were curtailed by the destructive intervention of the State.

In a few words, Greek rural co-operatives are supposed to be private enterprises, but they were transformed into quasi-public entities serving the interest of the political parties and not the real interests of their members. Greek legislation, naturally, considers co-operatives as private enterprises responsible for their own activities and liable for their success or failure. However, the actual situation is completely different. Greek rural co-operatives were used as governmental tools to implement "social" policies in the agricultural sector. The strict political tutelage and severe party involvement in co-operatives resulted in serious damages of the institution and the general distrust of Greek public opinion, farmers included. The legislation contributed to that end including several legal deficiencies and other subtle provisions that worked at the expense of co-operatives.[8]

Let us now turn to an analysis of Law 1541/1985, and Law 4015/2011 and a more thorough description of Law 4384/2016, which will corroborate the above arguments. One might also suggest that the promulgation of Law 4673/2020 leads, more or less, to the same conclusions, since it is one more telling example of the practice followed in Greek rural co-operative legislation.

3) LAW 1541/1985

The reference to an old legal instrument may only serve as an emphasis to the basic argument of the present paper. Therefore, there will be a brief comment as to four of its provisions. More specifically:

6. See Fefes, Greek and Italian Co-operative Movement, p. 102-105.
7. See Papageorgiou, p. 27-48.
8. An exception was Law 2810/2000, a modern piece of legislation combining co-operative principles and innovative entrepreneurial organisation. However, such legislation has not helped co-operatives to develop, which proves that it is very difficult to undo the damage already done.

1) Article 4[9] violated the 1st co-operative principle, since it prohibited the establishment of more than one co-operative within the same district. Therefore, if a farmer wished to become member of a co-operative, he had no choice but to become member of the only co-operative of the district or not become a member at all.

2) Article 8[10] violated the 2nd principle distinguishing the members of a co-operative in regular and special members. Such distinction was related to the profession of the prospective members, that is whether they were farmers or had another occupation as well. The members did not have the same rights, therefore people that were involved in producing agricultural goods were not keen to membership in co-operatives.

3) The law allowed for close relatives of the members of the administrative board to be elected as members of the supervisory board, creating thus phenomena of nepotism and mismanagement.

4) Article 28§5[11] provided for the election of the members of the administrative board according to the party-slate system and not under the system of a single ballot. The said system created fractures within co-operatives, division among members and rekindling of political passions. Combined with the "only one co-operative in one district" provision, such election system made co-operatives an ideal battlefield for political parties in order to manipulate farmers' votes.

4) LAW 4015/2011

Law 4015/2011 was till 2016 the instrument on rural co-operatives. It abolished in essence the previous measure, that is Law 2810/2000 (maybe the best legislative specimen in the field of rural co-operatives). The law's purpose (as reflected in its Explanatory Report[12]) was to serve as a new beginning for co-operatives in Greece. Its provisions aimed to avoid any phenomena of fraudulent behavior within co-operatives serving as a landmark. The following comments show clearly that the said law was one more example of failed legislative action:

1) Article 5§1 provided that only natural persons may be members of a co-operative. Consequently, legal persons, such as other co-operatives, were not able to become members of a co-operative, not to

[9]. Article 4 read as follows: "1. The seat of the rural co-operative organization is the municipality or community, where is its administration. 2. The district of the rural co-operative is defined by the administrative borders of one or more neighboring municipalities or communities of the seat of the co-operative, wherein the farms of its members are located. 3. A second rural co-operative may not be established within the same district".
[10]. Article 8 read as follows: "1. Regular members of a rural co-operative may be adults, male or female, who are engaged personally, professionally and exclusively in any branch of the rural economy ... Full members may also become adults, who are engaged personally, professionally, but not exclusively, with the above-mentioned work. Special members of a rural co-operative may become adults, who are owners of agricultural property located within the district of the rural co-operative, but are not personally and professionally involved in the production of agricultural products".
[11]. Article 28§5 read as follows: "Elections are held by secret ballot with the system of party-slate. Each party-slate includes candidates for the administrative board, which are listed on the ballot paper in alphabetical order".
[12]. Greek laws are always going together with an Explanatory Report describing the reasons for legislative action on the specific issue the law regulates.

speak of forming a co-operative themselves. The prohibition to acquire membership of a rural co-operative by legal persons was a clear violation of Article 12 of the Greek Constitution, which enshrines and protects the individual right of association. The only (limited and insufficient) right for a co-operative was to have only one share in another co-operative.

Article 19§8 of L. 4015/2011 was an attempt to fill the vacuum created by the "prohibition" of co-operation among co-operatives. It provided that the then existing Joint Ventures of Rural Co-operatives and Central Co-operative Unions (legal persons provided for in Law 2810/2000) were forced to be transformed to Branch Rural Co-operatives, or else they would not be registered as co-operatives in the Co-operative Registry of the Ministry of Rural Development. Such Branch Co-operatives should function at a national level and there could be only one Branch Co-operative, that is all olive oil producers were either to be members of such co-operative or not be members at all. Such provision in essence imposed a kind of compulsory co-operative violating the 1st Co-operative Principle.

Thus, in Greece the legislator not only precluded a legal person from joining a co-operative, but also effectively prohibited co-operatives from joining other co-operatives. It goes without saying that there is absolutely no reason, legal, economic, functional or other, justifying such prohibition. It did not only violate the 6th Co-operative Principle, but also run counter to the provisions of the SCE Regulation, which explicitly provides for the establishment of a European Co-operative from other co-operatives.[13]

2) Law 2810/2000 provided for the ability of first-level co-operatives to form second-level co-operative (Unions).[14] Articles 18 and 19 of Law 4015/2011 provided for a specific compulsory procedure of amalgamation of such Unions. More specifically, Unions were abolished and transformed to first-level co-operatives through the amalgamation of their members. Moreover, such compulsory transformation existed for Joint Ventures and Central Co-operatives as well. It is evident that such procedure violated article 12 (right of association) and article 5§1 (right of economic freedom) of the Greek Constitution.

3) Article 16§11, modifying article 17 of Law 2810/2000, provided that, among other duties, the auditors of a rural co-operative control, in particular, "the managerial order, both as to the legality and the essential purpose of expenditure and is intended primarily to detect irregularities, misconduct or other infringements and to identify those responsible". Such provision is far beyond the duties of auditors, especially in comparison to the auditing of a société anonyme (SA) in Greece. The strict control of the materiality and necessity of expenses in an enterprise obviously is an impediment to the actions of the manager or directors, since it concerns any kind of business decision. The wording of the article was so general that it covered all types of expenditure from the largest to the everyday expense. This type of

[13]. See Fefes, European Institutions of Social Economy, p. 137.
[14]. Law 2810/2000 provided for a three-level organisation of co-operatives, distinguishing them to first-level co-operatives (established, e.g., as small legal persons at a village or town), second-level (established at a prefecture) and third-level, which had a panhellenic dimension). Such structure was abolished by Law 4015/2011 and the abolishment is still valid after the promulgation of Law 4384/2016.

control usually leads to idleness and decline of an enterprise. Therefore, the said provision violated article 5§1 (right of economic freedom) of the Greek Constitution.

A final comment has to do with the creation by Law 4015/2011 of a new Registry, wherein all rural co-operative collective entities should be registered and remain there as long as they were functioning.[15] The Registry was an instrument of supervision for co-operatives. The objective of the newly introduced supervisory process was the liquidation of inactive co-operatives, whose only reason of existence was to vote in the election of the bodies of the second- and third-level co-operatives. However, all these inconsistencies were totally unnecessary. The then existing Law 2810/2000 offered solutions to the supervisory authority, which could initiate the procedure of winding-up and liquidation of those co-operatives not complying with the provisions of the law. Hence, the liquidation of inactive co-operatives was purely a matter of political will and application of the law, and not a matter for a new legislative initiative. The only reason for inertia was the "political cost", that is the fear for loss of control of the rural vote.

5) LAW 4384/2016

As said, the till very recently the legal regime for rural co-operatives in Greece was found in Law 4384/2016. The following analysis indicates once more the pattern of Greek legislation towards a strict control of co-operatives. The law repeated the same mistakes that put co-operatives at a disadvantageous position. More specifically:

1) Article 4§1 provided that the minimum number of founding members of a co-operative was at least twenty persons. There is a tendency for experiments with the minimum number of founding members in the Greek legislation. In most countries the number of founding members varies from 3 to 10. The SCE Regulation provides for 5 persons, natural or legal, coming from at least two different Member-States.[16] Greek co-operative legislation started from number seven (Law 602/1914) and Law 2810/2000 provided for the same number. It is evident that twenty was too large and restrictive. The number of members has initially to be small, as the co-operative is an enterprise based on the free will of the members to co-operate with sincerity and solidarity after having fully understood the advantages of the institution and such co-operation. Larger and financially-viable co-operatives are always our best intention and objective, however this is not achieved by legislative pressure and the mandatory

[15]. It is worth mentioning the events following the creation of the Registry. The deadline for submitting applications expired within three months of the publication of Law 4015/11, ie 21/12/2011. The short deadline was the reason for "funny" events such as an unofficial extension to be registered. The Registry remained open after 21/12/11 and those co-operatives enrolled afterwards received a registration number and a certificate of registration without, however, being officially registered, since the deadline could be extended only by amending the law. It is clear that such a legal provision resulted to a plethora of judicial adventures and multiple legislative corrections.

[16]. See Fefes, European Institutions of Social Economy, p. 137.

requirement of a large number of members. If the members come themselves to the conclusion that large business size is for their own benefit, only then will they seek to expand their co-operative.

2) The law prohibited the registration of members in co-operatives three months prior to the date of election of the members of the administrative and supervisory boards (article 7§1, d). This provision was unreasonable and violated the 1st co-operative principle. It clearly depicts the legislator's attitude over co-operatives and sheds light to the reasons of many inefficiencies of co-operatives in Greece. The pretense for such provision is to avoid the falsification of boards' election through the enrollment of many members, whose only purpose is to vote for specific persons to be elected as board officers. Such attitude assimilates a co-operative to a political party, as if specific fractions in a co-operative are trying not to lose control of power. Even if there are such potential phenomena, it is for the co-operative itself to react. For instance, the statutes may simply provide for a least period of membership, avoiding thus all "free rider" cases.

3) Article 8§3 provided for an obligation of the members to deliver to co-operatives at least 80% of their annual produce and purchase from their co-operatives at least 80% of their annual supplies. Regardless of its content or whether such agreement is right or wrong, such a provision was a rather unnecessary legislative intervention. Transactions between members and co-operatives are a purely internal matter and are not to be compulsorily regulated.

4) The mandatory presence of a lawyer at the procedure of boards' elections - moreover as the chairman of the electoral committee - was another unacceptable interference of the legislator with purely internal co-operative issues. The provision was supposed to promote transparency and credibility of the voting procedure and results, but was inspired by intense suspicion and doubt for co-operatives, burdening them at the same time with unnecessary expenses and bureaucracy. Such rule was unique and is not found in other entities' board elections. Only the statutes should regulate the details of the electoral procedure and all other relevant issues.

5) Articles 17§8c and 16§1 stipulated that the chairman of the administrative board could be elected for only two consecutive terms. Furthermore, a person who had served as chairman for two consecutive terms could not be a candidate as a simple member of the administrative board. Such provisions are meaningless and irrelevant, since they concern purely internal co-operative matters and their only outcome is that co-operatives may lack the services of experienced officers.

6) Article 17§1 provided that in the ballot paper there will be mandatorily female candidates. The percentage of women candidates for the administrative board would be at least equal to the percentage of female members of the co-operative. The provision was another example of an unfortunate legislative intervention, introducing discrimination on grounds of sex. Members, regardless of gender, must be treated in full equality.

7) Article 16§10 provided that co-operatives with a turnover exceeding 10,000,000 euros may, by decision of the general meeting, offer remuneration to the chairman of the administrative board. This provision was another futile intervention by the legislator on exclusively internal co-operative issues.

8) Article 16§12 provided that the chairman of the administrative board (and the CEO or the manager/s if any) were compelled to submit annually a statement of their private assets in case that the co-operative's annual turnover exceeded 2,000,000 euros. Such obligation is valid for all those persons having a direct or indirect relationship with the Greek State. Nevertheless, co-operatives are private enterprises, not connected or related to the State, thus one may not comprehend the obligation reserved for chairmen of administrative boards, CEOs and managers. Such persons are neither officers of the State, or public servants, nor are they involved in public affairs or deal with public money and public expenditure. Such obligation would be acceptable, for instance, in the case of a public contract undertaken by the co-operative with a fee of 300,000 euros. All other provisions are unnecessary.

9) It is true that to hire a competent and co-operatively experienced manager benefits a co-operative and creates a favourable environment of co-operation and trust among the members of the administrative board and co-operative workers. On the other hand, the recruitment of a manager is a purely internal matter of function and administrative structure of a co-operative and should be an issue which lies in its exclusive discretion. However, article 16§11 provided that the appointment of a manager was mandatory, if a co-operative had a turnover exceeding one million euros. Such provision for compulsory recruitment was unique for a private enterprise.

10) The wording of Article 9 indicated that there was only one compulsory share. Unfortunately, the law abolished additional mandatory shares. Such abolition was incorrect, because additional mandatory shares (depending on the member's transactions with the co-operative) means additional funding for the co-operative in order to avoid bank loans. The provision was also contrary to the provisions of the SCE Regulation, which states in Article 4§7 that "the statutes lay down the minimum number of shares required to be subscribed for".

11) Article 26§2 provided that the General Assembly decided the winding-up of the co-operative, if the own funds, as reflected in the balance sheet, had become less than 1/5 of the co-operative capital. This provision was, in essence, a copy-paste of the then Article 47 of Codified Law 2190/1920 on SA, therefore it was totally misplaced and erroneous and violated the first co-operative principle. As said, a co-operative has a variable capital, because, due to the open door principle, the number of members is variable. The provision would make sense, only if the law provided for a minimum co-operative capital, as provided for, i.e., in the SCE Regulation.[17]

[17]. See Fefes, European Institutions of Social Economy, p. 181.

12) The initial version of article 27§12 of Law 4384/2016 provided that after the full repayment of the co-operative's debts, the remainder of the liquidation, if any, is not distributed to the members. The statutes were to regulate the manner of allocation of the remainder, for instance, either to another co-operative, or to a social cause. Unfortunately, the said provision was replaced by article 13 of Law 4492/2017, stating that the liquidator deposits any remainder with the Organisation of Management of Real Estate, a legal person controlled by the State. The Organisation delivers the remainder either to another co-operative, or to support activities that contribute to the development of rural economy. Such provision was an unacceptable intervention of the legislator with the co-operative's property, it violated the right to free disposal of one's property and was, in essence, a confiscation of the co-operative property.

13) As clearly mentioned in the Explanatory Report of the law, there was a clear legal distinction for the first time between "mixed" co-operatives and women co-operatives in Greece. Even if such distinction was based on good intentions, it is rather unfortunate and problematic. The statutory prohibition of free entrance in a co-operative based only on sex (article 2§1), regardless of the fact that the candidate member fulfilled all the other criteria, created a clear discrimination. Such provision violated article 4 of Greek Constitution and the 1st co-operative principle. It is recalled that equality of men and women has been established for co-operatives since 1844, being an article in the statute of the Rochdale Co-operative.[18]

14) Article 39 provided for the creation of a non-for-profit legal person of private law under the name "Rural Co-operative Education and Training Fund". Members of the Fund were to become all rural co-operatives and another legal person ("Greek Agricultural Organisation DIMITRA"). The Fund's resources were to come from the distribution of co-operatives' surpluses (2% of the annual surplus of a co-operative goes to the Fund - article 23§4d), from European Union programmes regarding education and training and any other potential funding from the rural co-operatives (after a decision of their administrative board). As a rule, whenever the State thinks necessary to set up a legal person as the said Fund, it has on the same time to take care of both its resources and its administration. Legal provisions envisaging compulsory funding from enterprises of the private sector, as are co-operatives, as well as compulsory membership are a direct violation of Greek Constitution (economic freedom and freedom of association).

[18]. "Where restricting membership is a direct response to wider gender discrimination and disadvantage women face in society, restricting membership to women only does not breach this 1st Principle". The legislator's attitude clearly comprehends Greece as falling in the category of countries, which place women at a disadvantageous position. https://www.ica.coop/sites/default/files/publication-files/ica-guidance-notes-en-310629900.pdf, pp. 10-11.

6) LAW 4673/2020

The said law was published on 11/its shareholders´03/2020. In its article 37 it provides for the abolishment of Law 4384/2016 with the exception of articles 37 and 38, which include provisions for producers' groups and organisations and PDO-PGI-TSG products.

The Explanatory Report of Law 4673/2020 explains that the then current Law 4384/2016 failed to alleviate the prolonged deep institutional and financial crisis affecting negatively the Greek co-operatives. On the contrary "the new law provides increased opportunities for co-operative members to formulate the appropriate framework for them in order to operate as a private and autonomous enterprise, which will have access to all business activities that do not alter its rural character".

It is not possible to get in an into depth analysis of the new law in such a short period of time, however a few initial comments on the new law are as follows:

1) Article 1§5 provides for the supplementary application of the provisions of Law 4548/2018 on SA and the Civil Code as regards matters not regulated by the law itself. The supplementary application of the SA legal regime is a mistake. One should remind the classical distinction in Greek legislation between capital and personal enterprises. Co-operative is a personal enterprise basing its activities on its members and not on invested capital. SA is a capitalist enterprise basing its activities on its shareholders' capital. It is a wrong practice to use legislation irrelevant to the nature and scope of the original enterprise. One might say that the same is provided for in the SCE Regulation, however such provisions are only applying within the specific context of an article of the Regulation and not in general terms, and furthermore such application is controlled by the residual competence of each Member-State legislation.[19] An acceptable practice would be the application of an SA rule in a co-operative case specifically mentioned in the law text. General supplementary application alongside the Civil Code is not a good practice and may cause questions and contradictory issues.

2) Article 33§5 provides that the remainder of the liquidation, if any, is distributed to the members. Such provision is detrimental for co-operatives violating the 3rd co-operative principle.[20]

3) The Explanatory Report indicates as one of the advantages of Law 4673/2020 "the opportunity to solve the constant problem of financing the functioning of the co-operatives, which makes them non-competitive. Thus, the statutes may provide for the registration of voting investor-members, making their participation attractive" (article 6§2 of Law 4384/2016 did not allow voting rights to investor-members). Hence, if the statutes allow, investor-members may participate with more than one compulsory shares in the co-operative capital and each compulsory share corresponds to one vote under the condition that such

[19]. See, i.e., Fefes, European Institutions of Social Economy, p. 153.
[20]. "The ethical principle driving these restrictions is that the residual net assets of a co-operative, its indivisible reserves created by generations of co-operative members, ought not to be seen to be owned by and available for the personal benefit of current members", https://www.ica.coop/sites/default/files/publication-files/ica-guidance-notes-en-310629900.pdf, pp. 37-38.

shares and votes will not exceed 35% of the whole of compulsory shares and corresponding votes (article 9§2).

Investor-members' contributions are a capital source for co-operatives, however their presence should follow specific criteria. Co-operatives that accept non-user members or investor-members create a potential risk to a co-operative's autonomy and independence in addition to risking breaching the 3rd co-operative principle of "limited compensation on capital subscribed as a condition of membership". This risk arises, because such members inevitably will not have the same commitment to the long-term sustainable autonomy and independence of the co-operative as user-members have. This is particularly the case where non-user or investor-members are granted voting rights in a co-operative's general assembly or rights to appoint nominees to the board.[21] Investor-members come only at the third place of potential capital sources for a co-operative.[22] As a counterargument, one might point out that the SCE Regulation provides for investor-members. This is true, nevertheless they do not participate and vote in the General Meeting of the SCE (as provided for in article 12 of Law 4673/2020).[23] They form their own special meeting, formulating and expressing their opinion as regards their own interests and communicate this opinion at the General Meeting of user-members.

4) It is true that the new law amended some deficiencies of Law 4384/2016, for instance it reduced the minimum number of founding members of a co-operative from at least twenty persons to ten. However, many of the abovementioned shortcomings of Law 4384/2016 remained intact. Somewhat more specifically:

a) The law prohibits the registration of members in co-operatives three months prior to the date of election of the members of the administrative and supervisory boards (article 7§3).

b) Article 8§1f preserves the obligation of the members to deliver to co-operatives their annual produce and purchase from their co-operatives their annual supplies at a specific percentage. The only difference from the previous regime is the reduction of the percentage from 80% to at least 75%.

c) The law provides for the mandatory presence of a lawyer at the procedure of boards' elections as the chairman of the electoral committee (article 20§1).

d) Article 16§11 provides that the chairman of the administrative board undertakes the obligation to submit annually a statement of private assets in case that the co-operative's annual turnover exceeds 1,000,000 euros instead of 2,000,000 euros provided in Law 4384/2016, that is the new law makes stricter the said requirement.

---

21. https://www.ica.coop/sites/default/files/publication-files/ica-guidance-notes-en-310629900.pdf, p. 55.
22. "Co-operatives should always consider the relative priority for raising capital from the following sources: 1st – a co-operative's own members, 2nd – other co-operatives and co-operative financial institutions, 3rd – social bonds and social investors, 4th – commercial lenders – the financial markets". https://www.ica.coop/sites/default/files/publication-files/ica-guidance-notes-en-310629900.pdf, p. 40.
23. See Fefes, European Institutions of Social Economy, p. 96.

e) The wording of article 9§2 indicates that there is only one compulsory share for user-members prohibiting the acquirement of additional mandatory shares for these members in contrast with investor-members that may acquire more than one compulsory shares.

f) The legal distinction between "mixed" co-operatives and women co-operatives in Greece remains, hence the statutory prohibition of free entrance in a co-operative based only on sex (article 2§1).

7) CONCLUSION

Co-operatives need for their existence and development a specific legal framework that adequately reflects their particular nature and function, thereby ensuring them a level playing field relative to other business organisations, and that preserves their distinct identity, which more generally is the precondition for both a variety of legal entities and market pluralism to exist. The regulation of co-operatives cannot be identical to that of other business organisations, especially companies, but must be modeled on the specificities of its subject matter, which in turn this regulation contributes to shaping. This does not imply that co-operatives are to be the recipients of a preferential treatment as compared to other business organisations, but of a specific treatment as far as their particular features so require.[24]

The different approaches to legislation governing co-operatives can be categorized into three types:

1. Countries where there is one general co-operative law;

2. Countries where co-operative legislation is divided according to the sector and social purpose of the co-operative;

3. Countries where there is no co-operative law and where the co-operative nature of a company is solely derived from its internal articles of association or rules.

Anyway, initial ownership structures of co-operatives (consumer-, producer or worker-oriented) exert a predominant influence on the type of laws and norms applied to this type of company, i.e. the path dependency is mainly structure driven. For instance, in some jurisdictions of the EU, the co-operative is viewed as an association, in others as a society or as part of contract law, while in some other EU member states co-operatives have no special legal statute, like in Denmark and the United Kingdom. This does not mean that co-operatives with an economic objective cannot include societal effects of solidarity, network building, trust and education of members, capacity building and a sustainable development of local communities or regions.[25]

Both the above passages illustrate, on the one hand, the coordinated research done on co-operatives and on the other, the existence of valuable resources and aids on co-operative legislation and its proper drafting. The only safe conclusion is that in order to draft a law on co-operatives, one must have a deep

[24]. See Fici, p. 7.
[25]. See Groeneveld, p. 20-21.

knowledge of co-operative definition, values and principles, as enshrined in the ICA Statement on the Cooperative Identity, and follow the international evolution of co-operative practice and experience, the jurisprudence of national courts and the Court of the EU. If the legislature is not aware of the above principles, then what it creates may be anything but a co-operative.

The above brief description of several specimens of Greek rural co-operative legislation clearly reflects the attitude of the Greek legislator. It is evident that the main approach is depicted by lack of knowledge of the co-operative institution, persistent distrust for co-operatives, and endeavour to control their function. There is definitely no connection to the desirable and correct legislative process quoted. A true service to Greek cooperatives would be if the legislature adopts a single law on co-operatives, following the above patterns.

SELECTED BIBLIOGRAPHY

Antoniou A., "Co-operative structures within traditional economic activities, 19th century Greece" in Agricultural Co-operatives in South and Central Europe, 19th - 20th century: a comparative approach, Athens Academy, 2013.

Cracogna D. –Fici A. –Henrÿ H. (eds), International Handbook of Cooperative Law, Springer 2013.

Fefes M., Rural Co-operatives. The New Legal Regime under Law 4384/2016 (in Greek), Nomiki Vivliothiki (Legal Library), Athens 2018.

Fefes M., The Legal Regime of Rural Co-operatives (in Greek), Nomiki Vivliothiki (Legal Library), Athens, 2012.

Fefes M., "L. 4384/2016 on Rural Co-operatives: Legal Faults" (in Greek), Attorney, Issue 131/2019, pp. 32-35.

Fefes M., Greek Legislation on Rural Co-operatives: A concise presentation, Working paper, CIRIEC No. 2018/09.

Fefes M., "Recent Evolution in Agricultural Co-operatives Law" (in Greek), Synigoros (Councelor) 101/2014.

Fefes M., "Greek and Italian Co-operative Movement: A brief comparison", in Agricultural Co-operatives in South and Central Europe, 19th - 20th century: a comparative approach, Athens Academy, 2013.

Fefes M., "The New Legal Regime of Rural Co-operatives: A critique" (in Greek), Dikaio Epichiriseon & Organismon (Enterprises and Organisations Law), 3/2013.

Fefes M., "Recent Evolution in Agricultural Co-operatives Law" (in Greek), Synigoros (Councelor) 95/2013.

Fefes M., Greek agricultural Co-operatives in the '80s: The Tale of a Lost Decade, EBHA 15th Annual Conference Athens, 24-26 August 2011, Business, Finance and the State in the Twentieth Century: European Comparisons in Historical Perspective Crisis and Transformation, http://www.ebha.org/ebha2011/files/Papers/ AUGUSTCONFERENCEFEFESPAPER.pdf.

Fefes M., European Institutions of Social Economy: I. The European Co-operative Society, (in Greek), Ant. N. Sakkoulas Publications, Athens – Comotini 2007.

Groeneveld H., Doing Co-operative Business Report, ICA, 2016.

Papageorgiou C., "Usage and mis-usage of co-operatives. The example of Greece", in Agricultural Co-operatives in South and Central Europe, 19th - 20th century: a comparative approach, Athens Academy, 2013.