
The Question of Legal Subjectivity of a Cooperative Founder

Sonja Končar¹ and Igor Prokopović²

¹Public Defender's Office of the City of Novi Sad, Novi Sad, Serbia

²Law Office Prokopović, Leskovac, Serbia

Article Information*

Review Article • UDC: 334.73:340.111.5

Volume: 21, Issue: 2, pages: 197–214

Received: March 25, 2024 • Accepted: June 21, 2024

<https://doi.org/10.51738/Kpolisa2024.21.2r.197kp>

Author Note

Sonja Končar  <https://orcid.org/0009-0009-1281-9076>
Igor Prokopović  <https://orcid.org/0009-0008-5223-0234>

We have no known conflicts of interest to disclose

Corresponding author: Sonja Končar

E-mail: ksonja052@gmail.com

* Cite (APA): Končar, S., and Prokopović, I. (2024). The Question of Legal Subjectivity of a Cooperative Founder. *Kultura polisa*, 21(2), 197–214, <https://doi.org/10.51738/Kpolisa2024.21.2r.197kp>



© 2024 by the authors. This article is an open-access article distributed under the terms and conditions of the Creative Commons Attribution (CC BY) license (<https://creativecommons.org/licenses/by/4.0/>).

Abstract

The current aspiration towards development and improvement of the cooperative sector in Serbia, observed in the context of modern business conditions and imperative market demands regarding the establishment of sustainable development of business entities, provides at the same time an opportunity to evaluate the legislative solutions within this area. The paper shall first, through observing the elements of the cooperative identity, determine the general features of a cooperative and its importance in the modern economic environment, and then, by analyzing the legal regulations of Serbia, Croatia, Bosnia and Herzegovina and Montenegro, using a comparative method, it shall critically enlighten our legal regulation as it pertains to the regulation of the establishment of cooperatives with an emphasis on the question of legal subjectivity of a cooperative founder. It is the aim of the research in this paper to: 1) examine whether the answer to the question of legal subjectivity of the cooperative founder as envisioned by our legislation, observed in the context of modern market conditions, contributes to the sustainable development of the cooperative and to the improvement of its economic potential, and 2) to propose *de lege ferenda* solutions that would create a more stimulating legislative framework within the area regulating the question of legal subjectivity of a cooperative founder.

Keywords: cooperative, establishment of a cooperative, legal subjectivity of a cooperative founder, self-help, sustainable development of cooperative, *de lege ferenda*

The Question of Legal Subjectivity of a Cooperative Founder

Introduction

A cooperative is a voluntary enterprise where the members of the cooperative realize their different aspirations guided by cooperative values and operating based on cooperative guidelines. However, a cooperative is also a market competitive actor and an economically feasible business entity (Vitez, 2018, p. 19). Although the business operations of a cooperative are not exclusively focused on gain, the impression is that, in the modern business environment characterized by the absolute domination of capital and the imperative of profit achievement, it is expected from a cooperative, even more than from a classic business enterprise, to contribute to economic growth and the development of society (International Cooperative Alliance [ICA], 2013). Such expectations are also present in Serbia and manifested through the current aspirations towards the development of the cooperative sector. Although the institutional and financial support to cooperatives in Serbia, intensified in recent years, does represent a certain step forward, the basis for the existence, sustainability and development of the cooperative sector is ensured through legislative framework (Zakić & Nikolić, 2018; Vitez, 2010). In that regard, the intention for the development of cooperative organizing in the Republic of Serbia presents itself as an opportunity to examine the significance and position of a cooperative in the modern economic environment, as well as an opportunity to analyse the positive legal and comparable legislative solutions governing the fundamentals of functioning of the cooperative. It is the opinion of the author that one of the key fundamentals is the establishment of the cooperative emphasizing the regulation of the question of legal subjectivity of a cooperative founder. The selection of legislation governing cooperatives analyzed in this paper was made based on the fact that Croatia, Bosnia and Herzegovina, Montenegro and Serbia, all had a long-standing evolution within the same legal system, while also taking into account the fact

that in the last decade the Croatian cooperative legislation has been evolving in accordance with the European legal system.

General Features of a Cooperative and its Importance in the Modern Economic Environment

A cooperative represents a specific form of business organization based on principles of democracy and self-help and is different from other forms in terms of establishment, membership, governance, fundraising, business goals and other characteristics. (Laidlaw, 1980, p.3; Nikolić, 2018, p.68). These specific cooperative features are determined by the definition of cooperative, as well as its values and principles, all being mutually connected and conditioned elements of the cooperative identity, as adopted in form of the Statement on the Cooperative Identity by the International Cooperative Alliance at its 31st congress, held in September of 1995 in Manchester. As per the above, the Statement on the Cooperative Identity defines a cooperative as an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise (ICA, 1995). The same document states that the values a cooperative is based on are: self-help, self-responsibility, democracy, equality, equity and solidarity, honesty, openness, social responsibility and caring for others, while the cooperative principles as guidelines by which cooperatives implement their values into practice, are defined as: voluntary and open membership, democratic member control, member economic participation, autonomy and independence, education, training and information, co-operation among cooperatives and concern for community.

The specificities of a cooperative as per the elements of the cooperative identity, as well as their implementation in business operations, have contributed to the fact that the cooperative sector today has a significant place within the modern economic environment, as indicated by the data stating that 279.4 million people, that is a 9.46% of the total employed world population, is engaged by cooperatives making 2.1 billion US Dollars, annually. (Eum, 2017, p.

12). It is safe to assume that this intensity and volume of the global cooperative business operation is a consequence of its primary focus on the satisfaction of the joint needs of its members based on mutual equality and solidarity, with the simultaneous existence of significant potential for social responsibility and concern for community. Also, the modern cooperative sector is characterized by multidimensional diversity, multiple varieties of cooperative forms and their significant vitality, giving it, without a doubt, the epithet of one of the most important and prospective segments of the economic environment (Fici, 2012, p.5; Nikolić, 2014, p.33). Cooperatives have a key role in stabilizing the economy, especially in those sectors that have a high level of uncertainty and price volatility, thus representing a more efficient form of association than traditional investment enterprises, which is why their significant potential requires adequate support (Mićović, 2017, p.1207; Bateman, 2010, p.106). As an interesting middle size organizational system, existing between big, centralized organizations and numerous small, individual businesses, a cooperative has the potential of using and combining the advantages of small businesses with the assets of big business systems, thus contributing to the social and economic development, encouraging the growth in employment and influencing a more equal wealth distribution (Hagen, 2001, p.43; Borzaga & Galera, 2012). By taking into account the positive effects of cooperative business operations, in the developed world, and especially after the global economic crisis of 2008, the cooperative model is now seen as an important science with a significant presence in the educational programmes of elite universities. (Zakić & Zakić, 2019, p. 25).

As all other business enterprises, a cooperative aims to achieve positive business results, striving towards continuous development of stability and certainty of socio-economic opportunities that it exists within. However, it is a fact that the current global economic environment is characterized by economic, legal and technological changes that are creating a lack of stability and exerting intense and growing pressure on business enterprises to evaluate their competitive advantages and their ability to participate in a market aggressive

environment. (Nikolić, 2009, p. 15). In that regard, all business enterprises today are faced with the task of redefining and optimizing as per the changing and highly competitive market conditions, with the aim of efficiently achieving the goals they were established to realize. The imperative of the modern market business model is a sustainable development of an economic entity, and its growth and business operations being based on knowledge and competence (Brkić & Tomaš Simin, 2022). These demands are increasingly being made on cooperatives as well, even though cooperatives, as opposed to classic enterprises, operate by adhering to the values of self-help, relying almost exclusively on their own personal and material resources, therefore facing significant challenges and difficulties in the process of realizing their economic aspirations. Since it almost exclusively relies on the capital contribution of its founders and members, the financial position of modern cooperatives is hardly sustainable, while profitability is difficult to achieve due to the fact that cooperatives are significantly closed to third parties (Dukić Mijatović et al., 2022, p. 1234). Therefore, a cooperative is faced with a complicated task of finding the optimal solution with the aim of meeting the demands of a modern market business model, while at the same time preserving the self-help function as its basic value.

Establishing a Cooperative – the Question of Legal Subjectivity of a Founder

Compared to classic capital enterprises, the establishment of a cooperative is characterized by a number of specificities primarily determined by the cooperative identity. In accordance with the cooperative principle of voluntary and open membership, the establishment of a cooperative represents an agreement of will of the founders of a cooperative regarding the mandatory elements of its legal status (Vitez, 2003, p. 163). Also, especially important for the establishment of a cooperative and the acquiring of its status as a legal entity, is the legislative framework defining the required number of founders of a cooperative, that is the legal subjectivity of persons who can be cooperative members, the modality of the cooperative

establishment agreement and adoption rules of such agreement, as well as the cooperative rules stating the principle of autonomy of the cooperative and defining in detail the organizational and operational principles. Taking into account that cooperatives are organizations focused on persons, the issues governing the position of a founder or membership of a cooperative represent the most important segment of the cooperative legislation of any country (Hagen, 2005, p. 26). The founders, or cooperative members, are at the same time its co-owners and main business decision makers, therefore representing the essence of a cooperative concept, establishing the *modus operandi* of a cooperative and projecting its plans for the future (ICA, 2015). Therefore, compared to a classic business enterprise, the market position of a cooperative is significantly different, as it is directly conditioned by its self-help function which, as a proclaimed cooperative value, represents an essential and inseparable element of a cooperative identity. The success of a cooperative business enterprise, and consequentially its sustainability, depend on the scope and intensity of the engagement as well as the competence and innovative ability of its founders or members. Therefore, in terms of optimization of cooperative business operations and the simultaneous ensuring of a stable self-help function as the base of a cooperative identity and its sustainability in response to the demands of the modern markets, it is reasonable to question the issue of legal subjectivity of the cooperative founder and its legislative framework.

In the foreign legal cooperative theory the question of legal subjectivity of a cooperative founder is almost indisputable, since the universally accepted definition of a cooperative established by the International Cooperative Alliance makes no difference between persons who can be cooperative founders, meaning that it equally allows for both natural persons and legal entities to exist as founders. As long as the basic democratic principle of cooperative management stating that one member has one decision-making vote is adhered to, the law should not impose any restrictions regarding the type of entity allowed to establish a cooperative (Hagen, 2001, p. 73). As per the aforementioned, the participation of a legal entity in establishing a cooperative is desirable

as long as it does not affect the traditional cooperative system based on equality as a basic cooperative value. The opinion that the law should allow for the possibility of legal entities to participate in the establishing of a cooperative is also prevailing in domestic literature. By introducing legal entities as founders of a cooperative, the self-financing function of the cooperative would be strengthened, while also elevating the level of business expertise and cooperative management (Mitrović et al. 2021, p.88). In that regard, the concept of legal entities as cooperative founders contributing their resources and participating in the business operations of a cooperative, would ensure the stability of a cooperative and would strengthen self-financing as an important element of the self-help function of a cooperative, possibly representing a realistic way of meeting imperative market demands. By merging the capacities of natural persons and legal entities, cooperatives could become more competitive (Ševarlić, 2015). As per the aforementioned, merging cooperatives with the infrastructure, skills and competences available to a legal entity could be essential for the development of a cooperative as a profitable and competitive economic enterprise. By legally limiting the ability of business entities to participate in establishing a cooperative, cooperatives are unjustifiably denied resources thus having a market disadvantage compared to classic business enterprises (Timčić, 2016, p. 164). If a cooperative is expected to operate exclusively on the bases of self-financing, while simultaneously being denied the access to resources available only to legal entities and not natural persons, a cooperative is faced with an inability to achieve its full economic potential, as opposed to classic business enterprises that have multiple and diverse possibilities and capital raising mechanisms available. It is the opinion of Vitez (2018) that a legal entity is a desirable founder of a cooperative since the personal exclusivity of cooperative organizing prevents business enterprises, as experts in their field, from becoming members and managers of a cooperative, thus contributing to the expertise and business efficiency and management of a cooperative (pp. 28-29). As per the aforementioned, it is safe to assume that the participation of legal entities in the establishment and operations of cooperatives through capital placement, but also through the investment of

knowledge, expertise, business skills, experience and previously achieved market position, while completely respecting the identity of a cooperative, would contribute to the development of the cooperative sector and to the strengthening of its self-help function as well as to the creation of conditions for increase of job opportunities, new business opportunities and the development of inventions, all being signs of improvement that every society aims for.

Having in mind the different business operation goals a cooperative has compared to other business enterprises, the issue of attracting legal entities and stimulating them to participate in cooperative organizing becomes especially important. Taking into account the growing importance of the socially responsible business principle, also identified as a contribution to the development of local communities, and having in mind the growing interest classic business enterprises have in acquiring the socially responsible business status, it is the opinion of the author that the issue of attracting legal entities could be resolved by implementing this principle into the process of merging cooperatives and classic business enterprises at a local community level. In that regard, a classic business enterprise with a cooperative founder status would have the opportunity, in accordance with cooperative values and principles, of actively participating, through different placements of their varied resources, in the development of a cooperative business within the local community, thus acquiring the socially responsible business title. At the same time, a cooperative would maintain its self-help function while being able to better respond to market demands through the engagement of a legal entity. The assumption is that this concept would be in agreement with the obvious global business hybridization, which is intensely pushing the boundaries of corporate sustainability in a direction of strategies suggesting that profit and social responsibility have a more equal footing (Alberti & Varon Garrido, 2017).

In continuation the paper will present a review of legislative provisions governing the establishing of cooperatives in Croatia, Bosnia and Herzegovina, Montenegro and Serbia.

According to the cooperative legislation of Serbia (Narodna skupština Republike Srbije, 2015), a cooperative is a special form of organization of natural persons who, by operating based on cooperative principles, realize their economic, social, cultural and other interests and who manage and control a cooperative. A cooperative can be founded by a minimum of five legally capable domestic and foreign persons, with the condition that the minimum number of cooperative founders may not include persons living in a shared household with the founder. Depending on the objectives and required funds for the establishment and operations, cooperatives can be established through contributions or membership fees, as per the establishment agreement and cooperative rules. The cooperative establishment procedure entails holding a constituent assembly, signing the establishment agreement, adoption of cooperative rules and election of cooperative governing bodies. As per the aforementioned, we can conclude that our law insists on restricting the legal subjectivity of the founder by not allowing for a legal entity to participate in establishing a cooperative, thus characterizing a cooperative as a highly personalized form of business enterprise.

According to the cooperative legislation of Croatia (Hrvatski sabor, 2011), a cooperative is defined as a voluntary, open, and independent enterprise managed by its members, who through their work and other activities, or through use of the services of a cooperative, on the bases of commonality and mutual assistance, improve and protect their individual and common economic, financial, social, educational, cultural and other needs and interests, in order to achieve the goals for which the cooperative was established. The establishment of a cooperative requires a minimum of seven founders, both legally capable natural persons as well as legal entities. According to legal procedure, a cooperative is established at a constituent assembly, where the cooperative rules are adopted, governing bodies are elected and a decision regarding a member's contribution is made. As per the aforementioned, we can conclude that the Croatian cooperative legislation governs the question of legal subjectivity in complete agreement with the definition of cooperatives stated in the

Statement on the Cooperative Identity, the principles of open membership and governing opinions of cooperative theoreticians, thus enabling legal entities the possibility of becoming cooperative founders.

According to the cooperative legislation of Bosnia and Herzegovina (Parlamentarna skupština Bosne i Hercegovine, 2003), a cooperative represents an organizational form of voluntarily joined members working to achieve their common economic, social and cultural needs and goals, through joint ownership and democratic business control. The minimum number of cooperative founders is five natural persons or legal entities, meeting the personal requirements as per cooperative rules, where the law states that the rules of the cooperative can prevent legal entities from becoming members of a cooperative. The cooperative is established by signing the establishment agreement. As per the law, through this document a higher number of founders can be determined. Depending on its goals and required funds, cooperatives are established through contributions and other assets of the founders as per the establishment agreement and cooperative rules. By a majority of votes, the cooperative rules are adopted at the constituent assembly. As per the aforementioned, we can conclude that within the cooperative legislation of Bosnia and Herzegovina the question of legal subjectivity is particularly defined, since although it enables legal entities to participate in establishing a cooperative, at the same time it states that the rules of a cooperative can exclude a legal entity from becoming a member of a cooperative, questioning in a way the observance of the open membership principles.

The cooperative law in Montenegro (Skupština Crne Gore, 2015) recognizes a cooperative organization defined as a voluntary form of joining and organizing of natural persons and legal entities, members of the cooperative, with the aim of realizing economic and other interests, The founders of the cooperative can be natural persons registered at the agricultural manufacturers registry in accordance with the law, and legal entities registered at the Central registry of legal entities engaged in agricultural production and processing. The minimum number of founders is five, and they can make both financial and non financial contributions. A cooperative is established at the

establishment assembly, where the founders adopt the establishment agreement by a majority of votes, adopt the operational rules of the cooperative and elect its governing bodies. As per the aforementioned, we can conclude that the Montenegro cooperative legislation, like the Croatian, governs the issue of legal subjectivity in complete agreement with the definition of cooperatives stated in the Statement on the Cooperative Identity, the principles of open membership and governing opinions of cooperative theoreticians, thus enabling legal entities the possibility of becoming cooperative founders.

Conclusion

Beginning with the indisputable economic potential of a cooperative, the developing goal of every community and the task of every government of creating conditions for the development of cooperatives through progressive legislation, (Dukić Mijatović et al., 2023, p. 3; Vitez, 2010), it becomes essential to resolve the issue of how to ensure a sustainable development of cooperatives and their organized and stable business operations based on knowledge, capabilities and expertise, thus enabling them a more equal market participation. Aside from the necessary institutional and financial support, one of the solutions is the creation and implementation of stimulating legislative framework for cooperative organizing, one that will enable cooperatives to have a stable development, and a stable growth of their business potential.

Based on the comparative analysis, it is possible to deduce that the observed legislative frameworks for the establishment of cooperatives have some similarities, but also significant differences. Together with the slight differences regarding the required number of founders, the format of the establishment agreements and the procedure of their adoption, we can confidently state that the essential difference between the observed comparative legislations and our law is contained in the provision stating that in Serbia only natural persons can be founders of cooperatives. Through this provision, the potential pool of interested cooperative founders is reduced both in terms of quantity and quality. At the same time, cooperatives are denied the

possibility of making use of a variety of resources and economic potential available to a legal entity. Considering this, and taking into account the analyzed literature, we come to a conclusion that our legal solutions stating that only natural persons can be founders of a cooperative are, in a way, not in agreement with the modern tendencies of the European cooperative legislation, as well as outdated even in comparison to the cooperative legislation of Bosnia and Herzegovina and Montenegro.

By observing the specificities that are characteristic to the domestic cooperative sector in a context of international documents within the area of cooperative law and modern market and business conditions, it is possible to create a law that would simultaneously enable cooperatives the strengthening and growth of their self-help function, their sustainable development and an equal market position compared to other business enterprises. As per the aforementioned, our legal provisions should be revised and amended with the following legal solution the author suggests to the law maker as a *de lege ferenda* proposition:

Enable a provision stating that, while completely respecting the identity of a cooperative and adhering to the implementation of the governing rule that says that one cooperative member is entitled one vote, the interested legal entities can participate in the establishment and operation of cooperatives, in a way where, through their resources, knowledge and competences, they enable its sustainability, strengthening its self-help function, while at the same time contributing to the overall economic development of a community.

However, it is important to have in mind that not even the best law on cooperatives is sufficient in order to establish a stable cooperative system (Hagen, 2002, p.48). In that regard, promoting the significance of the economic potential of cooperatives, attracting, motivating and incentivizing interested legal entities to participate in the establishment and operations of cooperatives, while obeying all elements of cooperative identity, might be the necessary prerequisites for the appropriate and complete implementation of the proposed legal solutions.

References

- Alberti, F.G. & Varon Garrido, M.A. (2017). Can profit and sustainability goals coexist? New business models for hybrid firms. *Journal of Business Strategy*, 38(1), 3–13. <https://doi.org/10.1108/JBS-12-2015-0124>
- Bateman, M. (2010). Cooperative development in Serbia: Why and how to promote cooperatives. In D.Tomić (Eds.), *Tematski zbornik Agrarna i ruralna politika u Srbiji – 3 – Održivost agroprivrede, zadrugarstva i ruralnog razvoja*, (pp. 99-106). Društvo agrarnih ekonomista Srbije & Poljoprivredni fakultet Univerziteta u Beogradu.
- Borzaga, C. & Galera, G. (2012). *Promoting the understanding of cooperatives for a better world*. Euricse. <https://euricse.eu/en/publications/promoting-the-understanding/>
- Brkić, J.I. & Tomaš Simin, M. (2022). Microeconomic aspects of sustainable development: Importance for market economy. *Pravo-teorija i praksa*, 39(2), 80–90. <https://doi.org/10.5937/ptp2202080B>
- Dukić Mijatović, M. S., Ozren, U. N., & Stoilković, A. V. (2023). Corporate social responsibility and sustainable development: International legal framework for goals achievement and some theoretical insights. *Pravo – teorija i praksa*, 40(1), 1–16. <https://doi.org/10.5937/ptp2300001D>
- Dukić Mijatović, M. S., Uzelac, O. N., & Mirković, P. R. (2022). Digital token in the business function of cooperatives. *Ekonomika poljoprivrede*, 69(4), 1225–1239. <https://doi.org/10.5937/ekoPolj2204225D>
- Eum, H. S. (2017). *Cooperatives and employment: second global report for Cicopa*. Cicopa. <https://www.cicopa.coop/wp-content/uploads/2018/01/Cooperatives-and-Employment-Second-Global-Report-2017.Pdf>

- Fici, A. (2012). *Cooperative identity and the law*. Euricse working paper, N.023, 12. <http://dx.doi.org/10.2139/ssrn.2005014>
- Henry, H. (2001). Guidelines for Co-operative Legislation. *Review of international co-operation*, 94(2), 50–105.
- Hagen, H. (2002). Current trends in comparative cooperative law. *Pravo - teorija i praksa*, 19(9), 48–61.
- Hagen, H. (2005). *Guidelines for Cooperative Legislation, second revised edition*. International Labour Office.
- Hrvatski sabor. (2011). *Zakon o zadrugama Republike Hrvatske*. [Law on cooperatives, Republic of Croatia] (Narodne novine, br. 34/11, 125/13, 76/14, 114/18, 98/19). Zakon. <https://www.zakon.hr/z/458/Zakon-o-zadrugama>
- International Cooperative Alliance. [ICA]. (1995). *Statement on the cooperative identity*. Brussels, News No. 5–6/1995, 3. Retrieved January 15, 2022, from <https://www.ica.coop/en/cooperatives/cooperative-identity>.
- International Cooperative Alliance. [ICA]. (2013). *Blueprint for a co-operative decade*. Retrieved January 15, 2022, from https://ica.coop/sites/default/files/2024-01/blueprint_for_a_co-operative_decade_-_english.pdf
- International Cooperative Alliance. [ICA]. (2015). *Guidance notes to the co-operative principles*. Retrieved January 15, 2022, from <https://ica.coop/sites/default/files/2021-11/ICA%20Guidance%20Notes%20EN.pdf>
- Laidlaw, A. F. (1980). *Co-operatives in the Year 2000*. A paper prepared for the 27th congress of the International Co-operative Alliance (Vol. 15). The Co-operative. https://okayasu.tokyo/excerpts/coops_in%20y2k.pdf
- Mitrović, S., Mitrović, A., & Mitrović, Lj. (2021). Zadrugarstvo kao nova paradigma održivog razvoja ruralnih područja u Srbiji [Cooperatives as a new paradigm of sustainable development of rural areas in Serbia]. *Ecologica* 28(101), 82–90. <https://doi.org/10.18485/ecologica.2021.28.101.13>

- Mićović, M. (2017). The legal nature and the framework for cooperative activities. *Ekonomika poljoprivrede*, 64(3), 1205–1218. <https://doi.org/10.5937/ekoPolj1703205M>
- Narodna skupština Republike Srbije. (2015). *Zakon o zadrugama* [Law on cooperatives]. (Službeni glasnik Republike Srbije, br.112/2015).Paragraf. https://www.paragraf.rs/propisi/zakon_o_zadrugama.html
- Nikolić, M. (2009). *Evolucija zadružnog zakonodavstva u Evropi* [Evolution of cooperatives legislation in Europe]. Društvo agrarnih ekonomista Srbije.
- Nikolić, M. (2014). *Primena zadružnih vrednosti i principa i njihov uticaj na poslovanje poljoprivrednih zadruga u Srbiji* [Application of cooperative values and principles and their influence on the operations of agricultural cooperatives in Serbia] [PhD Published doctoral dissertation, Univerzitet u Beogradu: Poljoprivredni fakultet]. <https://nardus.mpn.gov.rs/handle/123456789/4833>
- Nikolić, M. (2018). Modeli finansiranja zadruga [Models of financing the co-operatives]. *Finansije* (73)1–6, 66–88.
- Parlamentarna skupština Bosne i Hercegovine (2003). *Opći zakon o zadrugama* [General law on cooperatives]. (Službeni glasnik BiH, br. 18/03). Službeni list. <http://www.sluzbenilist.ba/page/i/s7CHyDhwRKM=>
- Skupština Crne Gore. (2015). *Zakon o kooperativama* [Law on cooperatives]. (Službeni list Crne Gore, br.43/2015). Paragraf. <https://www.paragraf.me/propisicrnegore/zakon-o-kooperativama.html>
- Ševarlić, M. (2015, November 5). Slabosti nacrtu zakona o zadrugama [Weaknesses of the draft law on cooperatives]. *Agronomija*. <https://agronomija.rs/2015/slabosti-nacrtu-zakona-o-zadrugama/>
- Timčić, A. (2016). Normativna određenja i ograničenja uslužnih delatnosti zadruga u Republici Srbiji [Normative determinations

- and limitations of cooperative service activities in the Republic of Serbia]. In M. Mićović (Eds.), *Zbornik: Usluge i uslužna pravila*, (pp.161–168). Pravni fakultet Univerziteta u Kragujevcu.
- Vitez, M. (2003). Volja zadrugara i autonomno pravo zadruge [The will of the members of a cooperative and the autonomous right of a cooperative]. *Pravo i privreda*, 40(5–8), 160–173.
- Vitez, M. (2010). O nekim imovinsko-pravnim pitanjima zadruga u Srbiji [About some property law cooperative issues in Serbia]. In D.Tomić (Eds.), *Tematski zbornik Agrarna i ruralna politika u Srbiji – 3 – Održivost agroprivrede, zadrugarstva i ruralnog razvoja*, (pp.107–126). Društvo agrarnih ekonomista Srbije & Poljoprivredni fakultet Univerziteta u Beogradu.
- Vitez, M. (2018). Neki aspekti korporativnog upravljanja zadrugom [Some aspects of the corporative management of the cooperative community]. *Pravo – teorija i praksa*, 35(1–3), 18–35. <https://doi.org/10.5937/ptp1803018V>
- Zakić, V. & Nikolić, M. (2018). Finansijska podrška države zadrugama u Srbiji [State financial support to cooperatives in Serbia]. *Škola biznisa*, 1, 158–174. <https://doi.org/10.5937/skolbiz1-19686>
- Zakić, Z., & Zakić, V. (2019). Zadrugarstvo kao realni promoter održivog razvoja ruralnih područja u Srbiji [Cooperatives as a true promoter of sustainable development of rural areas in Serbia]. *Ekonomski vidici*, 24(1–2), 17–28.

Pitanje pravnog subjektiviteta osnivača zadruga

Sonja Končar¹ i Igor Prokopović²

¹Pravobranilaštvo Grada Novog Sada, Novi Sad

²Advokatska kancelarija "Prokopović", Leskovac

Sažetak

Aktuelna težnja za razvojem i unapređenjem zadružnog sektora u Srbiji, posmatrana u kontekstu savremenih uslova poslovanja i imperativnih tržišnih zahteva za uspostavljanjem održivog razvoja privrednih subjekata, ujedno je i prilika da se sagledaju zakonodavna rešenja u ovoj oblasti. U radu se najpre kroz prikaz elemenata zadružnog identiteta determinišu opšta obeležja zadruga i njen značaj u savremenom privrednom ambijentu, a potom se analizom zakonskih propisa Srbije, Hrvatske, Bosne i Hercegovine i Crne Gore, korišćenjem komparativne metode, kritički osvetljava naša zakonska regulativa u delu koji uređuje oblast osnivanja zadruga s posebnim akcentom na pitanje pravnog subjektiviteta osnivača zadruga. Cilj istraživanja u ovom radu je: 1) da se ispita da li rešenje pitanja pravnog subjektiviteta osnivača zadruga koje je sadržano u našem zakonu, posmatrano u kontekstu savremenih tržišnih uslova, doprinosi održivom razvoju zadruga i unapređenju njenog privrednog potencijala, i 2) da se predlože rešenja *de lege ferenda* kojima bi se kreirao podsticajniji legislativni okvir u oblasti koja uređuje pitanje pravnog subjektiviteta osnivača zadruga.

Ključne reči: zadruga, osnivanje zadruga, pravni subjektivitet osnivača zadruga, samopomoć, održivi razvoj zadruga, *de lege ferenda*