

Acquisition of the Rights to the Post-Liquidation Assets of the Cooperative

Abstract

In cooperative law, a crucial issue is the admissibility or inadmissibility of distributing the cooperative's assets among its members at the liquidation stage. Any assets remaining after liquidation are allocated for the purposes specified in the resolution of the last general meeting. This meeting may decide that the remaining assets are to be distributed, either wholly or in part, amongst the cooperative's members, or possibly amongst former members or heirs. It is important to determine both the timing of the distribution and those entitled to the liquidation surplus.

KEYWORDS: liquidation assets, cooperative member, heir, general meeting, liquidation

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1 | Preliminary Remarks

The problematic nature of liquidation activities in cooperative law means that the issue of the admissibility, or inadmissibility, of the distribution of the cooperative's assets among its members at the liquidation stage plays an important role. It was only in the amendment to the Cooperative Law Act of 7 July 1994.^[1] that the legislator partially departed from the principle

¹ Art. 125 § 5 as amended by the Act of 7 July 1994 (Journal of Laws No. 90, item 419), which came into force on 26 September 1994.

of the indivisibility of a cooperative's assets during its liquidation, giving it a relatively binding character.

At the last general meeting of the cooperative, a resolution may be adopted regarding the allocation of the remaining assets. This distribution takes into account former members who have not been paid all their shares by the time the cooperative is transferred or put into liquidation. That is why it is so important to determine the moment of acquiring the right to the post-liquidation surplus for members, former members or their heirs.

2 | Right to the Remaining Assets of the Cooperative

The question of admissibility or inadmissibility of dividing the cooperative's assets amongst its members during liquidation plays an important role in cooperative law. Both education in cooperative law and existing statutory solutions have favoured the principle of the indivisibility of cooperative assets during the cooperative's existence, as well as in the event of its liquidation.^[2]

The indivisibility of cooperative assets was considered one of the fundamental principles of cooperative law.^[3] According to this law, after the liquidation of a cooperative, its assets were allocated by legally authorized entities for cooperative or social purposes. The Act of 29 October 1920 provided that the assets remaining after the liquidation of a cooperative were to be used for public purposes, in accordance with the provisions of the articles of association or the resolution of the last general meeting. In the absence of relevant provisions in the statutes or resolutions of the general meeting, the highest cooperative body, which at that time was the State Cooperative Council, decided on the allocation of the cooperative's assets remaining after liquidation.^[4] On the basis of Article 81, § 3, it was

² Zob. Władysław Siedlecki, *Prawo spółdzielcze* (Poznań: Państwowe Wydawnictwo Naukowe, 1951).

³ Antoni Witosz, *Prawo spółdzielcze. Zarys wykładu* (Katowice: Uniwersytet Śląski, 1985), 96; Mirosław Gersdorf, Jerzy Ignatowicz, *Prawo spółdzielcze. Komentarz* (Warszawa Wydawnictwo Prawnicze-Wydawnictwo Spółdzielcze, 1985), 77.

⁴ Ksawery Pomijański, Adam Mantla, Władysław Izdebski, Czesław Podemski, *Polskie ustawodawstwo spółdzielcze: przepisy ogólne* (Warszawa: nakładem Spółdzielni Wydawniczej, 1934), 73-74, indicated that if all the assets of a cooperative could

argued that the distribution of the cooperative's assets among its members solely on the basis of profit was not in line with the guiding principles of cooperativism, since the cooperative's assets were not solely the result of the economic activity of the members belonging to the cooperative at the time of its liquidation.

The principle of the indivisibility of cooperative assets was also expressed in a very similar manner in Article 82, § 5, of the Act of 17 February 1961, on cooperatives and their unions, where the assets remaining after the liquidation of a cooperative were allocated for social purposes. On the basis of this Act, the doctrine linked the essence of the principle of indivisibility with the social nature of cooperative property, and the integration of this property into the national economy as a whole. The position at that time was also intended to prevent the undesirable change in the legal nature of cooperative property from a social form to a private form at that time.^[5]

The principle of the indivisibility of cooperative assets in the event of liquidation was adopted by the Cooperative Law Act of 1982, in its original form, in Article 125, § 5. However, the literature pointed out that the legal principle of indivisibility of cooperative assets is not determined by the content of cooperative ideas.^[6] This was due to the fact that the principle of indivisibility was not explicitly mentioned among the cooperative principles defined by the International Cooperative Alliance.^[7] During legislative work on the amendment to the Cooperative Law, the issue of the divisibility or indivisibility of a cooperative's assets in the event of its liquidation was one of the most contentious issues. Representatives of doctrine and practice were in favour of maintaining the existing rule, and focused mainly on the fact, that in the 1990s cooperatives benefited from a number of different types of preferences, such as grants, subsidies, and

be divided among its members upon its dissolution, this would often encourage them to dissolve perfectly prosperous cooperatives in order to share them out.

⁵ Stefan Grzybowski, *Prawo spółdzielcze w systemie porządku prawnego* (Warszawa: Zakład Wydawnictw CRS, 1976), 166 oraz Mirosław Gersdorf, *Zarząd spółdzielni w systemie jej organów* (Warszawa: Zakład Wydawnictw CZSR Centralnego Związku Spółdzielni Rolniczych, 1976), 19; Mirosław Gersdorf in: *Prawo spółdzielcze. Komentarz* (Warszawa: Wydawnictwo Prawnicze, 1966), 203; Piotr Zakrzewski, *Majątek spółdzielni* (Warszawa: Lexis Nexis, 2003), 220-223. Marta Stepnowska, *Likwidacja spółdzielni* (Sopot: Fundacja na rzecz Polskich Związków Kredytowych-Institut Stefczyka, 2009), 209.

⁶ More: Zakrzewski, *Majątek spółdzielni*, 220-223.

⁷ Krzysztof Pietrzykowski, *Prawo spółdzielcze. Komentarz do zmienionych przepisów* (Warszawa: Wydawnictwo Prawnicze, 1995), 137.

tax exemptions, which resulted in a kind of debt of the cooperative movement to the state, and, secondly, aimed to ensure complete freedom for the general meeting to determine how the remaining assets of the cooperative should be allocated.^[8] Opponents of this view argued that the cooperative's assets were in fact generated by the members themselves, and that it would be highly unfair to completely disregard them when dividing the assets of the liquidated cooperative after satisfying the creditors.

In these circumstances, a compromise solution was proposed in Article 112. The principle of the indivisibility of the cooperative's assets would remain in force, but the Cooperative Council, guided by the degree of contribution of the members to the creation of the cooperative's assets, could allow the general meeting to adopt a resolution on the total or partial distribution of the remaining assets among the members. It was not until the amendment to the Cooperative Law, of 7 July 1994, that the legislator partially departed from the principle of the indivisibility of the cooperative's assets during its liquidation, giving it a relatively binding character.^[9] It was emphasized that such changes were possible, among other things, thanks to the introduction of amendments to Article 3 of the Cooperative Law, which states that "the assets of a cooperative are the private property of its members."^[10]

However, the existing solution has not been widely accepted by representatives of the cooperative movement. The latest position of the International Cooperative Alliance, which in the third cooperative principle adopted in 1995 decided that at least part of the cooperative's assets are indivisible, argues against the principle of divisibility of cooperative assets in the event of its liquidation.^[11]

⁸ Ibidem.

⁹ Marta Stepnowska in: *Prawo spółdzielcze. System Prawa Prywatnego*, ed. Krzysztof Pietrzykowski, Vol. XXI (Warszawa: C. H. Beck, 2020), 408.

¹⁰ Zdzisław Niedbała, „Podstawowe zmiany w prawie spółdzielczym w świetle projektowanej ustawy” *Ruch Prawniczy Ekonomiczny i Socjologiczny*, No. 3 (1994): 45 i n.

¹¹ Krzysztof Pietrzykowski, „Projektowane zmiany w prawie spółdzielczym” *Przegląd Legislacyjny*, No. 3 (1999): 11 i n. The previous cooperative rules of this international cooperative organisation did not address the issue of the divisibility or indivisibility of cooperative assets. The draft cooperative law accepted this principle, providing for the division of the assets of a liquidated cooperative among its members, but with the proviso that one tenth of these assets were to be transferred to the Cooperative Support Fund for cooperative purposes. Henryk Cioch, *Prawo spółdzielcze w świetle prezydenckiego projektu ustawy* (Kraków: „Zakamycze”, 2005), 126-127.

The indivisibility principle of the assets of a cooperative during liquidation is often mistakenly referred to in literature as the reserve fund.^[12] Once the liquidation proceedings have been initiated, in light of the provisions of the Accounting Act, there is no longer a reserve fund in the cooperative's asset structure, and we cannot speak of several cooperative funds, but rather of a single liquidation fund, all of whose assets are used to satisfy the creditors of the cooperative being liquidated. Therefore, it seems more appropriate to consider that the remaining assets, within the meaning of Article 125 § 5 of the Act, do not refer to the assets included in the reserve fund, which no longer exists, but should be treated as assets included in the liquidation fund, which have not been fully disposed of in the liquidation process. For the reasons given above, it is in relation to the remaining assets of the liquidation fund, and not the cooperative's reserve fund, that we should consider the principle of indivisibility after the completion of liquidation.^[13]

The assets of the cooperative remaining after liquidation shall be allocated for the purposes specified in the resolution of the last general meeting. The highest body of the cooperative has full discretion in deciding on the allocation of the cooperative's assets. The general meeting may decide, in a resolution, that the remaining assets are to be distributed in whole or in part among the members. The legislator referred the term "last" to the general meeting, not to the resolution. It follows, therefore, that a resolution on the allocation of the remaining assets may be adopted at the last general meeting of the cooperative.^[14] This body may decide to divide the assets among the members or allocate them for another purpose (e.g., contribute them to a commercial law company).^[15] Discretion of decision also extends to the selection of criteria for the allocation of assets to members. The Act does not impose any restrictions in this regard. Such criteria may include: the size of a member's shares, the length of membership in the cooperative,

¹² Gersdorf in: Gersdorf, Ignatowicz, *Prawo spółdzielcze*, 77; Kazimierz Krużalak, *Prawo handlowe. Zarys wykładu* (Warszawa: Wydawnictwo Naukowe PWN, 2004), 305.

¹³ Marta Stepnowska in: *Prawo spółdzielcze. System Prawa Prywatnego*, 411.

¹⁴ Vide: *Prawo spółdzielcze. Komentarz*, ed. Bogusław Lackoroński (2024, Legalis), art. 125. Por. Judgement of the Court of Appeal in Poznań of 17 January 2008 r., I ACa 1065/07, Legalis.

¹⁵ Vide: Dominik Bierecki, Piotr Pałka, *Prawo spółdzielcze* (2014, Legalis), art. 125, Nb 7.

or indicators used in the allocation of surplus or general income.^[16] However, the criteria established by the general meeting may not discriminate against individual members or groups of members. It seems desirable that the criteria on the basis of which the cooperative's assets are distributed be specified in the articles of association, which is possible under Article 5, § 2 of the Cooperative Law. The lack of regulations in the articles of association in this regard makes it necessary to define them in a resolution of the last general meeting of the cooperative. The literature emphasizes that the only body authorized to dispose of the remaining assets of the cooperative is the general meeting, and no other body may effectively make such a decision.^[17] The audit association to which the cooperative belongs may not authorize the liquidator to dispose of the cooperative's assets, as indicated in the provisions of Article 125 § 5 and Article 125 § 6 of the Act.

If the general meeting fails to decide on the distribution of the remaining assets, the liquidator should transfer them for cooperative or social purposes (Article 125, § 6 of the Act). The transfer of assets for cooperative purposes is made to either any cooperative, an audit association, or the National Cooperative Council. The transfer of cooperative assets for social purposes may be made to either a private or local government entity, whose statutory purpose is to conduct specific social activities. In principle, the liquidator of a cooperative has complete freedom in choosing a cooperative or social purpose. The literature indicates that the transfer of cooperative assets by the liquidator is a contract, not a unilateral legal act, and always requires the consent of the recipient.^[18]

3 | The Moment of Acquiring the Right to the Post-Liquidation Surplus

Following the Supreme Court in its decision of 18 April 2019, it should be noted that, within the framework of membership in a cooperative, rights and obligations should be distinguished, which, firstly, may be of a financial

¹⁶ Pietrzykowski, *Komentarz do zmienionych przepisów*, 137-142.

¹⁷ Vide: Zakrzewski, *Majątek spółdzielni*, 220-223.

¹⁸ Pietrzykowski, *Komentarz do zmienionych przepisów*, 137-142.

or non-financial nature, and, secondly, may arise directly from the membership relationship or be derivative thereof.^[19] It should not be disputed that property rights derived from membership are generally inheritable, pursuant to Article 922, § 1 of the Civil Code. An example of such a right is the right to a share of the cooperative's assets in the event of its liquidation, Article 125, § 5 and 5a of the Cooperative Law.

It follows from the above that a member or former member who has not been paid their shares acquires the right to a share of the cooperative's assets (post-liquidation surplus), only on the basis of a resolution of the last general meeting providing for the distribution of the remaining assets among members or former members.^[20] Since the resolution of the general meeting on the distribution of the post-liquidation surplus was adopted after the death of the legal predecessor of the cooperative member, this right did not exist on the date of the opening of the succession and therefore could not be inherited pursuant to Article 922 § 1 of the Civil Code, Article 924 of the Civil Code, and Article 925 of the Civil Code. It is not the elements of a legal relationship that are subject to inheritance, but the rights and obligations existing at the time of the testator's death.^[21]

One should not accept the view that the right to a share of the cooperative's assets in the event of its liquidation (post-liquidation surplus) is inextricably linked to membership in the cooperative, and that, as a result of this membership, the entitled person who submitted a declaration of accession to the defendant cooperative inherits the shares (Article 16a of the Cooperative Law), and thus inherits the right to participate in the distribution of the post-liquidation surplus, as related to membership in the cooperative and resulting from that membership.^[22]

¹⁹ Vide. Decision of the Supreme Court – Civil Chamber of 18 April 2019 II CSK 141/18, *Legalis*.

²⁰ Cf. Resolution of the Supreme Court of 12 January 2001, III CZP 44/00, *Legalis*, see ruling with commentary Piotr Pinior, OSP 2001, No. 12, p. 178, cf. SA in Poznań of 17 stycznia 2008, I ACa 1065/07, *Legalis*

²¹ Vide. Judgment of the Court of Appeal in Poznań – 1st Civil Division of 28 June 2021 I ACa 463/20, *Legalis* No. 2605000.

²² In the justification for its ruling of 16 June 2015 issued in the case of K 25/12 indicated that the applicant's next allegation concerned a breach by art. 16a Cooperative Law of freedom of association (Article 58, item 1 of the Constitution). The cooperative is obliged to accept as members heirs who wish to inherit shares in the cooperative, provided that they meet the requirements specified in the articles of association. Therefore, it is not an absolute obligation to accept a specific person or persons as members of an association such as a cooperative. This provision only

This follows from Article 16a of the Cooperative Law that the heir of a deceased member who has submitted a declaration of accession to the cooperative inherits the shares to which the testator was entitled at the time of death. The right to a share of the cooperative's assets - the post-liquidation surplus - is not identical to the share belonging to the deceased member and does not result from the share, but from the membership relationship, as provided for in Article 125 § 5a in conjunction with Article 125 § 3 of the Cooperative Law. Membership in a cooperative is closely linked to the person of the member, but it is inextricably linked to financial participation in the cooperative, expressed in the obligation to declare and acquire at least one share (Article 20, § 1 of the Cooperative Law). The contributed share cannot exist outside the cooperative. Upon payment of the share, a subjective right to the share arises, expressing the member's participation in the share fund, which exists for the entire duration of the membership relationship. Upon termination of membership, the right to the share is transformed into a claim by the former member, or possibly his heirs, for payment of the shares contributed, i. e. a claim against the cooperative. The member also has the right to demand the return of shares from a cooperative in liquidation (Article 125, § 3 of the Cooperative Law). As in the case of termination of membership, the right to return a share arises at the moment of its payment and is conditional. It loses this nature and becomes an unconditional claim against the cooperative if the following conditions are met: the cooperative goes into liquidation, the cooperative's receivables are repaid or secured, and six months have elapsed since the publication of the announcement calling on creditors to submit their claims. This claim becomes due after the financial statements have been approved by the general meeting.^[23]

The heirs of a former member of a cooperative who has not been paid their shares are entitled to participate in the distribution of the balance sheet surplus, if, by the date of the commencement of the liquidation of the cooperative, they have not been paid the value of the shares, in accordance with Article 26 of the Cooperative Law. This is because they are in a similar legal situation to that of the former member of a cooperative (the Testator).

limits the possibility of arbitrary refusal, which would prevent the inheritance of shares. The legislator has not unduly restricted the cooperative's freedom of decision-making. Each cooperative may, within the limits of the law, determine the conditions of membership that correspond to its specific nature.

²³ See Judgment of the Court of Appeal in Poznań – 1st Civil Division of 28 June 2021. I ACa 463/20, Legis No.2605000.

The position that in order to include the heir of a deceased member in the distribution of the balance sheet surplus, it is necessary to admit the heir as a member is not convincing. Pursuant to Article 16a of the Cooperative Law, the right to participate in the balance sheet surplus – referred to in Article 125, § 5a of the Cooperative Law – is not linked to membership, as it also applies to former members who have not been paid their shares.^[24]

If a cooperative has undergone liquidation, a member may be entitled to participate in the distribution of the assets remaining after the creditors have been satisfied (Article 125, § 5, 5a of the Cooperative Law). A member may acquire the right to a share of the cooperative's assets only on the basis of a resolution of the last general meeting, providing for the distribution of the remaining assets of the cooperative among the members.

4 | Claims of Former Members to the Remaining Assets of the Cooperative

The issue of admissibility of a former member to participate in the division of cooperative property was raised in connection with the amendment to the Cooperative Law Act of 7 July 1994. The commonly presented justification for allowing former members to receive satisfaction from the cooperative's assets is the fact that they contributed to its creation, either through their own work or simply by contributing shares or contributions. Initially, the participation of former members, i.e. those whose membership ceased before the cooperative was put into liquidation, in the cooperative's assets was regulated by Article 125, § 5 of the Cooperative Law. It provided that, in liquidation proceedings, the claim of a former member of the cooperative to a part of the reserve fund and other assets of the cooperative was satisfied on the terms specified in the articles of association. This construction was closely related to the amended content of Article 26 § 2. By way of contrary reasoning, it was considered that this right was vested at the moment of entry of the opening of liquidation in the register. These provisions gave former members of the cooperative the right to claim payment of a part

²⁴ See Judgment of the Supreme Court – Civil Chamber of 7 February 2025., II CSKP 2116/22, Legalis No.3178415.

of the assets, only if such a possibility was provided for in the cooperative's articles of association. This claim was valid on the date of entry in the register of the commencement of liquidation. Prior to that date, the former member was only entitled to an expectation of a share in the cooperative's assets. The rules for the former member's share in the cooperative's assets were set out in the articles of association, which also specified the criteria on the basis of which the shares were to be paid out. This solution was criticised by legal scholars.^[25] Firstly, the Act did not define the term "former member of a cooperative." This meant that any person who had ever been a member of the cooperative and whose membership had ceased no later than on the date of the general meeting's resolution on the allocation of the cooperative's assets remaining after its liquidation, could be considered a former member of the cooperative, which could lead to absurd results. Secondly, the imprecise wording "in liquidation proceedings" was criticised, as it suggested that the claims of former members of the cooperative were receivables due from the cooperative within the meaning of Article 125, § 1 of the Act, whereas in fact they only became due at the time of adoption of the resolution referred to in Article 125, § 5 of the Act, or at the latest at the time when such a resolution could have been adopted.

Currently, the entities entitled to participate in the division of assets are current members of the cooperative and those who have left the cooperative, and who have not been paid all their shares by the time of the cooperative's transition or liquidation.

The right of former members of a cooperative to make claims on the cooperative's assets during liquidation is, therefore, limited only to those persons who have not been paid all their shares by the time the cooperative is transferred or placed in liquidation. It cannot currently be assumed that former members who have not been paid their shares obtain their privileges to the remaining assets of the cooperative only at the moment of the commencement of liquidation, since the provision specifies this date as the date of the transition, or placing of the cooperative into liquidation. Former members of the cooperative who, prior to the date referred to in Article 125, § 5a, had their fully paid-up shares returned to them, and the cooperative is still in arrears with the repayment of the contributions made (they can only be included among the cooperative's creditors), cannot be included among the eligible persons. The previous solution, which

²⁵ Pietrzykowski, *Komentarz do zmienionych przepisów*, 137-172, the aforementioned *Projektowane zmiany w prawie spółdzielczym*, 11 i n.

provided that only the cooperative's articles of association determined the rules for former members' participation in the remaining assets of the cooperative, has also been abandoned. The statute of association should specify the criteria to be followed by the highest body of the cooperative in the distribution of assets, but its provisions may not conflict with the law. If neither the articles of association nor a resolution of the general meeting contain such a provision, it seems reasonable to argue that both former and current members of the cooperative participate equally in the distribution of assets.^[26]

Claims by former members of the cooperative referred to in Article 125, § 5a, may be submitted on the same terms as other creditors of the cooperative (no later than three months from the date of publication in "Monitor Spółdzielczy" ["The Cooperative Monitor"]).^[27]

Article 125, § 5 Cooperative Law is related to Article 26, § 2 Cooperative Law, which stipulates that a former member is not entitled to the reserve fund or other assets of the cooperative during its period of operation. However, they are entitled to a specific part of the reserve fund and other assets of the cooperative upon the commencement of the cooperative's liquidation, if all their shares have not been paid out by that date. In the period preceding the date of commencement of liquidation, when the cooperative is operating, within the meaning of Article 26, § 2 of the Cooperative Law, a former member is only entitled to an expectancy of a share in the reserve fund and other assets of the cooperative in the event of its liquidation.^[28]

Not only the individual rights of the deceased are transferred to their legal successors, but also their entire legal situation. The category of property rights included in the inheritance (Article 922, § 1 of the Civil Code) includes legally established expectations of the creation of rights (expectation of a share in the liquidation assets of a cooperative, related to the right to payment of the value of revalued shares included in the estate). This right, in accordance with Article 125, § 5 a, is therefore vested not only in a former member who has not been paid all their shares by the time of the cooperative's transition or liquidation, but also in their heirs, who have not been paid the shares included in the estate by that date.^[29]

²⁶ Zob. Stepnowska, *Likwidacja*, 215.

²⁷ Pietrzykowski, *Komentarz do zmienionych przepisów*, 137-142.

²⁸ See Judgment of the Supreme Court – Civil Chamber of 7 February 2025., II CSKP 2116/22, Legalis No.3178415.

²⁹ See Judgments of the Supreme Court of 3 October 1984., III ARN 5/84, OSPiKA 1985, No.9, Item 170, of 19 October 1984 r., I CR 175/84, OSNC 1985, No.8, Item 114, of

5 | Summary

It seems that such a compromise solution, which, on the one hand, allows for the division of the assets of a liquidated cooperative among its members, and, on the other hand, stipulates that a part, even a small one, is to remain indivisible and transferred for cooperative purposes, is the most appropriate. Nevertheless, the issue of the divisibility or indivisibility of a cooperative's assets during liquidation remains open and is still under discussion.

In light of the above, it should be concluded that the right to the liquidation surplus arises from membership, and is not created at the moment of becoming a member and paying the shares, but as a result of a resolution of the last general meeting. The position that, in order to include the heir of a deceased member in the distribution of the balance sheet surplus, it is necessary to admit the heir as a member, is not convincing. However, upon termination of membership, the former member's right to a share is transformed into a claim by the former member for payment of the shares contributed. It should be accepted that the heirs of a former member of a cooperative, who have not been paid their shares, are entitled to participate in the distribution of the balance sheet surplus, provided that, by the date of the opening of the liquidation of the cooperative, they have not been paid the value of the shares in accordance with Article 26 of the Cooperative Law.

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